

PRESENT STATUS OF VICTIMS IN INDIA: IMPLEMENTATION OF POLICY AND LAW

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INTRODUCTION

Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice. The operative principle is fair trial and justice to both, the accused and the victim of crime. Application of this principle involves a delicate judicial balancing of competing interests of the accused, the public and the victim. Where an offence is committed, the State apprehends the accused and brings him to trial. He is convicted and sentenced to undergo punishment, if found guilty. Does this complete the wheel of criminal justice? What about the crime victims? Traditionally, it may have been sufficient that the criminal is caught and punished. But, the modern approach is to also focus on the victims of crime. It is all very well that the accused is given a fair and just trial; that the guilty are punished; that the convicts and prisoners are given a humane treatment; that jail conditions are improved and the erstwhile criminals are rehabilitated, but what about the crime victims? What is the status of crime victims in the Criminal Justice system? While the accused is protected with all the resources available at the expenditure of the State, the victim is left to fend for himself with little or no support from the State machinery.

PRESENT STATUS OF VICTIMS IN INDIA

Since last several years, some amendments have been made in criminal laws in India giving some rights to crime victims at different stages of criminal justice system but so far as status of crime victims in criminal justice system in India is concerned, it is inadequate and requires legislative attention. A crime victim has right to oppose the release of accused on bail but he has no right or status to be informed if bail is filed. Except in few matters, he is not a necessary party in criminal revisions, appeals or writs filed by accused. His evidence is necessary for recording conviction of accused but he need not be informed for hearing on the

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point of sentence. He is entitled to get compensation but before determination of compensation, he has no vested right to be heard. A victim has no status to watch the trial. There are definite places for judge, prosecutor, defence lawyer, accused and staff of court in court room but no place has been assigned to victim in a court room to watch the progress of trial.

INTERNATIONAL APPROACH

Even definition of the word ‘victim’ in section 2 (wa)¹ inserted by Criminal Laws (Amendment) Act 2008 in Cr.P.C is quite narrower than that of international approach in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the United Nations General Assembly in its resolution no. 40/34 dated 29th November, 1985 which provides, ‘victims of crime’ are persons 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 in Member States, including those laws prescribing criminal abuse of power.

Identification of offender and his prosecution has been purposely avoided to be used in this definition in order make it wider and beneficial to victims. It may be noted that Criminal Injuries Compensation Act, 1995 passed in UK provides that the Secretary of State shall make arrangements for the payment of compensation to or in respect of persons who have sustained criminal injury. Section 9(4) of the Act stipulates that sums required for the payment of compensation in accordance with the Scheme shall be provided by the Secretary of State out of money provided by Parliament. So, the funding is by the State and not by the offender. Consequently, The Criminal Injuries Compensation Scheme (2001) was framed in U.K which, inter alia, specifies the standard amount of compensation payable in respect of each type of injury and compensation is payable irrespective of the criminal being apprehended or not and independent of the trial of the accused.

THEORY OF STATE COMPENSATION

History of payment of compensation by state may be traced in the Hammurabi Code of

¹ Section 2 (Wa) CrPC- “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”.

ancient Babylonian² which makes the earliest reference to state compensation for victims of crime. It provides, if the robber is not caught, then shall he who was robbed claim under oath the amount of his loss; then shall the community, on whose ground and territory and in whose domain it was, compensate him for the goods stolen. If persons are stolen, then shall the community pay one mina of silver to their relatives?³

This principle was well accepted in England in the Anglo-Saxon period of the seventh century.⁴ The Kentish laws of Ethel best contained specified amounts of compensation for a large number of crimes ranging from murder to adultery. In the early Common Law of Middle England, if a man was murdered, the victim's family was entitled to a wergild of four pounds. However when the criminal justice system was separated from the civil system with growing principle of sovereign immunity in criminal law, the offences like murder, robbery and rape did not remain within the category of tort to be settled by compensation but were regarded as crimes against society and were punishable as such. Hence, state compensation disappeared and the state played a punitive role, imposing punishment for not only the harm done to individual victims but also harm done to the king or feudal lord. But the doctrine of state compensation to victim again attracted attention of sociologists and jurists. Jeremy Bentham⁵, has said that due to the presence of the social contract between the state and the citizen, victims of crime should be compensated when their property or person was violated. It is the role of the state to prevent crime and protect people and property. If the state is unable to prevent a crime it falls upon the state to support the victim. Thus modern approach of victimology acknowledge that a crime victim has right to be adequately compensated, rehabilitated and repaired irrespective of identification and prosecution of offender and the

