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An Analysis of Victim Compensation Scheme

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Code of Criminal Procedure (Amendment) ACT 2008

Abstract: India was not having and fixed criteria to provide compensation to the V.O.C., not that event India was not giving any compensation to victims of crime, as their thinking was on the difference of criminal wrong and civil. but as the years passes on, government changed the legislature come forward with the Cr.P.C, 1973, which at on a large area put a glint for compensating victims.
Key words: people, judiciary, recommendation

Introduction

India is country where the government is chosen by the people of India. The government work in the parliament form where the process of giving remedy of compensation, justice is decided by the judiciary. But these rights to the judiciary are given by the constitution, so to provide a right justice to the victims, bit-by-bit the legislature and the judiciary is originating the essential precepts by which compensation could be paid to the Victims of Crimes (hereinafter 'V.O.C.').

As for the same, the legislature on the recommendation of the judiciary as introduced a scheme, Victim Compensation Scheme (herein after "V.C.S.") under Criminal Procedure Code of 1973, Section 357-A [1] by amending Criminal Procedure Code of 1973 (hereinafter Cr.P.C.) in 2009. This scheme helps the judiciary to render the compensation to the V.O.C.

The prime focus of this informative research paper would be to analyze the V.C.S. and its leading cases, as well as the history of compensation, the position prior and post to the amendment, and analysis of Section 357-A of Cr.P.C.

The Concept of the Compensation- Civil and Criminal Law:

The process for forming any law there are some of the basic steps which are to be taken, the law present in the today's era have some type of norms; norms are the basic rules which a particular society or community have to follow. The law we have may be come from grunt norm or other norms. Similarly, for the concept of victims' compensation, civil and criminal law has a history in the form of grunt norm, the concept can be historically, seen in the 12th and 13th centuries because during that era a major distinction was made between several kinds of wrongs, i.e., private and public wrong.[2] Putting light on private wrong,

CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT 2008

[2] K.D. Gaur, Justice to Victims of Crime: A Human Rights Approach, in Criminal Justice: A Human Rights Perspective of

are the wrong were the injury is suffered by an individual specifically, in past the culprit was called for compensate the victim. Nonetheless, in the public wrong the law-breaking affects the public on the loose, here the state aimed to remit upon itself to penalize the criminated.

Several vindications were used for the compensation, such as: welfare for the dupes, symbolic social acknowledgement for the dupe's agony, and discouragement effects on the wrongdoer likewise the reformative effects in the wrongdoer as the compensating has an "intrinsically moral value of its own".[3]

To have a look on the earliest acknowledgement to submit compensation for victims of crime, take the content of the Hammurabi code of ancient Babylonian, which pinned down that:

"If a man has committed robbery and is caught, that man shall be put to death. If the robber is not caught, the man who has been robbed shall formally declare what he has lost . . . and the city . . . shall replace whatever he has lost for him. If it is the life of the owner that is lost, the city or the mayor shall pay one maneh of silver to his kinsfolk."[45]

This above acknowledgement was well recognized by the England in the Anglo-Saxon time period of the 7th century. Similarly the Kentish Laws of Ethelbert carried pinned down amounts of compensation for vast number of law-breaking arraying from murder to adultery.[6] It was also seen that when the era of early Common Law of Middle England, if a provider of a family i.e., the man was murdered, the dupes of the family of that man was entitles to get compensation of four ponds.[7] As the time passes on the criminal justice system was broke down from the civil wrongs, on seeing the reason of breaking down into two different wrongs was because of the growing of power and royalty among the people, which can be otherwise seen in growth of Royal and Ecclesiastical power (power associated with Christian church).[8] During this time duration there were several changes between the criminal law and the law of torts, law-breaking such as murder, robbery and rape were no more related with the context of torts which further leads to the

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The Criminal Justice Process in India 350, 351 (2004).

[3] Law Commission of India, One Hundred and Fifty Fourth Report on The Code of Criminal Procedure, 1973 (1996), at 57.

