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B.A. LL.B. (Hons.), 2nd Year.

Victims of Crime Restoration and Legal Care Under Indian Criminal Jurisprudence

Abstract

A victim may be a product of crime and his rehabilitation and restoration within the society is an important facet under criminal justice system. Victim compensation is one among the several modes of rehabilitation, reparation and assistance of the victim of a criminal offense. But there's not one comprehensive law which exclusively associated with compensation and rehabilitation of victim of a criminal offense. Under the code of criminal procedure, 1973 there are many provisions relating to compensation of victim, but these are lengthy and not uniform throughout the country. A comprehensive law is much needed solution which exclusively deals with and provided for the victim a speedier mode of compensation, rehabilitation and assistance in criminal justice system.

Introduction

The bearing of justice is usually misconceived to halt at the signature on a judgment; however, the true destination lies at the lap of the victim. While it's the courts that preserve the purity of justice, it's the perquisite of the state to support the pillars of justice. Victimology related jurisprudence has debated extensively on where to point the responsibility - whether the obligation of the state ends merely by registering a case, conducting investigation, initiating prosecution and sentencing an accused or whether apart from pursuing these steps, the state features a further duty to the victim. Similarly, there is a dilemma whether the court bears a

duty to award compensation regardless of conviction. However, it remains that victims of a criminal offense, including her/his kith and kin carry a legitimate expectation that the state will 'catch and punish' the guilty and compensate the aggrieved. Even within the event when the machinery of justice fails to spot the accused or falls short in gathering and presenting requisite evidence to make sure appropriate sentencing of the guilty, the duty of compensation remains.

The framework of justice in India has been largely oblivious to what would constitute true vindication to the victim. The ambit of justice has fixated to merely mean the conviction of the accused. This has excused systemic failures in terms of blotchy investigation, poor efforts of the prosecution, and questionable integrity of these who are involved within the process. Further, there's a scarcity of infrastructure to support or accommodate development within the process. This successively affects the standard of justice offered to the victim.

Justice must be reformative for the aim of the perpetrator and rehabilitative for the survivor. Therefore, it's a legitimate expectation that the victim must tend rehabilitative support including monetary compensation. Such compensation has been directed to be paid publicly law remedy with regard to article 21. The Hon'ble supreme court has in numerous cases, to try to do justice to the victims, directed payment of monetary compensation also as rehabilitative settlement where state or other authorities did not protect the life, dignity and liberty of victims.¹

The jurisprudence under article 21 has gained momentum since the turn of the century and now extends to rehabilitating the victim or her/his family. However, the scope for a remedy to the victim in terms of compensation was earlier limited under law by way of writ jurisdiction. Therefore, there was a requirement to introduce a selected provision for providing compensation to the victim regardless of the results of prosecution. Accordingly, section 357-A was introduced within the code of criminal procedure, 1973.

Historical Development of Compensation as a criminal remedy

Restitution has been employed as a punitive measure throughout history. Ancient societies never conceptually separated the realm of civil and legal code, but mechanically required the offender to reimburse the victim and/or the family for any loss caused by the

¹ KewalPati v State of U.P (1995) 3 SCC 600; Supreme Court Legal Aid Committee v State of Bihar (1991) 3 SCC 482; Nilabati Behera v State of Orissa (1993) 2 SCC 746.

commission of the offense. However, the first purpose of such restitution was misplaced since it had been meant to guard the offender from violent retaliation by the victim or the community as against compensating the victim. It had been a bargain afforded to the offender to 'buy-back' the peace he had broken. With the passage of your time, principles of law gradually demarcated the allocation of punishment within the case of civil tort and criminal offenses. Compensation was then incorporated as a victim's right in civil law as against a remedy within the case of a criminal offense.