² "An eye for an eye ..." is a paraphrase of Hammurabi's Code, a collection of 282 laws inscribed on an upright stone pillar. The code was found by French archaeologists in 1901 while excavating the ancient city of Susa, which is in modern-day Iran. Hammurabi is the best known and most celebrated of all Mesopotamian kings. He ruled the Babylonian Empire from 1792-50 B.C.E. Although he was concerned with keeping order in his kingdom, this was not his only reason for compiling the list of laws. When he began ruling the city-state of Babylon, he had control of no more than 50 square miles of territory. As he conquered other city-states and his empire grew, he saw the need to unify the various groups he controlled.

³ The Code of Hammurabi ; Translated by L. W. Kin

⁴ Anglo-Saxon England refers to the period of the history of the part of Britain that became known as England, lasting from the end of Roman occupation and establishment of Anglo-Saxon kingdoms in the 5th century until the Norman Conquest of England in 1066 by William the Conqueror. Anglo-Saxon England did not have a professional standing law enforcement body like our modern police. In general, if a crime was committed then there was a victim, and it was up to the victim - or the victim's family - to seek justice.

⁵ Jeremy Bentham (15 February 1748 – 6 June 1832) was a British philosopher, jurist, and social reformer. He is regarded as the founder of modern utilitarianism.

payment of such compensation should be made by state.

APPROACH IN INDIA

The international trend was not followed in India. Identification and prosecution of offender has been necessary for giving any relief to crime victim till the amendment in the Cr.P.C. in the year 2008. The reasons are obvious. Internationally, the liability to compensate the crime victim is responsibility of state and hence the focus is about identification of victim and the harm caused to him. But in India, the offender has to compensate the crime victim and hence successful prosecution is necessary. Section 2(wa) of Cr.P.C provides 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. Use of the word “for which the accused person has been charged” in this definition makes the legislative intention clear.

Specific provision for compensation to victim was inserted in Cr.P.C. as section 357 in pursuance of the recommendation of the Law Commission in its Forty-first Report (1969). This provision states, “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”. A similar provision in the Probation of Offenders Act, 1958 may be found though it is applicable only in cases where offenders are directed to be released on probation. However, awarding compensation under these provisions depends on conviction of accused and we all are aware that rate of conviction in India is quite low, i.e, about 10% only due to various reasons and the convictions are subject to appeals and revisions which is a time taking process. Thus section 357 Cr.P.C or similar provisions in Probation of Offenders Act are quite inadequate and the delay in making it available to the crime victim would itself defeat the purpose. The other statutes in India making provisions for compensation to victims are Works Man Compensation Act, Fatal Accidents Act, Motor Vehicles Act and Domestic Violence Act, which provides that wrong doer or his master, should pay compensation to victims. Insertion of S. 357A in the Cr.P.C. by Amendment Act,2008 w.e.f. from 31/12/09 and the Bihar Victim Compensation Scheme 2011 are welcoming steps where the responsibility of state for compensation and rehabilitation of victim irrespective of identification and prosecution of accused have been acknowledged. I shall discuss the beneficial provisions of this scheme in detail separately at latter part of this address.

RIGHTS & STATUS OF CRIME VICTIMS

In the resolution of UN General Assembly in the year 1985 (as referred earlier), four rights and status of crime victims has been recognized, which are-

- i. Access to justice and fair treatment,
- ii. Restitution,
- iii. Compensation &
- iv. Assistance.

However, the Indian law is mainly focused about payment of compensation to victims of crime as well as rehabilitation and giving some financial assistance to him. The status of crime victims about access to justice and fair treatment may be properly appreciated in relation to the four different stages of criminal justice system, which are:

- 1) Right to mobilize the criminal justice system in action by lodging FIR or complaint,
- 2) Right and status of victim during investigation of a criminal case,
- 3) Right and status of victim during trial and
- 4) Right and status after judgment in criminal case.

