



VICTIM EMANCIPATION THROUGH COMPENSATION: A STUDY WITH SPECIAL REFERENCE TO SECTION 357 OF CRPC

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1. Introduction

“Justice is that which upholds, nourishes or supports the stability of the society, maintains social order and secures the general well being and progress of mankind”

Supreme Court of India

Yeshwant Prabhu V.P.K Kunde

AIR 1996, SC 1113

One area which is totally overlooked is the plight of the victims. It is a recent trend in the sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. The first type consists of direct victims, i.e. those who are alive and suffering on account of harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependant of the direct victims of crime who undergo suffering due to deprivation of their bread winner.¹

The victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by the Rule of Law. But if the state fails in discharging this responsibility, the State must still provide a mechanism to ensure that victim's right to be compensated for his injury is not ignored or defeated.

Increasingly the intention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crime often entails substantive harms to people and not merely symbolic

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1 State of Gujarat vs. Hon'ble High Court of Gujarat (1998) 7 SCC 392

harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victim is compensation to victims of crime. The needs of victims and their family are extensive and varied.²

In recent years, the phenomenon of ‘victim rights’ has been catapulted to the forefront of policymaking on both domestic and international platforms. While the criminal justice system has traditionally been conceptualised as a mechanism for the State to resolve its grievances against suspects, defendants and offenders, it is now broadly accepted that justice cannot be administered effectively without due recognition of the rights and interests of other parties affected by the criminal action. This shift has affected the extent to which their interests are represented in the formulation of criminal justice policy, in that increasing number of initiatives are undertaken in the name of victims, seeking to bolster their position within the system. These developments raise a number of key questions and fundamental issues concerning the structural and ideological basis of our criminal justice system, not least as to whether the very concept of ‘victims right’ is inherently compatible with a system that is ideologically constructed as bipartisan contest between the State and the accused.³

The Principles of Victimology has foundations in Indian Constitutional jurisprudence. The provision of Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for “securing the right to public assistance in cases of disablement and in other cases of undeserved want). So also Article 51 A makes it a fundamental duty of every Indian citizen, inter alia to have compassion for living creatures and to develop humanism. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinning for victimology.⁴

The prime focus of the article would be on the Victim Compensation Law and also deals with the modern approach of penology and victimology which is striking a balance between victims and society. The author will sketch out the recently amended law that deals with Victim Compensation and analyse to highlight the need for compensation. The whole

2 The 154th Law Commission Report on the CrPC.

3 Jonathan Doak, ‘Victim Rights, Human Rights and Criminal Justice. Reconcepting the Role of the Third Parties, Oxford and Portland, Oregon, 2008. P. 1

4 Suresh & Ans vs. State of Haryana, 2014 (8) Supreme 289

idea is to explore the victim's present position in the criminal justice and legal system in future prospects for the victim.

2. Concept of Victims

The task of designating an individual as a victim is more complex than it might prima facie appear. Certainly, there is no authoritative definition that can be applied across the legal order; generally, those definitions that do exist tend to imply that the victim is one who has suffered injury or loss as the result of an illegal act.⁵

To the word 'victim' may be attributed five fundamental factors, namely, nature, society, energy, supply, motorization and criminality. Nature causes disasters such as earthquake, floods, droughts and famine. Society holds a collective potential for starting mass conflict that may generate genocide, terrorism and abuse of power. Another aspect of socially determined victimity is the consequence of over population, poverty, illiteracy, alcoholism, drug addiction, prostitution and occupational diseases. Motorization and energy resources are causing innumerable traffic accidents on land, at sea, and in the air, apart from industrial and domestic accidents. Last but not the least, the most important categories of victims is crime victims⁶.

Victim can be broadly divided into two categories, criminological and non-criminological. The character that makes a person definable as a crime victim is the suffering of adversity due to contravention of criminal law by another person or entity.