Thus, legal code was obviating the burden of compensation to rehabilitate victims since the position of law was that criminal justice was either reformatory or retributive for the aim of the offender, as against being rehabilitative with reference to the victim. This conventional position has in recent times undergone a notable change, as societies world over have increasingly felt that the legislatures and therefore the courts alike were neglecting victims of the crimes. However, a scheme supported restitution by the offender to the victim is especially problematic because it's imperative for the offender to be apprehended and convicted, and it's also necessary for the victim to be ready to afford the resources for an equivalent. Such a scheme also gives rise to a probability where the victim is denied compensation since the offender may be a debtor and can't raise money in prison. Thus, the simplest method seems to be to possess a State Fund from which the victims are immediately compensated after the crime. If and when the offender is convicted, he could also be ordered by the court to retribute a particular amount to the State. This is often to make sure that the victim isn't affected either by the offender's inability to pay, the long delays within the criminal process, or an acquittal due to lack of evidence. Therefore, legislations are introduced by several States including Canada, Australia, England, New Zealand, Northern Ireland and therefore the USA providing for restitution by courts administering criminal justice.

Evolution: The Concept of Compensation to Victims of Crime

Earlier the theory of retribution was in operation according to which an injured person or the relatives of one killed could exact similar vengeance from the wrong doer. Later it was felt that blood money could be paid in lieu of pursuing the blood-feud. Even then an option was there for the injured person or the relative of taking money or taking blood for certain offences. In Arabia, Tyler noted the transition from blood vengeance to compensation. Nomadic tribes

outside the cities adhered strictly to the blood-feud, but those living in towns found it necessary to practice compensation for offences against the person in order to prevent the socially disintegrating effects of the blood feud. The principle of compensation for victims of crime has its reference and concern in the old Penal law Rome and Greece. The penal laws provided for compensation to the victims of crime and there was considerable increase in awarding compensation in criminal cases. There were certain offences like theft, assault, libel, trespass in which compensation was payable. During the Anglo Saxon period the payment of compensation assumed major importance. We can notice the first systematic use of awarding damages or compensation to the victim of crime and abuse of power in the form of money. In UK the criminal had to pay compensation in the form of money and monetary payments, like the writ to the King or the Feudal Lord for the wrong which he has done further the offender need to pay money in the form of bot and wer to the victim or his relatives/dependents. (The amount of money set on a man according to his rank and status in society was known as wer and the amount of compensation to be paid was known as wergild or bot. For breaking King's peace and doing something against the authority of king, a fine was required to be paid which is commonly known as wite). In the end of the middle ages, the concept of paying compensation started losing its moral support.⁶² Due to the increase in the powers of king there was a clear and sharp classification between torts and crimes and the award of compensation in the given cases. It was in the 19th Century that concern for the grant of compensation to the victims of crime and abuse of power gained a momentum. There were criminal justice thinkers who supported the idea, concept and the need of dispensation in the form of awarding compensation to the victims of crime and abuse of power. Similarly, these observers also stressed on the need of rehabilitation of victims and restitution to the victims of crime. The thinkers like Bonneville who advocated the concern of public responsibility to the victims of crime. Criminologist Lombroso supported the idea of compensation to the victims of crime. Clearly, he advocated that the victims of crime must be adequately compensated against the wrong which the offender has done. Definitely there were procedural aspects wherein the awarding of justice in this form was difficult but Lombroso strongly advocated the concept that the victim of crime must receive from the criminal some amount as compensation for the wrongdoing of the offender. Meaning thereby, he advocated the conceptual idea of the paying compensation to the victims of crime out of the pocket of the offender during his detention. Another Criminologist Garofalo advanced the idea of enforced reparation whereby it is stressed that the damages need not be only sufficient for the injured party's good but rather also the concern of States' expenses are taken accounted for. One of the concept in criminal law is that

the offender must have the capacity to pay. But Garofalo advocated the idea that if the offender has no capacity to pay then he must be made to do labour and to pay out of it in the form of required reparation. It was in the year 1885 at the First Congress of Criminal Anthropology in Rome, a resolution supporting the suggestions of Garofalo was introduced and passed. Likewise, on the same grounds in 1891, The Third International Juridical Congress at Florence recommended the setting up of an institution pertaining to Compensation Fund.

