

Compensatory Jurisprudence in India

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ABSTRACT

Compensation is granted to the victims of any offence. There are various statutes that aim to provide compensation to the victims. This article aims to provide information about the compensatory jurisprudence in India and also bestows information with respect to the concerned statutes. This article also aims to provide a keen knowledge about the dearth of laws in providing adequate compensation to the victims. The article also throws light on the issue that the laws are not in accordance with the changing trends and with the contemporary society. This article highlights the inadequacies in the current laws and the need for a renovation of these statutes so as to make them prevail for future as well. This article has aimed to provide few suggestions in its concluding paragraphs as well.

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MAIN MANUSCRIPT

The inception of compensatory jurisprudence is an escalating sign stipulating that the judiciary has taken the onus of aegis to the right of life and personal right of all the citizens notwithstanding of the non-appearance of any prompt constitutional allocation as well as judicial precedents. The endowment of judiciary to rectify contends of victims of crime is no less noteworthy. The higher courts have played an ascendant role in reassuring compensatory justice to the victims of crime.

While granting such compensatory succor, they have exercised due heed and prudence to ensure that people's credence in judicial process is not debilitated and the victims' protective rights are not repudiated from them. Some of the landmark judgments of the Supreme Court fortifying restorative justice to victims of crime contemplate the growing perturb of judiciary to secure the rights of victims.

The concept of compensation to victim of crime, peculiarly to the crime victims by the state is acquiring much significance. Though this concept is an antique one, its evolution on more scientific guidelines and also as a bifurcation of criminology has begun since a few decades ago. The contemporary states which are titled as welfare states have perceived the gravity of the subject of compensation to the victims of crime and are appropriately recording up various victim compensation programs, as part of their mainstream well-being. Several Nations have upraised the scheme of reckoning of compensation to victim of crime. There is a reserve for payment of compensation to crime victims in Canada, Australia, New Zealand, United Kingdom, under the sovereignty of board. We too require such reserve to abet and cinch the victims that 'we care'.

The term 'compensation' means alter for the loss endured. Compensation is something offered to make things balanced, an entity given to make amends for sufferings, recompense, reimbursement or bay. It is counterbalancing of the victim's sufferings and loss that result from victimization. The reasoning or essence for compensation maybe the following three grounds:

1. As an additional type of social insurance
2. As welfare measure another facet of the government/public assistance of the unprivileged.
3. A way of meeting an overlooked governmental obligation to all citizens.

The penologist acknowledged that requisite compensation to the victims from the accused or rather from the state is the intent of the science of victimology which is acquiring ground and requires attention. In India there is no compendious legislation or statutory sleight dispensing for compensation to victims of crime. In some European countries provisions are made for remission of compensation to the victims of crime in the itinerary of criminal proceedings. Justice needs that an individual who has agonized must be compensated. Basically, the

accused is accountable for the injury spawned to the victim. We have statutes, underneath which compensation may be given to the victims of crime.

1. The Fatal Accident Act, 1855.
2. The Motor Vehicles Act, 1988
3. The Criminal Procedure Code, 1973
4. The Constitutional Remedies for Human Rights Violation.
5. The Probation of Offenders Act, 1958.

The reactions to crime have been distinct at distinct stages of human civilization. There are various theories available prevailing to “Reaction to crime”. Prominent among these theories are Retribution theory, Utilitarian theory, Deterrent theory etc. In common, every theory provides reasonable punishment. The objects of punishment can be summarized as:

1. Partly of creating example of the criminal.
2. Partly of discouraging the criminal from repeating the same act
3. Partly of reforming the criminal by eliminating the evil conscience and
4. Partly of gratifying society is feeling of retribution which the act is supposed to evoke.

The law in the initial stages of advancement was to compensate the victim and not to punish the offender. Narada was the first to endorse compensation to the victims by the offender in order to redress his sins. If we go back to the genesis of criminal law, we see that the victim and his family engross a central position it is the victims and who have the right to request vengeance or guilt. However, over the centuries, his family with the progression of the state and the administration of state prosecution the mantle of the victim has reformed from his central position the victim has been transposed to a marginal one.

