

Compensation of Victims under Article 357 of the Criminal Procedure Code

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Introduction

The concerns of victims after an occurrence of a crime have always taken a back seat in justice systems around the world since ancient times. Criminology roughly until the 1970s only concentrated on the convicted and the punishments meted out, fine exacted from these punished were used for the welfare of victims only on a secondary thought in a handful of systems like in ancient India's system of Nyay Panchayats.

But after the adoption of the 'Declaration of The Basic Principles of Justice for The Victims of Crime and Abuse of Power' by the United Nations General Assembly, which came to be ratified by scores of countries with India among them, triggered a revolution in the field of victimology. It originated after World War II as a study to understand the relationship between a perpetrator and a sufferer and as a factor causing criminal behaviour. The concept of victim reimbursement was first proposed by **Margery Fry**, an English Penal reformer during the 1950s, and first came into effect in New Zealand in 1963 and in Great Britain subsequently.

A victim as described under the UNGA's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is a person who *'individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member States, including those laws proscribing criminal abuse of power'*¹

Krishna Iyer J attributed the victim's ignorance to our jurisprudence and the weakness of our legal justice system which sees a criminal trial just as a contest between the state and the accused. He reinstated the need for the legislature to correct the deficiencies in the code².

The Advent of a Definite Compensation Provision for Victims

With the passage of time, many more countries came to adopt the UNGA's declaration, and some even made provisions and policies suiting the needs and wants of their region. The idea of victim orientation came into being, allowing them a wider spectrum of choices regarding what is to be done to the convicted (punishment/compensation) and a greater degree of sensitivity and respect towards them and their rights in the course of investigation and trial from the Justice institutions³.

¹ Article 1, United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, A/Res/40/34.

² Justice should not only be done but also seems to be done (Victimization and Administration of Criminal Justice in India), Pranav Kumar Kaushal Bahra University Shimla Hills Priyamvada Kaushal Bahra University Shimla Hills

³ Madhava Menon, 2004: 362363

There are several legislations laid out under the CrPC 1973 which look out for the victims and their rights but have been continuously disregarded by the lower courts as seen in their sentencing in contrast to the High Courts and the Supreme Court which have come to the aid of the victims in both the usual crimes where the perpetrator is a fellow citizen and against the state institutions which seek to violate the rights of an individual.

A committee headed by **Justice V. S. Malimath** (Former Chief Justice of the Karnataka High Court) in 2003 was tasked with submitting a report on Reforms Needed in the Criminal Justice System and the CrPC 1973. It was laid down the Justice system was steadily losing faith among the public for its inconsiderate treatment of the victims and their families, so one of the core reforms suggested by the committee was to devise methods and schemes for fair compensation of the spurned. The results of this report were one of the important reasons behind the amendment of the Code of Criminal Procedure in 2008 and the Criminal Law (Amendment) in 2013 in order to accommodate section 357, which effectively merged the compensation process (Civil Court) and the criminal sentencing process (Criminal Court) curtailing the need of a victim to approach two different courts.

There are many other provisions under the Code of Criminal procedure such as section 250 which grants the power to direct the petitioner to pay compensation to the respondent or vice versa to the magistrate. And section 358 authorizes to court to order a person who has caused wrongful Police arrest of another person. This paper will deal with section 357 which enables the court to issue a sentence of compensation for the victim along with the main sentence.

Cases and Observations

In the case of Balasaheb Rangnath Khade vs The State of Maharashtra⁴, it was held that any criminal justice system is built around the state. The persons against whom the offense is committed are not looked at and the punishment of the convicted is considered enough for their retribution. The rights that have been already violated, and the damage that has been already done, are considered to have been washed away by punishing the convict.

It was further held that the victims have a say through all the stages of trial and investigation. And the total violation of the human rights of a victim is the issue the state should remedy⁵.