Marlene A. Young, *Meeting Victim Needs: What is the Role of Victim Compensation in Recovery? The National Centre For Victims of Crime (May, 2003)*), *Available at* http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=32597 (Last updated March, 01, 2016)

Gerhard O. W. Mueller, *Compensation for Victims of Crime: Thought before Action*, 50MINN. L. REV. 213 (1965).

Dr. Kaushal Kishor Bajpai, *The History of Compensation of the Victims of Crime*, AIR WEB WORLD, Available at http://airwebworld.com/articles/index.php?article=1058 (Last updated March, 01, 2016)

Young, *Supra* Note 4, at 2.
Bajpai, *Supra* Note 5.

not giving compensation to those victims whose come under these category but were to be sanctioned as considering these law-breaking as public wrong rather than the harm to an individual.[9] This in the larger area vanish the role of state compensation and left on the state of punishment to the one who has done harm to the victim as individual or as king i.e., the ruler of the country.[10]

But later on, this distinguish between the criminal and tort was no more given any enhancement because of the utilitarianism principle of Jeremy Bentham, as he considered that on account of social contract among the state and the citizen that whenever any wrong or loss is done to the property or person of V.O.C. they must get compensation. As the main aim of the government of the country is depend on the maxim "Salus Populio Siprema Lex Esto[11]" so, if the harm leads to the person or his/her property then the state should compensate him/her to overcome the damage suffered by him/her.

Further the justification of Bentham was not fully accepted as it will implicate the compensation of all and sundry dupes of the crime to full degree of legal injuries they endured. In the latter half of the century this construct of state compensation was discoursed at fifth International Prison Congress. Leading to this, British assemble a legal program in 1964, which was organized by the criminal injuries compensation board and the arsenals were fixed by the parliament yearly.[12]

Moving forward which proper implementation of legal state compensation, the California was the first state which sanctioned the compensation to be given to V.O.C. on a tariff bases in 1965.[13] Putting further enactment, the major step was taken up by the united nation in its Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power of 1985, which acknowledges four basic rights and claims of victims: (a) Access to justice and fair treatment, (b) Right to restitution, (c) Personal assistance and support services, and (d) Compensation.[14] The actual framework work was discerned by the international community. Though the help of Universal Declaration of Human Rights, 1948.[15]

In India, the air of compensating the V.O.C. was coined up by the Maharashtra NGO by the yojana known as "Manodhairya yojana" in which the NGO was use to give amounts of money to

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Bajpai, *Supra* Note 5.

Supra Note 3.

Maxim, Salus Populio Siprema Lex Esto, available at http://www.merriam-webster.com/dictionary/salus%20populi%20suprema%20lex%20esto (Last updated March, 02, 2016)

Supra Note 3.

Supra Note 3.

[14] It states that when compensation is not fully available from the offender or other sources, the State should provide it at least in violent crimes that result in serious bodily injury, for which a national fund should be established.

[15] Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc.A/ RES/217(III) (Dec. 10, 1948).

overcome of the misfortune or the damages they face in their life. Further this Manodhairya yojana was accepted by the Maharashtra Government and they launched the 'Manodhairya' scheme for the victims of crime. Under this scheme state was supposed to provide compensation between Rs 2 and 3 lakhs to the subsisted. The subsisted will not only receive the medical treatment but also a certain amount to overcome the misfortune in his/her life. Regardless of these coming forth sheer of compensation stays subsidiary to the inflicting punishment role of the state. Justice V.N. Krishna Iyer fore grounded the extended apathy of the criminal justice system:

"It is the weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature".[16]

On this foreground by Justice V.N. Krishna Iyer, the legislature worked on the issue of compensating the V.O.C. in India, and come out with an amendment in the Cr.P.C under Section 357 of it and inserted a Section 357-A which states about the Victim Compensation Scheme.[17]

Indian position anterior to the section 357-a of Cr.P.C.