Right to mobilize the Criminal Justice System

So far as right to mobilize the criminal justice system is concerned, the crime victim has no special or distinguishable status or privilege and normal rule of law is that any person can set the criminal law in motion. However, in respect of offences relating to marriage, dowry torture and defamation, the victim as aggrieved party has been given exclusive right to file complaint. Some privileges have been given to victims of rape and cognate offences. If such victim is physically or mentally handicap than her statement shall be recorded by lady police officer or lady officer at a place convenient to such victim. It has been further provided that statement of lady as informant or witness during investigation shall be recorded by lady police officer or lady officer. But all such provisions mainly relate to gender justice and protection of the dignity and privacy of ladies. The hardship of general public including crime victim in lodging FIR, vis a vis, harassing attitude of police officers in institution of a case, even after an order u/s-156(3) Cr.P.C. by a Magistrate came to consideration of Hon'ble

Supreme Court in a case *Lalita Kumari v. State of U.P.*⁶ Three interim judgments have been reported so far, in relation to the said case. Due to conflicting opinion in several cases as to whether a police officer has option to do some preliminary inquiry before lodging an FIR, the matter has been referred to larger bench in Hon'ble Supreme Court and clear verdict in that respect is awaited.

While a crime victim is engaged in his treatment or is under shock and terror, some other person may get first opportunity to lodge FIR about an occurrence. In such a situation, the limited status of victim is further curtailed. Sometimes, the real culprit lodges FIR of the occurrence with concocted or different story and it causes hardship to poor victim in institution of FIR of cross case. If the police submit final report after investigation, notice is mostly issued to the informant of the case, and the crime victim, if not informant, remains unaware about the result of the investigation. In criminal revisions, appeals, and writ petitions filed by accused, the informant is mostly impleaded as opposite party. If the law is amended that after receiving any information of occurrence from any person other than crime victim, the officer-in-charge of the police station, shall enter such information in the station diary and proceed to search & take statement of victim of crime also, which may be made the basis of FIR, it will naturally strengthen the status of crime victim in criminal justice system and his right of access to justice and fair treatment may be ensured to some extent.

RIGHT & STATUS OF VICTIM DURING INVESTIGATION

A crime victim has no right or status during investigation of a case. Even the criminal courts have also no right to interfere in investigation. The victim cannot withdraw a case at investigation stage inspite of the fact that the complaint, which was sent to police station u/s 156(3) Cr.P.C. was filed by him. The statement of victim or other witness cannot be recorded u/s 164 Cr.P.C. until it is sponsored by investigation officer. Same is the position about holding T.I. Parade of person or property, forensic examination of any seized article or viscera etc. If post mortem houses are inspected, it will be found packed with samples of viscera which were never collected and sent for forensic examination. The investigation agencies have been given such wide and unbridled powers in investigation. But the experience show that a criminal case mostly fails due to delay and latches in investigation. Recently accused parsons were acquitted in Bathani mascre case due to faulty investigation

⁶ 2012(2) SCC (Cri) 1

and list of such cases is quite long. Hon'ble Courts in various rulings has observed about such lapses in investigation which was proved to be fatal in criminal trial. If the prosecution fails due to faulty investigation, the crime victim never gets justice. If the police have been given such a wide and unfettered discretion in investigation, why not there is a clear provision fixing liability on state to compensate the crime victim if the prosecution fails due to laches in investigation. Moreover, liberty should be given to state to reimburse itself by realizing the amount of compensation from the erring IO.

At this stage, the interpretation of Hon'ble Supreme Court in judgment delivered in *Sakiri Vasu v. State of U.P.*⁷ may be quoted wherein the Apex Court observed that-

The interpretation given in the said ruling need detailed consideration by the Law Commission. Whether the powers of monitoring investigation are available only in respect of cases instituted under orders u/s 156(3) Cr.P.C. or it may be exercised in respect of other investigations also is a moot question for clear interpretation and legal provision. It is high time that Law Commission should carefully examine and recommend incorporation of a clear provision in this respect in Cr.P.C.

The victim may oppose release of an accused on bail or releases of any property seized during investigation, or oppose the prayer of accused in criminal revision, appeal and writs filed, but he has no status to be necessarily informed by court, when such an applications are filed by accused. If the crime victim is not the informant in FIR, he does not get information in above mentioned matters and thus after institution of FIR, the victim has no alternative but to visit court every day to verify as to whether any bail application, release application or criminal revision against any order has been filed by accused. A simple amendment in Cr.P.C. giving right to crime victims to file caveat in such matters may give right of fair treatment to crime victims in criminal justice system.