“Victim is a person who is put to death or subjected to misfortune by another; one who suffers severely in body or property through cruel or oppressive treatment, one who is destined to suffer under some oppressive or destructive agency; one who perishes or suffers in health etc from some enterprise or pursuit voluntarily undertaken⁷.”

Perhaps realizing the gravity of the problem the United Nations General Assembly (UNGA) in 1985 adopted a 'Declaration of the Basic Principles of Justice for the Victims of

⁵ In the USA, a victim is defined under Section 3771(e) of the Justice for All Act 2004 'a person directly and proximately harmed as a result of the commission of a federal offense'. Arizona defines a victim as 'a person against whom the criminal offence has been committed or if death occurred or the victim is incapacitated the victim's spouse, parent, child or other lawful representative' (Arizona revised statute B – 4401) and Wisconsin defines a victim as 'a person against whom a delinquent act or crime has been committed (Wisconsin Constitution, Art I (938.02)). One of the few definitions to exist under English law is found under S7 (7) of the Human Rights Act, which rather unhelpfully defines a 'Victim' by reference to Art 34 of the European Convention. However, for the purposes of the Act, it seemingly includes whose rights under the Act have been violated as a result of an act of a public authority contrary to Section 6 of the Act.

⁶ Bharat B Das, *Victims in the Criminal Justice System*, ABH Publishing Corporation, New Delhi, 1997. P. 27-28

⁷ Ibid

Crime and Abuse of Power. The Declaration gives a comprehensive definition of a victim. According to declaration,⁸ Victims includes:

Any 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 emissions that are in violations of criminal laws, including those laws prescribing criminal abuse of power.

Under this definition, we can assume that both natural and legal persons, individuals and collective groups and the families and dependants of injured parties would also constitute victims.

3. The Victim in a Historical and International Perspective

Criminal Law traditionally assures that the victims are sufficiently satisfied by conviction and sentence of offender. This traditionally accepted assumptions seems to be right, just and convincing in the light of the primary functions of criminal law and the victims faith in the centralised system of criminal justice administered by the State. But when it comes to doing full justice to the victims of crime, the pretension of the criminal justice system appear to be unfounded. This is because the victim by and large remains ignored when it comes to restoration of material loss suffered by him or the separation for mental and emotional strain that he undergoes.⁹

It is apparently clear that in early human civilization, retribution⁷ was the only aspect of punishment to be taken into consideration. The law was designed to compensate the victim and not to punish the accused the amount of redress and sometimes the mode of redress were left to the discretion of the victims in total disregard of the accused under the arbitration of the State. Thus the thrust was on compensation to the victims, rather than the punishment to the accused.¹⁰

Historically, the ancient Babylonian Code of Hammurabi (about 1775 BC) makes the earliest reference to governmental compensation for crime victims. The Code mandated territorial governs to replace a robbery victim's lost property if the criminal was not captured. In the case of a murder, the governor was to pay the heirs a specific sum in silver from the

8 United National General Assembly adopted a Declaration of the Basic Principles of Justice for the Victims for Crime and Abuse of Power – in 1985

9 K.I. Vibuhati, 'Victimology' An International Perspective; Vol 14, Cochin University Law Review. P. 148 (1990)

10 S.P. Makkar, 'Global Perspectives in Victimology' 1993 ABS Publications, Jalandhar. P. 326

treasury. In the succeeding centuries, restitution to the victim by the offender replaced compensation of the victim by the State. But that too disappeared during the middle ages. The victim of crime was left with no remedy except to sue damages in civil court.

The Anglo-Saxon “Wergild” the Hebrew law as reflected in the Book of Exodus, the law of the Franks and even the provision in our Criminal Procedure Code for the compounding of offences are other familiar examples of the principle of criminal compensation.¹¹

In the early era of history, therefore, the emphasis was on compensation to the victims or the “spiritual” and material satisfaction of the victims rather than on punishment of the offender. According to Sir Henry Maine: “Now the penal law of ancient communities is not the law of crimes, it is the law of wrongs, or. To us the English technical word, of Torts.”¹²

After the middle age, restitution as a concept separate from punishment seems to have been on the wane. Little as we know about crime today, even less was known then. No other possible aspect of the victim’s role was taken into consideration and the victim became the “poor relation” of the criminal law.

