COMPENSATION TO VICTIMS OF CRIME: 
A SOCIO-LEGAL CRITIQUE

Summary

The history of crime and punishment in the whole civilized world reveals crime as steadily increasing. Administration of criminal justice remains generally unsatisfactory from the point of view of the victims of crime. The satisfaction, the victim is expected to get from justice is the punishment inflicted upon the criminal. The tendency of modern criminology is to stress on legal aid, reform and rehabilitation of the accused. The injuries and sufferings of the victim are gradually losing importance. The State while administering criminal justice does not fight against abstract legal principles, but against the anti social acts of living human, i.e. its citizens causing immense harm and pain to others. The object of the punishment should not be merely to shelter and reform the criminals but should also be oriented to the need for enabling all citizens to participate in the restoration of law and order. There is need for safeguarding the interests of the victims. Therefore, it has to be seen in what manner the administration of criminal justice can be re-oriented so that it can also be of some benefit to the victim who has suffered at the criminal’s hands.¹

Various rationales underlie the case for state compensation programmes. While some suggest that the state has a moral responsibility to compensate victims of crime, others suggest that it is part of the state’s welfare responsibility. Some argue that state victim compensation is an act of grace, whereas others proclaim state victim compensation is a rightful and practical expression on behalf of the community. American researchers, Smith and Hillenbrand conclude that at best it can be said that all criminal injuries compensation schemes “hold promise for ‘making victims whole’

…”, but not enough is known as to whether that promise is met. Unless the state intervenes, a number of practical issues such as, most offenders are not apprehended, most offenders lack the capacity to recompense victims and the lack of viable alternatives available to victims to alleviate the effect crime, remain largely unresolved. In our present judicial system where it takes number of years to decide over a matter, where the victim spends almost his whole life especially his peak years in trauma and harassment in the long and endless wait for justice, that justice remains incomplete without adequately compensating the victim. Declaration of Basic Principles of Justice for Victims of Crime And Abuse of Power recognised four major components of the rights of victims of crime:³

a) Access to justice and fair treatment
b) Restitution
c) Compensation
d) Assistance

The criminal process reveals that victims of crime in India are neither allowed to participate effectively in the investigatory, prosecutory and sentencing process nor compensated comprehensively. The law is lacking in all the four components in providing justice to the victims of crime. This ignorance may result in collapse of criminal justice system if victims refuse to co-operate. They may become anti system and choose not to report or to co-operate in future. Their experiences may also affect their friends and families and even the general public, spreading a reluctance to co-operate. This syndrome can best be seen in rape cases where few women are willing to co-operate. Hence due importance has to be given to the victim which he/she genuinely deserves. He is just not a passive object but an active component in the judicial process. Justice should not only be done but must be seen to have been done. Justice is achieved by punishing the offender but the latter part that it must be seen to

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have been done requires something more to be done. It requires not just only punishment to the accused but caring for the victim and protection of his rights and supporting him in times of distress.

Today the purpose of the criminal justice system seems to be confined to ascertaining the guilt or innocence of an accused. The role of the victim of a crime is restricted to that of a witness for the prosecution even though he or she has suffered harm-physical, mental, emotional, economical or impairment of fundamental rights. Since the basic aim of the legal system is to retain the public confidence in administration of justice, there is a need to recognize the status and interest of the victim. The victim of crime has hardly any role to play in the entire proceedings except to be examined by the prosecution as a witness. Hence an award of fair compensation to the victim will act as a balm on his wound. A permanent mode of compensation has to be worked out. The demand of justice is that a person who has suffered must be compensated.

The responsibility to compensate lies on two agencies:

a) Accused
b) State

The accused must be made responsible for victim reparation. It might be that the accused is too poor to compensate. In such cases the State which fails in its duty to protect the life, liberty and property of its citizens should compensate the victim for loss and suffering. State victim compensation acts as an incentive to voluntary participation in crime prevention and an aid in law enforcement. Victims who have confidence in the criminal justice system are more likely to report crime and help criminal justice system if they have a hope of gaining compensation. Critics may argue that criminals, in the knowledge that victims will receive compensation, might become more violent and the State will become the victim of fraudulent claims. Victims may register fake cases in order to receive compensation from the State or the offender. But in a developing country like India more risk will have to be taken for the benefit of the society as a whole. Law cannot make the genuine victims suffer at the cost of few fake victims. Merely ordering reparation does not ensure that it will be

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paid. The existing legal framework relating to victims’ rights in India reveals that except compensatory relief by the State, very little has been done to help victims. The plight of victims confirms the reality of failed legal system in responding to victims’ needs. Now it must be considered how law can better assist and support the victims of crime. Victims must receive timely and accurate information regarding offenders and relevant criminal proceedings through modern information and communication technology. Criminal justice reforms depend on effective communication and use of technology. The main agencies, i.e. police, court and prosecution, all have poor information and communication technology system which is the main weakness in the criminal justice system. The key requirement is the effective communication exchange and reducing the time spent by the victims in the court thereby improving the quality of service to them. It should be seen if the following parameters of compensation are met:

- How compensation to victims is provided?
- Is there a State compensation programme?
- What benefits does a compensation programme provide?
- What are the eligibility requirements?
- How do state compensation, restitution and private insurance work together?
- What kind of losses a victim might suffer if he is not compensated?