Crime Statistics in India

The Code of Criminal Procedure of India divides offences as cognizable and non-cognizable. Cognizable offences are those for which a police officer can arrest a suspect without a court warrant. Non-cognizable offences are those for which a police officer cannot arrest a suspect without a court warrant. The recent "Crime in India" publication (Government of India, 2007) states that about 1.99 million cognizable offences were registered under the Indian Penal Code (IPC), whereas under the Special and Local Laws (SLL), 3.74 million cognizable offences were registered. In total, 5.7 million offences were registered under both the IPC and SLL. The rate of total cognizable crimes per 100,000 persons during 2007 was 504.5, which rose from 455.7 in 2006. The percentage share of violent crimes reported was 10.8% of the total number of IPC crimes. Violent crimes have been classified under four categories: those affecting life, those affecting property, those affecting public safety, and those affecting women. Significantly, though the share of violent crimes of the total IPC crimes has been showing a declining trend, the share of violent crimes affecting women alone has increased continually from 2003 to 2007. A total of 185,312 incidents of crimes against women, both under IPC and SLL, were reported during 2007 as compared to 164,765 during 2006, recording an increase of 12.5% during 2007. For the total number of crimes under the IPC, the share of crimes against women was 8.8% in 2007. Of the total number of crimes against women, rape offences constituted 7.6%. The actual number of victims of rape was 20,771 out of 20,737 reported rape cases in 2007. Reported rape offences increased by 7.2% in 2007 over 2006. The number of dowry death offences (8,093) in 2007 also increased by 6.2% over the previous year.

Crime Restitution- An Overview

In its traditional sense, restitution has been defined as "a monetary payment by the offender to the victim for the harm reasonably resulting from the offence". Restitution can personify both monetary payments and in-kind services to the victim. Consistent with Black's Law Dictionary, restitution is an "Act of restoring; restoration of anything to its rightful owner; the act of creating good or giving the same for any loss, damage or injury; and indemnification". Restitution proactively involves the victim and offender in mending the harm done to the victim. Unlike retributive responses to crime, restitution has the potential to repair the financial and maybe relational harms that crime has left in its aftermath. Restitution is arguably preferable because rather than simply increasing the entire amount of harm suffered by interested parties, restitution aims at repairing the victim, and making the offender a productive person. It provides a sanction that's more clearly associated with the offence than punitive measures, and it better restores a victim to the place he/she occupied before the offence.

Restitution serves to commemorate the gesture of reparation and acknowledgment of wrongdoing. Rather than completely ignoring the harm done to individual victims, restitution acknowledges and attempts to repair the injury they need suffered. Whereas retributive and rehabilitative responses fail to deal with the harm inflicted on victims, restitution, when sought as an outcome of a restorative process, has as its primary motivation reparation to the victim. Thus, restitution is claimed to raised satisfy a victim's need for justification, because the offender must personally acknowledge and account for the offense.

Potentially, for the offender, restitution can't only be less punitive, but more rehabilitative than incarceration. It allows the offender to precise guilt during a concrete manner. It provides an alternate sanction with far less stigmatization than incarceration, ultimately better-facilitating reintegration. Restitution affirms the offender's self-worth, giving them the chance to "make things right".

Victim Compensation in India

The criminal justice system in India is predicated on British pattern and aims at punishing the accused person to reform and rehabilitate him/her in society as an honest citizen. Within the jail also the accused. Person availed all the human rights

available to the citizens enshrined within the Constitution of India. Prisons have also been converted into correctional centres, where the criminals while undergoing imprisonment are given sufficient training in some trade in order that after their release from the jail they easily become a part of society without being a burden thereon. The growing emphasis on probation, parole, and therefore the suspended sentence is additionally aimed toward restoration and aid to suit within the present-day society.