(A) International Perspective

The decline of restitution as a criminal sanction has been traced to several development in the criminal justice system.

With the growth of centralized legal system, however, restitution was gradually phased out, government took over; crimes were seen as act against the State and the State assumed the role of the prosecutor, it was the State that divided what punishment the offender should undergo and in a sense in return for taking upon itself the major task of dealing with the criminal offences, the State stood to gain from any penalties inflicted upon offenders which might carry out with them monetary rewards; the fine payment to the State, took over from restitution – payment to the victim. In the process of transfer from personalised system to an impersonal State run system, the victim was virtually forgotten by the system.

The concept of Restitutive justice which prevailed in early societies was revived in 19th century by Garafolo and Ferry in Italy and by Bentham in England. In 1926 Sweden started a system in which compensation was paid out of fine. After 1963 a commendable

11 S. Venogopal Rao, ‘Perspectives in Criminology’ 1998, Vikas Publishing House New Delhi. P. 217

12 Ibid

work commenced and the system of payment of compensation did not remain confined to be paid out of fine but the State also accepted the responsibility for compensation.

The First International Symposium on Victim (1973) held in Jerusalem resolved that modern laws were harder on victims than on offenders in respect of payment of compensation to victims should be sufficiently armed with modern laws to obtain indemnity from the offender procedural reforms were also suggested. The victim of crime wants to be compensated for physical or property loss through monetary means besides meeting out punishment to the offender.¹³

The cases for compensation to victims of crime rest primarily on two grounds. Firstly, the criminal who inflicted the injury on the persons or property must compensate for the loss, and secondly, the State which failed to protect the victim must pay the victim for the harm done to him.¹⁴

During the formative stages of penal code, voices were raised in favour of introduction of the system of reparation to the victims of crime. It was argued that in a country like India where the great majority of the people is poor and unable to sustain the ordinary expenses incidentally to their daily substance this right should be carried to the utmost limit.¹⁵

4. Victims Compensation and the law in India: An Overview

No compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such serious violation of a victim's fundamental right, the State is duty bound to provide compensation which may help in the victim's rehabilitation.

More than four decades back Krishna Iyer J. Speaking for the court in Maru Ram & ors. V. Union of India and ors.¹⁶, in his inimitable style said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercised, the length of prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment said the court, not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn. Justice requires that a person who has suffered (including dependants) must be compensated. Basically, the accused is responsible

13 Y. Pratap Reddy, 'Compensation to the Victims of Crime - Modern Perspective of Victimology', 1990, *Cri.L.J.*, p. 2.

14 *Ibid.*

15 Second Report on the Indian Penal Code, 1847. P. 495

16 (1981) ISCC 107

for the reparation of any harm caused to him. However, it might be that the accused, being too poor, is unable to make any payment or otherwise unable to compensate the victims. In such a situation, the State that has failed to protect the life, liberty and property of its citizens. Victim of crime or his kith and kin have legitimate expectation that the State will punish the guilty and compensate the victim. There are systemic or other failures responsible for crime remaining unpunished which need to be addressed by improvement in quality and integrity of those who deal with investigation and prosecution, apart from improvement of infrastructure but punishment of guilty is not the only step in providing justice to victim. Victim expects a mechanism for rehabilitative measures including monetary compensation.