There are four basic recourses open to victims of crime in which compensation can be recovered:

1. Receiving restitution from the offender.
2. Through a civil court judgement against the offender.
3. Collecting reimbursement from an insurance policy.
4. Receiving compensation from the government fund.

However, none of these options properly meet the needs of the victims, as all are inadequate. Perfect compensation is hardly possible. ‘Justice requires that it should be equal in value, although not alike in kind.....Object is to mitigate the hardship caused to the victims/legal representatives.....Compensation awarded should not be inadequate and should neither be unreasonable, excessive nor deficient. There can be
no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation but the amount recoverable depends on broad facts and circumstances of the case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded." Assessment of damages is not an exact science but practical. Steps must be taken in the direction of welfare of victims with a special focus on the compensation awarded to them. Well begun is half done i.e. if beginning is well, half of the work is easily done, only determination on the part of the legislature and judiciary is required. For their functional success all the three organs of democracy must be fine tuned to respond to the imperatives and urgencies of the Third World and even the Fourth World within the Third World-the marginalized, victimized, sub-humanised sector. We must realize that the nineteenth century system has passed away, and has no application to present day needs. Rule of Law, which is so important, must run closely to the Rule of Life. ....It has to deal with today’s problems. And yet law, by the very fact that it represents something basic and fundamental, has a tendency to be static. This is the difficulty. It has to maintain that basic and fundamental character but it must not be static, as nothing can be static in a changing world. 

There is an adage that prevention is better than cure. Although it is not an easy task but one should always strive to achieve aims and the goals which one sets. It is difficult to achieve perfection but one can always strive to excel. “The courts are also required to have a change in their outlook and attitude, ....and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases......so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the Majesty of Law has prevailed.” It is now well accepted proposition that monetary

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5 West (H) and Son Vs Shephard (1964) AC 326
7 Ibid at 153
8 State of M.P. Vs Shyamsunder Trivedi 1995 AIR SCW 2793
compensation is indeed an effective and sometimes the only suitable remedy for redressal of offence. While assessing compensation the emphasis has to be laid on the compensatory element also along with the punitive element.

**Basic Flaws In The Compensation Law In India:**

1. The rules of criminal law are in favour of the accused as the onus of proof is on prosecution.
2. Compensation to victim under Section-357 and 357A of Criminal Procedure Code is at the discretion of the court and not mandatory. The victim is awarded compensation on proof of loss or injury and the loss or injury must be of a magnitude to justify a civil action.
3. Compensation under Section-357 of Criminal Procedure Code cannot exceed the fine imposed on the offender.
4. The procedure under Sections-421 and 422 of Criminal Procedure Code for realization of fine is lengthy and cumbersome. Due to this courts are reluctant to award compensation.
5. If the extent of compensation has to bear a rational correlation to the actual harm suffered, the trial judge will need to make a thorough inquiry into the nature and degree of such harm. While it may be relatively easy to ascertain external physical injuries, it will be far more difficult to ascertain harm suffered in the nature of mental trauma and psychological stresses that emerge much after the commission of crime.

Taking into account the present scenario of victims of crime, in order to accept a comprehensive victim-assistance policy, it should start with the recognition of certain basic rights of the victim, such as:

1. **Right To Protection From Criminal Victimization:**

   The law enforcement agencies should educate the public about crime prevention measures which a person can take to avoid victimization.

2. **Right To Compensation For Consequences Of Criminal Victimization:**

   This right ensures physical, psychological, social and financial well-being of the victims. If the State fails to protect its subject, the subject must be compensated for the injury caused to him.
3. Right To Be Informed:
The victim must be informed about the procedure of criminal justice system in simple language. For example; progress of investigation, arrest of offenders, case status in the court, right to privacy, dignity and respect, right to legal advice and assistance, right to fair trial and treatment, speedy disposal of the case etc.

In India the Code of Criminal Procedure 1973 empowers the criminal courts to order for payment of compensation to victim of crime under Sec- 357, 357A, 358 and 359. The Supreme Court while discussing the scope of Sec-357 Criminal Procedure Code in Hari Krishna and State of Haryana Vs Sukhbir Singh\(^9\) held:

“… this power of Court 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/she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crime, it is indeed a step forward in our criminal justice system.” As regard Section-358, the limit of compensation not exceeding one thousand rupees even after amendment is inadequate and unjustified and needs further amendment in the increase. Under Section-359, compensation to complainant in non-cognizable cases is limited to expenses in respect of process fees, witnesses and pleader’s fees but does not include any other loss.

Following suggestions are recommended for an effective compensatory law relating to victims of crime:

1. Re-Examining The Criminal Law:
The foremost requirement is to re-examine the criminal law in a fresh light in context of compensation. In the absence of a clear legislative framework, judiciary cannot work up to the mark to get the desired result. Most of the remedies such as fines, penalties, imprisonment etc are not proportionate to the degree of harm suffered by the victim. Though the judiciary has been using its writ jurisdiction to provide compensation to the victims, there is a dire need of a clear and specific law on the basis of which relief can be provided to the sufferer.