It can be clearly seen from the history, that India was not having and fixed criteria to provide compensation to the V.O.C., not that event India was not giving any compensation to victims of crime, as their thinking was on the difference of criminal wrong and civil. but as the years passes on, government changed the legislature come forward with the Cr.P.C, 1973, which at on a large area put a glint for compensating victims. [18] This format of providing compensation was come from testimonial of the Law Commission of its 41st Report, 1969, under this testimonial purvey was wreaked in the favor of V.O.C. under the Section 357 [19] of Cr.P.C. this Section states that:

"Court may award compensation to victims of crime at the time of passing of the judgment, if it considers it appropriate in a particular case, in the interest of justice".[20]

Getting for compensation for the V.O.C. under Section 357 of Cr.P.C., which was further divided into sub-sections, in which compensation will we only procurable when the honorable court will enforce a fine and the amount of compensation is confined to the amount of fine. This confined amount which was supposed to be given was entailed under the Section 357(1), which encourage the compensation and lays down four bases for bringing down a fine.

Rattan Singh v. State of Punjab, (1979) 4 S.C.C. 719, 721.
Supra Note 1.

[18] §§ 357, 421 & 431 empower a criminal court, at its discretion, to award compensation to a victim of crime as well as to recover it and pay it to him
[19] The Code of Criminal Procedure §357, (1973) states about Order to Give Compensation
The Code of Criminal Procedure §357, (1973).

Nevertheless, under Section 357(3) courts are given rights to give compensation to person for whom they have suffered injury or harm, even those kinds of cases in which the right of getting compensation does not arise. Even the judges have power of giving compensation but it is not decided in a specific manner that what amount of compensation must be given to person. number of time court has provided compensation on the bases of the facts and the conditions of the case. This can be easily seen from the case Hari Krishna & State of Haryana v. Sukhbir Singh[21] were the supreme court addressed all court to liberally understand the facts of the cases and mainly on those kind cases where the criminated is freed on warning, liberation or where the both parties agree to compromise.

In the same duration, court also stated that the amount that should be given must be reasonable and fair enough to overcome the injury.[22] As such what is the correct reasonable amount must be bases on the fact and the situation of the individual case and the victim.[23] On using further this judgment in cases, the court gave reasonable compensation in many cases.

As on seeing that there is no proper background to give compensation to the victims, it was fully based on the reasonability which was seen by the court in which the case is presented. To overcome this default in Indian justice system, Supreme Court of India (hereinafter S.C.) directed Union Government/State Government to come up with a structured Victim Compensation Schemes in the case Laxmi v. Union of India.[24]

Indian position Post to the Section 357-A Of Cr.P.C.

On direction of S.C., State Government comes with the amendment in 2008 to give structured V.C.S. under Section 357-A of Cr.P.C., 1973. Section 357-A provides a structured scheme to compensate V.O.C. further in the same amendment the basic definition of "Victim" was introduced under Section 2(wa) of Cr.P.C., which states that:

'Victim' means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir".[25]

Another amendment was done in the Cr.P.C that inserted a Section 357-A for providing compensation to V.O.C. i.e. Victim Compensation Scheme for plying arsenals to the victims or his/her legal heir or dependents who have endured loss or injury by the crime against them to get proper requirement like rehabilitation, shelter and medical treatment in the cases like rape, acid attack, trafficking or other crime bases on mental and reputational harm.

After this amendment, each and every state made its own Victim Compensation scheme, which has a fixed structure of giving compensation. On further, the

[21] Hari Krishna & State of Haryana v. Sukhbir Singh, (1988) 4 S.C.C. 551
[22] *Id.*, ¶ 11
Id., ¶ 11.

(2014) 4 SCC 427.
[25] The Code Of Criminal Procedure §2(wa), (1973)

New Delhi government has also passed an order in which Rs. 200 crores were given to rehabilitee the victims of rape, human trafficking, and acid attack or to woman whose husband or family member are died in cross border firing. Later on, the following coming cases in future use to give compensation that were fixed in the Scheme. [26] The result of this amendment can be seen in the cases Delhi Domestic Working Women's Forum v. Union of India and others[27], Ankush Shivaji Gaikwad v. State of Maharashtra[28], and other cases.