There are five possible statutes (statutory provisions) under which compensation may be awarded to victims of crime. They are:

- Fatal Accident Act, 1855
- Motor Vehicles Act, 1988
- Criminal Procedure Code, 1973
- Constitutional remedies for human right violations
- Probation of offenders Act, 1958

A. Compensating Victim of Crime: Existing Legislative Framework

Right of access to justice under Article 39A and principle of fair trial mandate right to legal aid to the victim of crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family and in appropriate cases, rehabilitation measures including monetary compensation. It is a paradox that victim of a road accident gets compensation under no fault theory, but the victim of crime does not get any compensation, except in some cases where the accused is held guilty, which does not happen in a large percentage of cases. Justice remains incomplete without adequate compensation to the victim. Justice can be complete only when the victim is also compensated. In order to give complete mental satisfaction to the victim; it is extremely essential to provide some solace to him in the form of compensation so that it can work as a support for the victim to start his life afresh. The present Code of Criminal Procedure does not recognise the right of victim to take part in the prosecution of the case instituted on the basis of the police report. The victim is the merely a witness in a State versus case. He has no right to prefer appeal against the order of acquittal of the accused by the trial court in a criminal case started by the State. The State reserves the discretion not to prefer and also to withdraw from the prosecution even in heinous offences. The victim of crime becomes the victim of our justice system when the

political motivated investigation agency or prosecuting agency shows lack of interest or apathy in the matter of investigation or prosecution or extraneous consideration.

a) Compensation under the Criminal Procedure Code, 1973

The Code of Criminal Procedure of 1898 contained a provision for restitution in the form of Section 545, which stated in sub-clause 1(b) that the court may direct “payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the court recoverable by such person in a civil court” The Law Commission of India in its 41 Report submitted in 1969 discussed Section 545 of the Code of Criminal Procedure of 1898 extensively and stated as follows: Section 545 under clause (b) of sub-section (1) of Section 545 may direct “in the payment to any person of compensation for any loss or injury caused by the offence when the substantial compensation is, in the opinion of the court.” The significance of the requirement that compensation should be recoverable in a civil court is that the act which constitutes the offence in question should also be a tort. The word “substantial” appears to have been used to exclude cases where only nominal damage would be recoverable. We think it is hardly necessary to emphasise this aspect, since in any event it is purely within the discretion of criminal courts to order or not to order payment of compensation the power to compensate the victims of crime under Section 357 of the Criminal Procedure Code of 1973, it is not a new remedy provided under Criminal Procedure Code of 1973. Even Section 545 and 546 of Criminal Procedure Code, 1898 provided for compensating victims of crime. The Law Commission of India noted in its Forty First Report (1969) our court did not exercise their statutory power under this Section as freely and liberally as they could be desired. Accordingly, with a view to give a substantive power to the trial court to this effect, it recommended insertion of a substantive provision for the payment of compensation to the victim of crime. On the basis of recommendation made by the Law Commission the Government of India introduced the Code of Criminal Procedure Bill, 1970. Which aimed at revising Section 545 and introducing it in the form of Section 357 as it reads today:

Section 357 Cr.PC empowers the court to award compensation to victims of the offence in respect of loss/injury suffered. The object of the Section is to meet the ends of justice in a better way. This Section was enacted to reassure the victim that he is not forgotten in the criminal justice system.

Moreover, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section 357 of the Code of Criminal Procedure

incorporates this concept to an extent and empowers the criminal court to grant compensation to the victims. Under Section 357 CrPC, empowers a criminal court imposing a sentence of fine or sentence (including sentence of death) of which 'fine' forms a part at in its discretion, interalia, to order payment of compensation, out of fine recovered, to a person for any loss or injury caused to him by the offence. Sub-Section (1) of Section 357¹⁷ empowers a criminal court to appropriate the whole or any portion of the fine recovered for the purpose mentioned in its clauses (a) to (d). Clauses (a) and (d), in essence, deal with defraying expenses pecuniary losses incurred by a person in prosecution and by a bonafide purchaser of stolen goods, respectively. Clause (b) and (c) on the other hand, respectively deal with re compensating 'any loss' (pecuniary or otherwise) or injury caused by any offence by death. Sub-Section (3)¹⁸ of Section 357 of the Code, which was introduced for the first time in 1973, made an improvement over the old Code of 1898 in that Under Sub Section (3) of Section 357 it recognised the principle of compensating the victims even when no sentence of fine is imposed. Under the Code no compensation could be awarded unless a substantive sentence of fine was imposed and the amount of compensation too was limited only to the extent of fine actually realised. But order of compensation under Section 357(3), will be futile against an accused without property or other financial resources or if he dies. Now, by virtue of this provision, a court is empowered to pass a compensation order of a specified amount, unlike hitherto, not limited to the amount of fine imposed on or recovered from the offender. Section 357 is mandatory and it is the duty of all courts considers it in every criminal case. The court is required to give reasons to show such consideration.