The victim of crime, however, remained neglected during the investigation, trial, and thereafter. They're simply treated as an informant to lodge FIR and to depose as a prosecution witness against the accused during the trial. It's rightly said that: it's a weakness of our jurisprudence that victims of crime and distress of the dependents of the victim don't attract the eye of the law. In fact, the victim reparation remains the vanishing point of our legal code. This is often the deficiency within the system which must be rectified by the legislature.²

Position of Victim in Criminal Cases

The two important components of criminal justice system are the perpetrator who commits the crime and the victim against whom the crime is committed. Neither the victim nor the perpetrator has been defined by any penal statute. Ordinarily a person is liable for his own guilty acts. However, in certain situations one is held liable for the criminal acts committed by others also. There is no society in the world that is not confronted with the problem of criminality. Crime prevention and treatment of offenders is engaging attention of the criminologists. There may be situations where person committing crime may not be free agent. The present day trend is to rehabilitate and reform the accused rather to award deterrent punishment. There are two systems of administration of criminal justice system present in the world. One is accusatorial, which is prevalent in common law countries and the other is inquisitorial followed in some European countries like France. Under first category the burden of proving that the accused person violated some law is on the prosecution whereas under the second the burden is on the accused to prove that he is not guilty. India is following the pattern of common law countries and therefore accused has been given rights in the administration of

²Rattan Singh v. State of Punjab, (1979) 4 SCC 719.

the criminal justice system to ensure that one innocent is not convicted rather guilty persons may be acquitted.

The Law Commission Report and Implication of section 357 of the CrPC

The 41st Report of the Law Commission of India was submitted in 1969. This discussed Section 545 of the Code of Criminal Procedure of 1898 extensively. The report stated that the importance of the recoverability of compensation should be enforceable during a civil court like the general public remedy available to tort. The gravity of compensability was earlier demarcated by the utilization of the word “substantial” which excluded cases where nominal charges are recoverable. However, the Law Commission debated against the demarcation since the discretion to use the supply in cases was used scarcely by the courts in directing compensation for victims.

On the idea of the recommendations made by the Law Commission within the above report, the govt of India introduced the Code of Criminal Procedure Bill, 1970, which aimed toward revising Section 545 and re-introducing it within the sort of Section 357 because it reads today. The Statement of Objects and Reasons underlying the Bill was as follows:

“Clause 365 (now Section 357) which corresponds to Section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the court imposes a fine; the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine or fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors.”

The CrPC consequently incorporated the changes proposed within the said Bill of 1970. within the Statement of Object and Reasons it stated that Section 357 was “intended to supply relief to the poorer sections of the community” whereas, the amended CrPC empowered the court to order payment of compensation by the accused to the victims of crimes “to a bigger extent” than was previously permissible under the Code. Section 357 caused significant changes within the framework. The approach to

demarcation was shifted with the exclusion of the word “substantial”. Further, two new subsections were inserted. Subsection (3) provides for payment of compensation even in cases where the sentence doesn't impose a fine, while subsection (4) outlined the jurisdiction and powers of courts with reference to the section. It states that an order awarding compensation could also be made by an appeals court or by the supreme court or Court of Session when exercising its powers of revision.

Conclusion

The main purpose of compensation to victims is their rehabilitation, and assistance, in order that they will be restored within the society again. Though there are many provisions under the code concerning the compensation but these provisions provide compensation on the discretion of the court, in many cases there's very meager amount is provided by the code, procedure to get compensation is lengthy and not uniform throughout the country. aside from providing compensation nothing much has been finished prompt and complete rehabilitation. the govt of our country must believe these aspects, if possible must enact and implement a law which exclusively deals with and provides for the victim a speedier mode of his compensation, rehabilitation and assistance in criminal justice system.

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