Moreover, by the same amendment Section 372 of Cr.P.C. was also amended and due to which particular rights were provided to the victims to proceed with appeal in the court, under certain conditions or situations:[29]

1. Acquittal of criminated,

2. Condemnation for a trivial offence or little legal in nature, and;

3. Not satisfied with the amount of compensation given before.

[26] CENTRAL VICTIM COMPENSATION FUND, TIMES OF INDIA, available at http://timesofindia.indiatimes.com/india/Central-victim-compensation-fund-set-up-with-Rs-200-crore/articleshow/49359189.cms (Last updated February, 28, 2016)

[27] Delhi Domestic Working Women's Forum v. Union of India and others 1995 SCC (1)14, JT 1994(7)183

[28] Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770

The Code Of Criminal Procedure §372,(1973).

Before amendment of 2008 in Cr.P.C, this section only deals with the universal rights and as such rights only to which Cr.P.C states or deal.

PERUSAL OF VICTIM COMPENSATION SCHEME (SECTION 357-A)

As it is mentioned that on the direction of S.C., State Government come forward with this scheme were each state as its own scheme on the bases of crime related to mental harm to victim or dependents of the victims. Further this Section is divided into six sub-sections.

Basically, the sub-section (1) of Section 357-A i.e., V.C.S. talks about the formation of scheme by the state government to give compensation to the V.O.C. or his/her legal representative who have endured injuries in their life because of the misfortune or a black dream happened against them and also to give proper rehabilitation if require.

Sub-section (2) talks about the criteria of recompensing on the cornerstones of the sub-section

(1) of Section 357-A, Sub-section (2) states that whenever the judges pass an order to give compensation to the V.O.C. from District Legal Service Authority (hereinafter D.L.S.A.), D.L.S.A. should decide the quantum of compensation to be given to the V.O.C. or his/her legal representative on the bases of the above scheme made under the Sub-section (1) of Section 357-A of Cr.P.C. this is because it is considered that Legal Service Authority member are the one who can understand the proper quantum amount to be given to the victim.

Before the commencement of Section 357-A, District or Trial court were not allowed to provide compensation the V.O.C. or the criminated who have been acquitted, but Sub-section (3) of the Section 357-A states that District court has been authorized to direct the D.L.S.A to provide the compensation in those cases where the victim as been acquitted and require rehabilitation to overcome the event which happen in his/her life or in those circumstances in which the compensation was provided to the victim but it was inadequate to overcome which must be seen by the Legal Service Authority members.

On moving forward, sub-section (4) of Section 357-A deals with the rights of V.O.C. or his/her legal representative to ask for the compensation for the injury they faced even where the trail has not taken place and the wrongdoer is not followed or identified. They can ask the compensation from the D.L.S.A. this sub-section is most favorable to the V.O.C. to get their injury forget even in those cases where the wrongdoer in not even convicted or identified.

It is always said that in India, the justice is delayed to year and years pass on, to overcome this default in providing compensation to the accused under sub-section (5) of Section 357-A it is given that on the receipt of the application of V.O.C. under Sub-section (4), force D.L.S.A to do proper and adequate inquiry about the harm to the victim and state a fixed amount of compensation within the span of two months. The time duration of two month to D.L.S.A. helps to give justice on time without any delay.

In the same manner, sub-section (6) mention the most important aspect for curing the injury of the victim is to provide immediate first-aid facility or medical welfare to be proved free of cost or any other meantime requirement needed to be look appropriate by the D.L.S.A. fit. Mainly deal with the principle of "alleviating the suffering"[30] of the victim. After this principle, the victim has not to wait for the judgment or trial and can get compensation to cure his/her injury without any legal process, by just applying to D.L.S.A. to get immediate first-aid or other medical help.

In the recent case of V.C.S., Manohar Singh v. State Of Rajasthan And Ors31, it was held that if the criminated is not able to compensate the victim or his/her legal representative then the State or District Legal Services Authority will be force to pay the compensation amount to the victim of crime or his/her dependents on the bases of the particular state V.C.S.