b) The New Law of Compensation: Criminal Law (Amendment) Act 2008

17 When a court imposes a sentence or fine or a sentence (including a sentence of death) of which fine forms a part the court may when passing judgment, order the whole or any part of the fine recovered to be applied:

- a) in defraying the expenses properly incurred in the prosecution;
- b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a civil court;
- c) when any person is convicted for any offence of having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are under the Fatal Accidents Act 1855 (13 of 1855) entitled to recover damages from the person sentenced for the loss resulting to them from such death; and
- d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust or cheating or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

18 It says: 'When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way for compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.'

The amendments to the CrPC brought about in 2008 focused heavily on the rights of victims in a criminal trial particularly in trials relating to sexual offences. Section 357 had a British origin and Section 357-A reflected an Indian supplement. Section 357 says about the power of the court to order compensation. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A has paved a new path also to compensate Victim on order of discharge or acquittal as well as in case where offender is not traced. Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd and 154th Report in 1994 and 1996 respectively. It recognises compensation as one of the methods of protection of victims. This provision has received the attention of this court in several decisions.¹⁹

c) Victim Compensation Scheme

Justice remains incomplete without adequate compensation to victim. Justice can be completed only when the victim is compensated. The UN declaration of Basic Principles of Justice for Victims of Crime and abuse of power. This brought the dawn of a new era by emphasising the need to set norms and minimum standards in international law for the protection of victims of crime. The UN declaration recognised four major components of the rights of victims of crime.

1. Access to justice and fair treatment
2. Restitution
3. Compensation
4. Assistance

The declaration was implemented by introducing Section 357-A in the Code of Criminal Procedure: The amendment in the Code of Criminal Procedure (1973 whereby Section 357 (A-C) of Cr P.C was added providing for the victim compensation scheme and it came into effect from 2009, have cast a responsibility on Court and Legal Services Authority to ensure grant of compensation to the victim pursuant there to almost all the states have formulated there victim compensation scheme.

The government has introduced a Central Victim Compensation Fund (CVCF) scheme with an initial corpus of Rs. 200 Crores to enable support to victim of rapes,

¹⁹ Ankush Shivaji Gaikwad vs. State of Maharashtra, In Re: Indian women says gang-raped on orders of village court, Mohammad Harron vs. Union of India and Laxmi vs. Union of India
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acid attacks, human trafficking and women killed or injured in the cross border firing, suffering permanent or partial disability or death, etc. The victims of acid attacks and rape will now get Rs. 3 lakhs as part of CVCF while the compensation will rise by 50% in case the victim is less than 14 years of age. The key features including aims and objectives of CVCF given below:

- To support and supplement the existing Victim Compensation Schemes notified by States/UT administrations
- To reduce disparity in quantum of compensation amount notified by different States/UTs for victims of similar crimes and
- To encourage States/UTs to effectively implement the Victim Compensation Scheme (VCS) notified by them under the provisions of Section 357 A of Cr. P.C and continue financial support to victims of various crimes especially sexual offences including rape, acid attacks, crime against children, human trafficking, including women victims of cross border firing, etc.²⁰

5. Judicial Response: Sympathising with the Plight of Victim

The Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the victims of communal violence and compensatory justice to the Union Carbide Victims are examples of this liberal package of reliefs and remedies forged by the Apex Court. The decisions in Nilabati Behera V. State of Orissa²¹ and in Chairman, Railway Board V. Chandrima Das²² are illustrative of this new trend of using constitutional jurisdiction to meet out justice to victims of crime.