The Court ruled that the quantum of compensation must be equitable, depending upon the facts, context and justness of victim’s claim. The accused must be given equitable time for payment of compensation and if necessary, it may be ordered to be paid in installments.

The core muddle one has to confront while dealing with the compensation facet of the crime is, ‘Is compensation for the vandalization incurred by the paramount objective of the criminal process?’ A decision on this issue is distinctly important when the judge obtrudes on the offender, numerous financial obligations like court costs, fines, and compensation to the victim. Which of these obligations should clutch precedence over rests if the offender’s financial means are deficient to content all of them? One more vital problem that emerges is the financial milieu of the offenders because often they incline to be poor. If the offender has perpetrated an

economic offence then he has the scope to compensate, otherwise it is very grueling for the victim to get adequate proportion of compensation. The case of indemnification to victims of crime lied primarily on two accountabilities: accountability of the criminal who wreaked the distress against person or property and an obligation of the state, which malfunctioned to conserve the victim. The second accountability is much more vital because it is the function of the state to bestow effective safety against the crime. In India, the trend in this direction is quite good now. The proclamation that 'King can do no wrong' is in dwindling. Contemporary welfare society, has taken the duty to guard its citizens from crime. That is why the punishment facet absolutely prevails with the state. Though nemesis is having inferior position in Indian legal system yet it is grueling hard to get it going. In last few decades retribution facet has found its way in to the conventional criminal law.

It is relevant to examine in short, historically, the action taken by a person against the state. The Indian law was in a state of skepticism from its colonial times. This was because the theory of tortious liability as it subsisted in England was airily followed in India. Though culpability subsisted in some areas, the Indian courts had been preoccupied with the maxim "King can do no wrong" that they formulated a divergence between sovereign and non-sovereign functions. The decision of the Supreme Court in *Kasturi Lal v. State of Uttar Pradesh*², relinquished that the practice of a sovereign function will not generate a tort manoeuvre. This decision was fallacious, and to a degree was reformed by later decisions recapitulated in this article, but has still not been entirely overruled. Most judges either abuttingly avoid reference to it or differ its ratio.

A constitutional answer to pack the chink in the legal right to compensation in the fiscal way for the maul of the many human rights has been identified by the apex courts. The apex court in the case *RudalSah v. State of Bihar*³ for the first time relinquish the principle that compensation can be awarded in the cases where fundamental right of a person has been infringed and that the upper courts have the delegation to do so "through the implementation of writ jurisdiction and metamorphosed the principle of compensatory justice in the chronicles of human rights jurisprudence."

It is evident that fiscal compensation had been made in cases where an individual's legal rights have been damaged. Even though there isn't a statute defining such a claim, the courts have exercised this power wherever they deemed fit. If a person's fundamental right is infringed or where a writ petition is not initiated by the court itself, the said person's right to compensation comes into effect and he should be compensated adequately in such cases. In *Sebastian v. Union of India*⁴, "because of malfunctioning of government to create in habeas corpus petition brought by wives, apex court awarded cost of Rs. 1 lakh to be given to wife."