In Manish Jalan vs the State of Karnataka⁶, it was held by the Supreme court that the capacity of a person to compensate, the nature of the act committed, and the degree of injury inflicted on the victim of that act need to be taken into consideration. Nonetheless, the compensation awarded should not be unreasonable.

The Supreme Court slammed the practice of courts neglecting the victim's claim to compensation under Section 357 of the CrPC in Ankush Shivaji Gaikwad v State of Maharashtra⁷ (2013). It was observed that the faint wording of section 357 did not make it sound like a mandatory addition, the court specified that the intention of the legislation was

⁴Balasaheb Rangnath Khade vs The State of Maharashtra Cr. Appeals 991, 992, 331 & 854 of 2011

⁵ Cr. Appeals 991, 992, 331 & 854/11

⁶Manish Jalan vs the State of Karnataka, CA No. 1066 OF 2008

⁷ Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770

meant to be mandatory in nature. As a result, it was urged by the apex court that at least a valid reason be given for the rejection of compensation to the victims.

Compensation for Serious Offences

Sexual offences have gotten a lot of attention lately, especially after the violent gang rape of Jyoti Singh in 2012, which prompted the public to demand more official intervention to prevent and deter the commission of sexual offences against women. As a result of the backlash, numerous steps were announced, including the 2,000 crore Nirbhaya fund, which was created by the centre and under which the central victim compensation fund system was established.

Various state governments may have reacted to the public mood by prescribing higher amounts of compensation for sexual offences than for crimes resulting in death or other serious crimes in order to alleviate public outrage and in response to the increased focus on laws pertaining to sexual offences. This is because it is easier for the state to announce higher compensation for victims and harsher penalties for convicted rapists than it is to put in the hard work necessary to address the issues that really matter, such as equipping our police to conduct proper and scientific investigations, appointing zealous public prosecutors, improving police infrastructure, and sensitizing judges.

The Supreme Court recognized the right to compensation of a victim through one of the issues highlighted in the *suo motu* cognizance of the *Gang-Rape order issued by a Kangaroo court in West Bengal*⁸, ordering the gang rape of a 20-year-old girl for marrying out of the community. It was held that the state's obligation does not stop at merely at the compensation of the victim but extends to their rehabilitation.

Drawbacks and Loopholes

In the case of *Nipun Saxena v Union of India*⁹, the supreme court directed the National Legal Service Authority (NALSA) to formulate a scheme covering sexual harassment victims, even those falling under the Protection of Children against Sexual Offences Act. Which was indeed admirable and increased the number of petitions availing compensation and the amount of compensation that can be awarded, with a glaring absence of any schemes benefitting non-female victims.

Another drawback can be found in the duality of the functions performed by state or district legal service authorities. Normally a victim files for restitution in one such organization, the same one which provides legal aid to the accused party. Thus, there is a conflict and risks of partiality. The burden of being impartial in protecting the rights of both the accused and the victims are placed upon them.

Even section 357 is dotted with numerous flaws like the sentence can only be held binding after the accused has been sentenced, the recovery of fine is subjective to the capacity of the accused and the magistrate is required to consider the same before passing a sentence.

⁸ (2014) 4 SCC 786.

⁹ Nipun Saxena v. Union of India, 2018 SCC OnLine SC 3105

Conclusion

In spite of a plethora of drawbacks and loopholes exhibited by the provisions pertaining to the compensation of victims, there has been a general shift of intention of punishment and court ruling toward the plight of the victims of a crime, the role of justice has expanded to providing sufficient compensation and rehabilitation to the sufferer, which is considered equally important as punishing the convict for his actions.

As Sir Henry Maine once said *“Penal law of ancient communities is not the law of crimes; it is the law of wrongs. The person injured proceeds against the wrong done by an ordinary civil action and recovers compensation in the shape of money damages if he succeeds”*. The scope of victim compensation has become even wider through the passing of time, the rehabilitation process of a victim seeks to bring them back to the position they enjoyed before the occurrence of the crime. Even though the laws themselves have room for a lot of improvement, the progress so far has been palpable.

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