It can be concluded from the above detailed analysis of V.C.S. or an amendment of 2008, that it is most important amendment in Cr.P.C. Act of 1973 because it inserted the two important aspects for victims under Section 2(wa) and Section 357-A. in a simple language Section 2(wa) deals with the definition of 'Victim' i.e. a person who have suffered misfortune in his/her life. further Section 357-A deals with the right to compensation for the victims of crime or his/her dependent by the court or by applying in front of D.L.S.A. it also deals with the fiscal help for the dupes mainly in those crime as such of rape, child sexual abuse, human trafficking or any homicide victim. On the other side, the compensation be awarded must be

[30] The Code Of Criminal Procedure §357-A (1),(1973).

given in the span of two months without any delay. This scheme helps the victims of such crime to not to wait till the verdict is passed or the criminated is not identified or traced, but the victim has been identified so without any trial a victim or dependent can claim compensation to overcome the adverse misfortune in their life, this can be done by writing an application to the D.L.S.A. for the recompense. Further in the same context the victim legal representative can claim the compensation for an immediate first-aid or the medical requirement which a D.L.S.A. suits fit at that time. Because of this amendment know each state as its own V.C.S. on the bases of this scheme D.L.S.A. given quantum of compensation on the facts and circumstance of the case or victim.

The question that can be raised on the Section 357-A may be on the issue of inequality i.e., each state as its own compensation which can differ on the economic condition of the state. Let take schemes of two different states, Delhi and Punjab the compensation amount that are fixed in scheme are that compensation for Rape victim in Delhi the maximum quantum amount is 3 lakhs whereas the compensation for the same crime the quantum compensation fixed in Punjab is maximum 2 lakhs. From this example, it can be easily inferred that on the financial or economic condition of the state the V.C.S differs which may in future lead to inequality issue.

To make this scheme more effective the government can start a helpline number, in the manner as to provide rehabilitation to the children the childline-1098 helpline is formed and other helpline in the same manner. Further on the issue of economic condition of state, to overcome this condition Charities can be done to provide an appropriate amount of compensation to victims. Or on the larger context a service centers can be made at local or national level, we can also get help from the NGO's in the same manner in Maharashtra were one NGO start compensating the victim of crime. At last this amendment will help V.O.C. to forget the misfortune incident in their life and overcome with the injury.

Delhi Victim Compensation Scheme[31]

In the Delhi victim compensation scheme, the minimum and maximum limits have been defined

[31] Victim Compensation Scheme-Delhi, available at http://delhi.gov.in/wps/wcm/connect/3ba2ab004a168918a0c4b7054aa9b1b1/New+Microsoft+Office+Word+Document+(4).pdf?MOD=AJPERES&lmod=-287399459 (Last updated March, 03, 2016)

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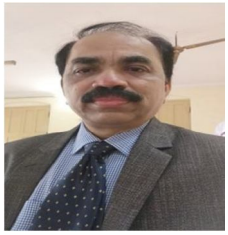
S.No	Particulars of Loss or Injury	Minimum Limit Compensation	Maximum Limit of Compensation
1	Loss of life	Rs.3.00 Lakh	Rs.5.00 Lakh
2	Rape	Rs.2.00 Lakh	Rs.3.00 Lakh
3	Loss of any Limb or part of body resulting 80% permanent disability or above	Rs.2.00 Lakh	Rs.3.00 Lakh
4	Loss of any limb or part of body resulting in above 40% permanent and below80% disability	Rs.1 lakh	Rs.1.50 lakh
5	part of Loss of any limb or body resulting in above 20% and below40% permanent disability	Rs.0.60 lakh	Rs.1 lakh
	Loss of any limb or part of body resulting in below 20% permanent disability	Rs.0.50 lakh	Rs.0.50 lakh
	Victims of human trafficking, child abuse and kidnapping	Rs.0.50 lakh	Rs.0.50 lakh
	Simple loss or injury to child victim	Rs.0.10 lakh	Rs.0.10 lakh
	Rehabilitation	Rs.0.20 lakh	Rs.0.20 lakh
	Victims of Acid Attack		
	a. In case of disfigurement of face	Rs.2.00 lakh	Rs.3.00 lakh
	b. Other cases of injury	Rs.0.50 lakh	Rs.0.50 lakh

By the reference table, it is clear that how much compensation is to be paid according to the Delhi compensation scheme.[32]



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