RIGHTS & STATUS OF VICTIM DURING TRIAL

The status of crime victim in criminal trial is quite limited. He may compromise a compoundable case or withdraw petty cases instituted by him. He may apply for release of property seized in the case and he may appoint a lawyer to assist the prosecution. He is an important witness for successful prosecution. He has right to file criminal revision against an

⁷ 2008(1) SCC (Cri) 440

order passed in criminal trial and right to file appeal, in case of acquittal of an accused or inadequate sentence or compensation. However, a victim of crime has not been assigned any place in the court room to watch the trial even after his evidence is recorded in such trial. Even in complaint cases disclosing commission of session's triable offences, the crime victim has no status in prosecution of the case before the session court and he may only engage a lawyer to assist the prosecutor. He has no right to be informed at the time of hearing on the point of charge or imposition of sentence, after conviction of the accused nor need he be informed at the time of quantifying the compensation to be paid, if any. If right of filing caveat to give opportunity of hearing at such stages bail etc be given to the crime victims, it may be acknowledgement of his right of fair treatment in criminal justice system. The crime victim has also been given right during trial to plea bargain with accused. However disposal of cases as a result of plea bargain in Bihar is not encouraging. One of the reason is that even after paying compensation to the crime victim as a result of plea bargain, the accused has to confess his guilt and he is at the mercy of judge in awarding sentence. Under such circumstances, the accused persons prefer to bargain with the crime victims outside the court and the courts remain unaware as to whether the crime victim has properly been compensated or not. In spite right of privacy, recording of her evidence in camera and non-publication of her name in any manner either by media or in judgment, a victim of rape is mostly threatened by the accused persons to be defamed in her 'Sasural' and resultantly, in most of the cases of rape, the crime victims show reluctance in attending court for giving evidence against accused and if they are compelled, they mostly turn hostile. It is a matter of consideration by legislature to see as to whether the provision of S. 376 of the IPC(not other cognate sections) should be brought within the purview of plea bargaining, because under such circumstances the victim may be at least properly compensated and rehabilitated without there be any threat to be defamed. The choice will always remain with the victim.

RIGHTS & STATUS OF VICTIM AFTER JUDGMENT

Where the accused is convicted after trial, the victim need not be necessarily heard on the point of sentence. If he is present, the court may hear him also. The historical position in India was much better where the victim was given right to opt the final punishment to be awarded to accused. The most recent reference of such right of victim may be found in autobiography of M. Hidayatullah, the Former chief Justice of India published as "My Own

Boswell”⁸. In the chapter ‘my ancestors’, His Lordship has mentioned, that his uncle, from 2nd wife of his grandfather was murdered and subsequently the assailant was caught, tried and convicted. The punishment was either decapitation or imprisonment for life. The family of deceased had the option to claim either of the punishment for accused. Although, His Lordship has not mentioned the year when such an important right of victim’s family was prevalent but it must be after 1958 because his lordship grandfather shifted from Banaras to Bhopal in year 1958. No such right is available to victim at present nor there do such option in cases of death penalty because the victim mostly opts in retaliation. To my mind, the provision of plea bargain should be applicable after conviction with reasonable condition irrespective of punishment, of the offence in which the accused has been found guilty and the process of plea bargain must be reduced in writing.

There are two important rights of victim, after pronouncement of judgment. He may file a criminal appeal against the judgment of acquittal and also against inadequate sentence or compensation and he has right to get compensation. I have already referred earlier that payment of compensation in India u/s 357 CrPC or under the provisions of Probation of offenders Act is subject to conviction of accused and as per interpretation; the amount of such compensation should be dependent on the capacity of accused to pay. With due respect to such interpretation, I am tempted to say that an amount paid to a victim in reference to capacity of accused and without considering the actual harm suffered by crime victim may be a financial assistance and not compensation. The amount of compensation should be in proportion to the harm and sufferings of victim and must be paid by state immediately. Liberty may be given to state to reimburse itself from the estate of offender. Necessity in this respect, though quite late, was realized by parliament and by the code of criminal Procedure (Amendment) Act 2008, a very important and long awaited provision was inserted in Cr.P.C. as section 357A⁹. The newly added section provides about creating victim compensation fund

⁸ Memoirs M. Hidayatullah, *My Own Boswell*, Universal Law Publishing Co New Delhi

⁹ Section 357A:

- 1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
- 2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).
- 3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

for the purpose of compensation to the victim or his dependents loss or injury as a result of the crime and who, require rehabilitation and District Legal Service Authority has been given responsibility to decide the quantum of compensation to be awarded. The section further provides about awarding compensation irrespective of acquittal or discharge of accused and even in such cases where the offender is not traced or identified but the victim is identified.