But the law contained in Section 357(3) Cr.P.C. has, by and large, been mostly neglected/ignored. Hence the Apex court in Hari Singh v. Sukhbir Singh and Ors²³, had to issue a mild reprimand while exhorting the courts for liberal use for this provision to meet the end of justice as a measure of responding appropriately to the crime, and reconciling the victim with the offender. The Court said: “....

²⁰ <http://www.thehansindia.com/posts/index/National/2016-03-10/India-sets-up-Central-Victim-Compensation-Fund-to-compensate-rape-victims/212624>

²¹ (1993 SCC 746)

²² (AIR 2000 SC 988)

²³ (1988) 4 SCC 551

Sub-Section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused... It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.

The amount of compensation, observed this Court, was to be determined by the Courts depending upon the facts and circumstances of each case, the nature of the crime, the justness of the claim and the capacity of the accused to pay. In *Sarwan Singh and others v. State of Punjab*²⁴, *Balraj v. State of U.P.*²⁵, *Baldev Singh and Anr. v. State of Punjab*²⁶, *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr.*²⁷, this Court held that the power of the Courts to award compensation to victims under Section 357 is not ancillary to other sentences but in addition thereto and that imposition of fine and/or grant of compensation to a great extent must depend upon the relevant factors apart from such fine or compensation being just and reasonable. In *Dilip S. Dahanukar's* case (supra) this Court even favoured an inquiry albeit summary in nature to determine the paying capacity of the offender. The Court said: “.... The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person

²⁴ (1978) 4 SCC 111

²⁵ (1994) 4 SCC 29

²⁶ (1995) 6 SCC 593

²⁷ (2007) 6 SCC 528

in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub- Section (3) of Section 357 does not impose any such limitation and thus, power there under should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge.”

In *R. Mohan V. A.K. Vijaya Kumar*²⁸ the legal question arose in the case was whether the court can award sentence in default of payment of compensation Under Section 357 of the Code the court can pass order to pay compensation. Sub-Section (1) of Section 357 of the Code empowers the court to award compensation to the victims of offence out of the sentence of fine imposed on the accused. Section 357 (3) is relevant when a court imposes a sentence of which fine does not form a part the court may when passing judgment order the accused person to pay by the way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357 (3) compensation is awarded for the loss of inquiry suffered by the person due to the act of the accused for which he is sentenced. If merely an order, directory compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. Therefore, position of separate sentence would secure the very object of payment of compensation.

In *Ankush Shivaji Gaikwad v. State of Maharashtra*²⁹, the Supreme Court again noted with despair that Section 357 Cr.P.C. has been consistently neglected / ignored by the Courts despite series of pronouncements³⁰ to that effect. In this decision Supreme Court highlighted that though the award or refusal under the provision is well within the judicial discretion, yet

²⁸ [2012] 7 S.C.R 1

²⁹ (2013) 6 SCC 770

³⁰ *Manish Jalan V. State of Karnataka* (2008) 8 SCC 225, *K.A. Abbas H.S.A. V. Sabu Joseph*, (2010) 6scc 230, *Roy Fernandes V. State of Goa* (2012) 3 SCC 221, *Satya Prakash V. State* (on 11th Oct. 2013)

there exists a mandatory duty on the court to apply its mind to question of compensation, in every criminal case, as a standard practice. The Court ought to record reasons for the order. The court further observed:”

The capacity of the accused to pay which constitutes an important aspect of any order under Section 357 CrPC would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view ,both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his\her family.