²*KasturiLal v. State of Uttar Pradesh* JT1987(3)SC234

³*RudalSah v. State of Bihar* AIR 1983 SC 1086

⁴*Sebastian v. Union of India* AIR1984SC571

The Indian Constitution has diverse provisions which inscribe the principle of victim compensation. The constellation of these stipulations had laid down the premises of new order in which Justice-Social, Economic and Political would flourish in the national life of the country (Article 38). Similarly Article 41, which has pertinence to victimology injunctions that the State shall make potent provision for securing public assistance in case of impairment. Article 51-A makes it a fundamental duty of every citizen of India *to protect and improve the natural environment and to have comparison for living creatures and to develop humanism*. If commiseratively interpreted and ingeniously expanded, one can find here the constitutional precursory of victimology in the opinion of Krishna Iyer. Article 21 provides protection of personal liberty and life and constrains the State to compensate victims of criminal ferocity. While every accused has a right to have fair trial, and those who are guilty are to be served justice not merely by punishing them, but by sending them to correctional homes where divergent kinds of psychological and vocational training is imparted on them. The issue of victim's rights seems to have been consigned to the backburner and forgotten. It is in this context that everybody has to realize that statutory provisions in Indian criminal law in favour of victims are very few, but judiciary has helped in extending the scope of the existing provisions to the victims. Although the judiciary is actively engaged in finding the redress for the victims the ultimate goal is to pass powerful, creative and efficient legislation in order to strengthen the hands of the Judiciary.

The concept of payment of compensation to the victim of crime was unfolded by the Supreme Court on the ground that it is the allegiance of the welfare state to safe guard the fundamental rights of the citizens not only against the actions of its agencies but also be liable for hardships to the victims on the ground of humanitarianism and obligations of social welfare, duty to protect its subjects, equitable justice etc.

The concept of compensation in criminal law is chiefly about compensation to the sufferers of a crime. A victim to a crime is one who has agonized any loss due to any conduct or omission of the accused. The victims not only go through physical offence but also psychological and fiscal destitution as well. The predicament of a victim is only turned worse by prolonged hearings and monotonous proceedings of courts and unprofessional conduct of the police. The victim is rigorously mortified again in the process of obtaining justice for the initial injury. The legitimate and legal heirs/guardians of the victim too fall under the same definition. The law makers made provisions in the Criminal Procedure Code, 1973 under Section 357(3) to validate the courts to give any aggregate of reimbursement to the victims of a crime. This was portrayed in the leading case of HariKisan⁵ whereby the Supreme Court had grant compensation as punishment, of Rs. 50,000. In addition to this, the lower courts were urged and recommended to “exercise the potential of granting compensation to the victims of offences in such a humanistic way that the victims may not have to dash to the civil courts.”

⁵HariKishan&AnrvsSukhbir Singh &Ors 1988 AIR 2127

The rape victim has to undergo from plethora of austerity like mental trauma, loss of income due to pregnancy and expenses suffered during child birth due to the offence. Also, in the contemporary Indian society, a rape victim is disdained even though she is the sufferer and not the offender. In the course of a rape trial, if the offender is just punished or asked to reimburse fine, the judgment does not appropiate the victim as her condition is not reinstituted. Hence, it becomes exceptionally indispensable to compensate such a victim. A women's right to compensation initiate from Article 21 of the Indian Constitution which states the right to life and personal liberty. The Supreme Court held that a woman can be reimbursed paradoxically in the mid stages of the trial as well as at the culmination of the trial. The Supreme Court even proposed the foundation of Criminal Injuries Compensation Board (CICB) under Article 38(1) of the Constitution of India whose duty would be to reimburse such victims and give them solace. However, no cognate board has been established.

In the leading case of *D.K. Basu v. State of West Bengal*⁶, the Supreme Court held that a sufferer of custodial right possess every right to be reimbursed as her Right to Life has been infringed by the official of the State. In another case, the Supreme Court held that the session's court too possess the authority to provide compensation to the sufferer even if the trial has not been accomplished. In fact, in the case *State of Maharashtra v. Madhukar N. Mardikar*⁷, Supreme Court was of the view that "even a prostitute has a right to privacy and no person can rape her just because she is a woman of easy virtue.

