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Law

"CRITICAL STUDY ON VICTIM COMPENSATION IN INDIA"

KEY WORDS: Victim Compensation, Cases, Critics

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ABSTRACT

The carriage of justice is often misconceived to halt at the signature on a judgment; however, the true destination lies at the lap of the victim. While it is the courts that preserve the sanctity of justice, it is the prerogative of the State to support the pillars of justice. Victimology related jurisprudence has debated extensively on where to place the ball of responsibility - whether the responsibility 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 has a further responsibility to the victim. Similarly, there is a dilemma whether the court bears a legal duty to award compensation irrespective of conviction. However, it remains that victim of a crime, including her/his kith and kin carry a legitimate expectation that the State will 'catch and punish' the guilty and compensate the aggrieved. Even in the event when the machinery of justice fails to identify the accused or falls short in collecting and presenting requisite evidence to ensure appropriate sentencing of the guilty, the duty of compensation remains.

INTRODUCTION

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 those who are involved in the process. Further, there is a lack of infrastructure to support or accommodate development in the process. This in turn affects the quality of justice offered to the victim.

Justice must be reformative for the purpose of the perpetrator and rehabilitative for the survivor. Therefore, it is a legitimate expectation that the victim must be given rehabilitative support including monetary compensation. Such compensation has been directed to be paid in public law remedy with reference to Article 21. The Hon'ble Supreme Court has in numerous cases, to do justice to the victims, directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life, dignity and liberty of victims. 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 remedy to the victim in terms of compensation was earlier limited under public law by way of writ jurisdiction. Therefore, there was a need to introduce a specific provision for providing compensation to the victim irrespective of the result of criminal prosecution. Accordingly, Section 357-A was introduced in the Code of Criminal Procedure, 1973 [hereinafter: CrPC].

History And Development Of Compensation

Restitution has been employed as a punitive measure throughout history. Ancient societies never conceptually separated the realm of civil and criminal law, but mechanically required the offender to reimburse the victim and/or the family for any loss caused by the commission of the offence. However, the primary purpose of such restitution was misplaced since it was meant to protect the offender from violent retaliation by the victim or the community as opposed to compensating the victim. It was a bargain afforded to the offender to 'buy back' the peace he had broken. With the passage of time, principles of law gradually demarcated the allocation of punishment in the case of civil tort and criminal offences. Compensation was then incorporated as a victim's right in civil law as opposed to a remedy in the case of a crime. Thus, criminal law was rid of the burden of compensation to rehabilitate victims since the position of law was that criminal justice was either reformative or retributive for the purpose of the offender, as opposed to being rehabilitative with regard 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 the courts alike were neglecting victims of the crimes.

However, a scheme based on restitution by the offender to the victim is particularly problematic because it is imperative for the offender to be apprehended and convicted, and it is also necessary for the victim to be able to afford the resources for the same. Such a scheme also gives rise to a probability where the victim is denied compensation since the offender is a debtor and cannot raise money in prison.

Victim Compensation In India

The history of penal law in India can be traced to the times of colonisation and the era of British rule. The very first trace of restitution in Indian law can be found in sub-clause (1)(b) of Section 545 in the Code of Criminal Procedure of 1898, which provided that courts 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 Report and 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 significance of the recoverability of compensation should be enforceable in a civil court to the public remedy available to tort. The gravity of compensability was earlier demarcated by the use of the word "substantial" which excluded cases where nominal charges are recoverable. However, the Law Commission debated against the demarcation since the discretion to apply the provision in cases was used scarcely by the courts in directing compensation for victims. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Code of Criminal Procedure Bill, 1970, which aimed at revising Section 545 and re-introducing it in the form of Section 357 as 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."

Analysis Of Section 357

The parent of Section 357 of the CrPC was Section 545 of the 1898 Criminal Procedure Code. The scope and application of this Section however extends to any order for compensation passed either by the trial court, Appellate Court, or by the High Court, or Court of Session while exercising their revisional jurisdiction. The Hon'ble Supreme Court is also empowered to order compensation under this provision.

The applicability of this Section is limited in application to four defined instances. Such compensation may be afforded to the complainant for meeting the expenses incurred during prosecution. It can also be recovered in the aforementioned competent courts by any person who has suffered loss or injury by the offence. The courts so empowered, can award such compensation to a person entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abatement thereof. The scope of Section 357 extends to instances of injury to property since courts can order compensation to a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property and which is ordered to be restored to its rightful owner. Subsection (3) of Section 357 further enables the court to order the payment of compensation even in cases where the punishment prescribed does not include payment of fine.

Criticism Of Section 357

The biggest flaw in the jurisprudence of Section 357 is that it is triggered only upon successful conviction. It functions on the assumption that the accused must be identified, prosecuted and convicted. It does not accommodate cases where the person is not pronounced guilty, or in those cases where Closure Reports or Summary Reports are filed by the Police, disclosing the commission of the offence, but that such an offence has not been committed by the accused who is sought to be prosecuted, or that the accused has not yet been identified. In such instances, the courts cannot rely on Section 357 to order compensation to the victim.

Findings Of The Malimath Committee Report

In order to revisit the machinery of criminal justice in India, in 2003, the Committee on Reforms of Criminal Justice System was constituted under the Chairmanship of Justice V.S. Malimath. The Malimath Committee Report made observations regarding the history of the criminal justice system and how it was apparent that it mostly protected the 'power, the privilege and the values of the elite sections in society'. It evaluated the way crimes are defined in the modern era. The administration of the system demonstrated that there is an ingredient of truth of such a narrow perception. The primary assumption in the functionality of a criminal justice system is that it is the prerogative and dominant function of the State to protect all citizens from harm to their person and property. The State is believed to actualize this by 'depriving individuals of the power to take law into their own hands and using its power to satisfy the sense of revenge through appropriate sanctions.'

CONCLUSION

Victim compensation as a concept in India is still nascent and shy to continuous development. While the courts no longer subscribe to the archaic approach of limiting victim support to monetary penalty imposed on the convict, there is much momentum to be gained so as to adequately assist victims from various backgrounds. The development of victim centric jurisprudence must transcend legislative necessity, and afford participating instruments flexibility to respond to the diverse needs of a victim. Compensation must be actualised in the sense of realising rehabilitation for the victim. Therefore, a holistic Victim Compensation Scheme must encompass assistance through the process of prosecution, psychological support and rehabilitative measures to integrate the victim back into the norm of society. Apart from defining the role of various stakeholders, a successful victim compensation scheme must necessarily provide for transparency in the expenditure of the budget, and a mechanism for accountability. The State exchequer must be prepared for contingencies and be supportive of the expenditure incurred by the victim. There must be a channel for inviting and recording funds received from various international organisations and the public towards this purpose

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