THE BIHAR VICTIM COMPENSATION SCHEME, 2011

The Bihar Victims Compensation Scheme 2011 framed by Bihar government in the light of section-357A Cr.P.C. in this respect is a progressive step to be welcomed wherein the provision has been made for payment compensation or financial assistance for rehabilitation of the crime victim by the state, irrespective of the fact that the offender is traced or identified. Section 3 of scheme provides for creation of victim compensation fund at Legal Services Authority and also at Police Station level so that quick and immediate financial assurance may be given to victim in distress. The state government has to make necessary fund available by a separate budget. Section 5(6) in another appreciable provision which provides that in fixing the quantum of compensation, regard must be had to the minimum wages and the schedule to the Motor Vehicles Act 1988.

The approach in the scheme is quite reasonable and in accordance with international approach about victim compensation. However there appears to be some gray area in scheme which is likely to create confusion. The definition of word victim u/s 2(d) of the said Scheme restricts its payment and provides that-

“Victim means a person who himself has suffered loss or injury as a result of crime causing substantial loss to the income of the family making it difficult to meet their both ends without the financial aid or has to spend beyond his means or medical treatment of Mental/Physical injury and require rehabilitation.”

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- 4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
 - 5) On receipt of such recommendations or on the application under sub-section(4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
 - 6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

Use of words 'substantial loss', 'beyond his means', 'difficult to meet their both ends without the financial aid' and 'require rehabilitation' may caution the authority to enter into inquiry and demand proof of such requirements from a person claiming himself to be victim. Section 5(6) providing consideration of minimum wages and the schedule to the Motor Vehicles Act 1988 gets restricted by section 5(4) of the scheme which refers the own schedule of scheme in fixing quantum of compensation to be awarded. Although section 4(a) waives the necessity of offender being traced or identified but section 6 provides that copy of the order of compensation passed under this scheme shall be mandatory placed on record of the trial court. Section 357A of CrPC is naturally governed by the definition of victim in section 2(wa) of the code but the scheme framed under section 357A has provided a different definition of the word victim. It would be better that Bihar Government should rectify such conflicting provisions to make the scheme quick and beneficial. The victim compensation fund must be readily and reasonably made available. Recently the face and body of a school going girl in Siwan was disfigured by throwing acid and demand of District Legal Services Authority for reasonable fund of Rs 35000 so that she may be given financial assistance for medical treatment.

RESTITUTION

The criminal law in India is also silent on the restitution of crime victim to its original status. Restitution of crime victim may be done at least in cases of criminal trespass by making provision of re-entry, loss of limb by providing artificial limb, rectification of disfigurement by cosmetic surgery.

OTHER VICTIMS, WHO NEED ATTENTION OF CRIMINAL LAW

Before concluding, I may mention that criminal law in India only recognize, direct victims of crime and his dependents for payment of compensation, financial assistance and repairment. However, there are other crime victims also whose rights and status are yet to be considered. Imagine the plight and suffering of a child who is born as a result of rape with his biological mother or who is thrown in dust bin or orphan home after birth by his biological parents or mother. Merely conferring some limited civil rights of legitimacy and maintenance is not sufficient enough for the whole life sufferings of such child. He has no right to search and prosecute his biological father or mother or both. We have recently witnessed the long legal battle of one of such a person to prove him to be biological son of a famous politician.

Whether he can be criminally prosecute his biological father who not only criminally exploited his mother but had left him to live with stigma whole life. Such persons are consequential victims of crimes who have been given no status or right in criminal justice system. Also imagine the sufferings and loss of a patient or pregnant mother who is way laid while going to hospital in urgent need of medical help or a student, who could not give examination or a person who could not attend an interview due to blockage of road as a result of happening of some crime or due to damage to a bridge or road in terrorist activities. Outburst of public after happening of some occurrence sometimes results in destruction of property or physical injury of innocent persons. A person assisting the victim in distress or assisting police in apprehending a criminal sometimes suffers harm. An accused is punished as a result of evidences of so many witnesses out of whom, the direct victim may get compensation. But what about the other witnesses who are intimidated or harmed in revenge and suffers. These persons are incidental victims of crimes whose interests, rights and status have not been acknowledged in criminal law in India as yet.

Hence, it could be concluded that although some rights have been granted to victims in criminal justice system but still more is required, to give such crime victims a fair and respectable status.