There is plethora of case law where the Supreme Court has awarded compensation to the victims whose plight was brought to the notice of the apex court either by themselves or by way of FIR with the aim of protecting the human rights of the victims in our criminal justice system and to fulfill the constitutional obligation the apex court can instruct the government to bestow on jurisdiction on the criminal courts by making statutory provisions for the compensation to the victims of crime irrespective of whether the accused is convicted or not and to make statutory provisions for participation of the victims in prosecution along with prosecuting agency in a criminal case initiated on a police report. The court has also accorded fiscal compensation to victims of custodial violence in many cases. In a landmark judgment of *Nelabati Behra case*⁸ the Supreme Court granted compensation of Rs. 1, 50, 000 to the mother of departed, who died in police custody due to torment. In *D.K. Basu v. State of West Bengal* the Supreme Court held that compensation can be conceded beneath the public law by the apex court and High Court furthermore to private law rectify for tortuous action and punishment to offender under criminal law for manifest infringement of fundamental rights. Universal declaration of Human Right, 1948 under Article 5 says that no one shall be subjected to maltreatment or to cruel, inhuman or degrading treatment or punishment and also Article 8 of Universal Declaration of Human Rights (UDHR) and

⁶D.K. Basu v. State of West Bengal AIR1997SC610

⁷State of Maharashtra v. Madhukar N. Mardikar AIR1991SC207

⁸Smt. Nilabati Behera Alias Lalit ... vs State Of Orissa And Ors 1993 AIR 1960

Article 14 of International Covenant on Civil and Political Rights (ICCPR) in bestow for compensation for infringement of fundamental rights.

When a crime is perpetrated against an individual, the victim is deprived of a lot apart from suffering, damages and injuries. The duty of a judiciary should not only be to penalize the guilty but also to reimburse the victim as even if the accused is penalized, the victim's loss is not reimbursed. The reimbursement granted should at least try to put the victim in a condition in which he was before. It is not like victims of crime cannot seek for compensation as such a prayer is assessable under civil laws, but filing two distinguished suits for the same offence in two different courts. The proceedings for one suit are most of the time is agonizing, that such a methodology of filing distinguished suits only gives the victim a second traumatization. The concept behind providing compensation is legal as well as merciful. The impotence to safe guard the person by the State makes it legally mandatory for the State to reimburse him. The victim goes through such an adverse suffering and many times enduring loss of income only makes it cerebral for him to be compensated. In cases where a person perish or is sent into a vegetative state, reimbursement should be very exorbitant as many times, the victim himself is the sole "read earner of the family and hence his injuries affect the life of his family too. In such cases, if the accused is only imprisoned or asked to pay a tiny fine, no virtuous happens to either the accused or the victim's family. In the Indian society of the 21st century, many people want their brides to "pure" maidens. A victim of rape in cognate cases not only loses out on the opportunity to marry into an otherwise decent family but is also victimized upon for no culpability of hers. It is often said that the most prized proprietorship of a woman is her dignity and respect. In the society where people still have an orthodox ideology, the life of such a woman only deteriorate. It only makes sense to reimburse such a victim well apart from punishing the offender. Mental trauma, loss of earnings and cost of litigation should be taken into contemplation when coming out with reimbursement and the courts should hence compensate the victims more frequently.

We come to the conclusion that reimbursement is not only needed but is in fact a very prime aspect of even criminal law and the courts should not use this sparingly but a little liberally. Of course they should be cautious of not giving too high compensation and hence should be cautious. The government should take into cogitation the suggestions of the Supreme Court and set up Compensation boards to aid the victims with financial issues. Prior to CrPC (amendment) 2008, India is deficient of an all-inclusive legislation for compensation of victims. Compassionate treatment of victims under the criminal justice system itself guides to the faith in the system which is enhanced by way of compensation programs, independent of creed of offenders.

It requires less to highlight that the whole legislative paradigm mingled with dearth of judicial ascertainment has revealed various Laws of the contemporary legal system about the compensation therefore there is

requirement for renovating the entire legal system once gradually. The compulsory amends that are essentially required are as follows:

The proposal given by the Law Commission of India in its 42nd report on Indian Penal Code should be taken into deliberation and it would be better if the legislature also puts some light on the separate note of Justice R.L. Narsimha, a member of the commission. The law must also bestow recording of impetus for not dispensing or dispensing the compensation as we have in the circumstance of death sentence in CrPC. The law must also bestow for institutional set up as we have in western countries. If feasible, it would be better to give the compensation as a right to victim.