\(^9\) AIR 1988 SC 2127
2. **Compensation As A Matter Of Right:**

Payment of compensation should be a matter of right. It should not be linked with the status of the offender. Whether he is convicted or acquitted, whether he is in a position to pay or not should be done away with i.e. payment of compensation should be independent of all such restrictions. The goal of victim compensation and restitution is to acknowledge and validate the losses of victims through a system of compensation by the State or by the offender.

3. **State Compensation**

Victim compensation is one of the pillars of victim assistance as it serves as the primary means of financial aid. If a victim’s losses are covered by insurance schemes or other sources of payment, compensation from the State may be reduced or denied. In serious offences emergency payments can also be made during the pendency of the case. In cases of violent crime, victims should receive compensation for their injuries, emotional distress, loss of earnings and loss of maintenance as soon as possible after the crime has occurred, irrespective of whether an offender has been identified or not. In addition, where death has occurred, compensation should be paid for bereavement, funeral expenses and loss of dependency for the kin of the victim in case of indigent victims.

4. **Victim Participation In The Criminal Justice Process**

All victims should have an access to the justice system. In order to respond to the interests of the victims more effectively, it is important to ensure that they play an active role all through. Whether it is trial, examination of witnesses, conviction or acquittal of the accused, the victim must have the access. The focus should be in ensuring that all victims have access to the justice system as well as support throughout the justice process.

5. **Treatment Of Victims With Respect And Recognition**

When a victim reports an offence to the police or any other agency like Non Governmental Organisation etc, it is to be ascertained whether the report of the victim is valid or not and if it is valid, to identify the accused and bring him to justice. The process can be a long and difficult one and from the legal point of view the victim is
only an alleged victim. This should not prevent all those who come into contact with victims from treating them with the respect and recognition that all persons deserve.

6. Protection From Harm:

In addition to respect for victims, there is further need for the protection of safety and privacy of the victim. The accused may intimidate the victim in order to prevent him or her from seeking justice or may harass the victim in retaliation for having reported the matter to the authorities. This is more dangerous when the victim and the offender are in a close personal relationship, for example, as members of the same family or working in the same place of employment. Special provision should be made to protect the victims, especially the vulnerable ones.

There is lack of a comprehensive machinery for realization of compensation amount out of the fine imposed. The fragmented legal framework is inadequate for providing compensation by an offender to his victim. It is neither mandatory for the courts to compensate the victims nor there is any legal right in favour of victims. It is entirely the discretion and the sweet will of the courts to award payment of compensation. Victims feel ignored and seem to be crying for attention and justice. “Criminal justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognised by law and restitution for loss of life, limb and property are provided for in the system.”

There is need to take a fresh look at the position in which the victim of a crime is placed in our criminal justice system. Both the requirements in criminal justice system are to be accommodated simultaneously viz- needs of a victim and rights of the accused. Limitation of the resources of the State in making provisions related to victim-assistance fund should not be taken as a plea. India must incorporate International Conventions and Declarations in its domestic laws. “In cases involving human rights, the Courts must be alive to the International Conventions and Instruments and as far as possible to give effect to the principles contained in those international instruments.”

A mere lip service is not sufficient. Now is the time to act and implement. We are already delayed in fine

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10 Ministry of Home Affairs: Report of the Committee on Reforms of Criminal Justice System (Government of India, 2003) at 271
11 Apparel Export Promotion Council Vs A.K. Chopra AIR 1999 SC 625
tuning our penal laws to the prevailing human rights standards and any further delay will further dilute and weaken India's global standing as a champion of human rights. Refusal of compensation is a gross violation of fundamental rights enshrined in the Constitution. Though the courts had been granting compensation but the major question which still remains relates to the quantum of compensation as it varies from case to case and court to court because of lack of a comprehensive scheme related to compensation to crime victims.

Time has come when there is a need to look back and forward and to keep in mind the changing needs of the society. Law, if properly drafted and implemented can be a means of the ordering of the lives of the people. Man enjoys some rights, which are considered inalienable, inherent, fundamental, basic and above all universal ones and the enjoyment of which is the foundation of freedom, justice and peace in the world. All human rights are derived from the dignity inherent in the human person who is the 'central subject' of human rights. The evolution and crystallization of human rights took a long time and are deeply rooted in the history of human race. The great gift of classical and contemporary human thought to culture and civilization is the notion of human rights. The struggle to preserve, protect and promote basic human rights continues in every generation in all societies. There is a need to widen the sphere of human rights thoughts and actions to new arenas and constituencies. Compensation to victims of crime is also an arena, which is very much a part of our criminal justice system. Victim, who is also a human being really deserves redress. The time has come where consideration must, must and must be given to the victim of crime- to the one who suffers because of crime.

13 Dixit, Ravi Saran, 'Mahatma Gandhi And The Human Rights', Employment News (2nd-8th October, 2004) at 6