Similarly in *Suresh vs. State of Haryana*³¹ the apex court held that every criminal court is under obligation to consider the case of grant of interim compensation after taking cognizance into the matter and in *Tekan alias Tekram. V. State of Madhya Pradesh*,³².The Supreme Court directed all the States and the Union Territories to make all endeavour to formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation with the physical handicapped women as required under the law taking into consideration the scheme framed by the State of Goa for rape victim compensation. Hence the court directed the State to pay a sum of Rs. 8,000/- per month as victim compensation till her life time.

Conclusion

In a homogenous undifferentiated society, anti-social acts offend the strong cohesive conscience of the people. Punishment, therefore, in such a society is a mechanical reaction to preserve social solidarity. Individuals are but the instruments of society who “strike back” at the offender without any sense of justice or immediate utility. In contrast, the advanced and differentiated urban society develops another type of penal principle that is based on man-to-man requirements. In such a society, the law is not concerned with the preservation of ‘social solidarity’ but merely with restitution and re-instalment because the wrong done is not considered a threat to social cohesion because men are little aware of it. The wrong is measured only in terms of damages or injury done to the victim. Against these reactions to crime, the Indian open society with its unique historical characters, demands of various

³¹ (2015) 2 SCC 227

³² 2016 SCC ONLine SC 131 Decided on 11.02.2016

differentiated sections with the minimum of friction, chaos and waste. Hence, the punishment in our society becomes evaluated both in terms of 'social solidarity' and restitutions to victim. The law and the court should act as arbiter between the State and the offender and the victim. It will be recalled that only the theory of restitution can solve the forced conflict of the present criminal law. Nothing can create such respect for the State and its laws in the eyes of the offender, the victim and the whole world as a general opinion of the inner-justice of a punishment that looks not to an immoral repaying of evil with evil, but with good. The complexity of life therefore demands that the victim of crime should forgive and forget the offender, and the latter should pay the indemnity for his act. If the first object of the criminal law should be the protection of society, the second is the compensation and restitution to victim.

With the development of the concept of welfare state it is now being increasingly felt by criminologists, social thinkers and jurists that the administration of criminal justice should be such as would enable the victim to get his redress more expeditiously and adequately within the criminal justice system itself rather than through a long winding civil litigation against the individual offender. Moreover, the State having failed to give protection to its citizens, ought not to shy away from its responsibility to rehabilitate the victim by making adequate compensation for the loss suffered especially when the offender is unidentified or is so indigent that nothing substantial can be recovered from him by way of reparation.

The penal law of India provides for payment of compensation to victims of crime. A number of countries of the World have introduced some or other scheme of compensation to victims of crime. Though the enforcement machinery for the purpose of providing compensation to the victims of crime in India is not of the same pattern as in other countries and the programmes relating to this matter here is not well implemented as in other countries. Legislature and the judiciary have taken the steps gradually to evolve the necessary principles by which compensation could be paid to victims of crime. The legislature has done it by enacting two different kinds of law namely the General Law and Special law. The judiciary has, through the cases decided by it, propounded a set of principles to provide the remedy of compensation. The latest amendment to the Criminal Procedure Code is encouraging. The legislation consist some important aspects of victim's justice unless implemented properly. Hence, it could be concluded that some rights have been granted to victims in criminal justice system but still more required to give such crime victim a fair and respectable status.

Suggestions

In order to make victim compensation laws more realistic and meaningful in doing justice to the victims the following suggestions are made:

1. Informing victims of their role and the scope, timing and progress of the proceeding and of the disposition of their cases specially where serious crimes are involved and where they have requested such information.
2. Providing proper assistance victims throughout the legal process.
3. Avoiding unnecessary delay in disposition of cases and the execution of orders or decrees granting awards to victims.
4. Taking measures to minimize inconvenience to victims and protect their privacy, when necessary and ensure their safety as well as that of their families and witnesses on their behalf, from intimidation and retaliation.³³
5. Delay in the payment of compensation to the victim should be avoided at all costs.

³³ K. D. Gaur 'Justice to Victims to Crime: A Human Rights Approach' Eastern Book Company, Lucknow, 2004. P 361
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