

## Justice to Victims of Crime through Compensation and Assistance

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## ***Abstract***

In criminal justice system, a victim of crime cannot be neglected. The administration of the criminal justice remains mostly unsatisfactory from the point of view of victims of crime. Fair trial demands that justice be met to the victims of crime. The question that comes is what is justice to the victims of crime. Whenever we think about justice, the first thing that mostly comes into people's mind is 'punishment'. Despite the popularity attached to punishment as a mode of cure to crime, there remains a controversy regarding this punitive approach. There are some victims who rather than retribution or rehabilitation seek restitution. Though restitution looks a good option for reconciliation between the victim and the offender, many a times the victims do not receive any money from their offenders because their offenders are not caught, convicted, sentenced to restitution, or are unwilling or unable to pay the victims. In this scenario, the victim compensation funds created by State is of help to the victims. The victims have a right to get justice, to remedy the harm suffered as a result of crime. This right of the victim is different from the right to retribution, responsibility of which has been assumed by Rule of Law. But if the State fails in discharging this responsibility, the State must provide a mechanism to ensure that the victims are compensated for their injury and are given assistance.

## ***Keywords***

Victims of crime, compensation, assistance, criminal justice system

## **I. Introduction**

The phenomenon of victims' rights in the recent years, have been at the forefront of policymaking. Although the criminal justice system was premised to resolve the grievance of the State against the offenders and suspects, it is now believed that justice cannot be meted effectively without giving due recognition to the interests and rights of the victims of crime.

Under the modern criminal justice system, the position of victims of crime remained that of a forgotten man till the birth of the victims' movement. "Where in the 1970's the victim of crime was the forgotten party of the criminal justice system, by the turn of the century the victim has returned (Garland, 2001)." (Pamberton, 2009, p. 2). Laws recognizing that the injured parties too required government support and economic aid was passed centuries ago. However, "until the middle of the twentieth century the plight of crime victims was largely overlooked, even by most criminologists." (Karmen, 2010, p. 26). This situation changed with the coming of victimology. Some "researchers began to study victims, their initial interest betrayed an anti-victim bias: They sought evidence that the victims' behaviour before and during the incidents contributed to their own downfall." (Karmen, 2010, p.27). Since 1960's researchers attracted to victimology have labored to find ways to ease the suffering of victims of crime.

At present, the concept of victim compensation and victim assistance is rapidly developing. This recent growing concern regarding victims of crime is the result of the works of Margery Fry, an English penal reformer. It was in the year 1951 that Margery Fry wrote *Arms of the Law* wherein she revived for the modern society the ancient concept of state aid to victims of crime. It was the effort of Margery Fry that led to the establishment of the first ever state-operated victim's compensation fund in New Zealand in the year 1963.

## **2. Justice and victims of crime**

Whenever we think about justice, the first thing that mostly comes into most people's mind is 'punishment'. Even the deliberations that take place in the court are mostly concerned with the questions

of punishment: who, why, when, where, and how much? (Karmen, 2010, p.27). On the utilitarian grounds, punishment is justified as a necessary evil. Punishing wrongdoers helps in curbing down future criminality in many ways. On the grounds of ‘just deserts’, punishment has been justified “as a morally sound practice, regardless of any value it has in deterring or incapacitating criminals. According to this theory of punishment as retribution, it is fair to make offenders suffer in proportion to the misery they inflicted on others.” (Karmen, 2010, p.147).

Despite the popularity attached to punishment as a mode of cure to crime, there remains a controversy regarding this punitive approach. “Utilitarian opponents have documented how impractical, expensive, ineffective, and even counterproductive high rates of imprisonment can be. Civil libertarians have condemned such harsh punishments as a tool of domination and oppression used by tyrants and totalitarian regimes to terrorize their subjects into submission (see Menninger, 1968; Wright, 1973; Prison Research, 1976; Pepinsky, 1991; Elias, 1993; Mauer, 1999; Dubber 2002).” (Karmen, 2010, p.147).

The victims’ rights movement has no doubt sought empowerment for the victims. This empowerment gave the victims the ability to provide important inputs at various stages of the criminal justice process. But then what will the victims gain by way of inclusion or by getting a chance to participate in the important stages of the criminal justice process? According to Andrew Karmen in his book *Crime Victims An Introduction To Victimology*, victims can pursue one or even a combination of three distinct goals. He says that the first goal is to see to it that hard-core offenders who act as predators are punished. The second goal is to use the justice process as leverage to compel lawbreakers to undergo rehabilitative treatment. The third goal is the possible aim to get the court to order convicts to make restitution for any expenses arising from injuries and losses. (Karmen, 2010, p.147).

There are some victims who rather than retribution or rehabilitation seek restitution. They want that the legal system should help them to recover their losses. Though restitution looks a good option for reconciliation between the victim and the offender, many a times the victims do not receive any money from their offenders because their offenders are not caught, convicted, sentenced to restitution, or are unwilling or unable to pay the victims. In this scenario, the victim compensation funds created by State is of help to the victims. It is so because the victims can receive reimbursement even when the offenders are not caught or convicted.

### **3. United Nations (UN) on victim compensation and assistance**

At the international level, there was felt need for compensating the victims of crime. The General Assembly of the UN in 1985 adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Declaration, 1985). This UN Declaration, 1985 was “based on the conviction that victims should be treated with compassion and respect for their dignity and that they are entitled to prompt redress for the harm that they have suffered, through access to the criminal justice system, reparation and services to assist their recovery.” (United Nations Office on Drugs and Crime [UNODC], 1999). The UN Declaration, 1985 talks about compensation to be made available to the victims by the State when compensation cannot be fully recovered from the offender or other sources. It also recommended measures to be taken on behalf of victims of crime at the international, regional and national levels regarding compensation and assistance.

The UN Declaration, 1985 has recognized the following four rights for the victims of crime:

1. Access to justice and fair treatment.
2. Restitution
3. Compensation
4. Assistance

The UN Declaration, 1985 in Paragraphs 12 and 13 talks about compensation. Paragraph 12 says that when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) The family, in particular

dependants of the persons who have died or become physically or mentally incapacitated as a result of such victimization.

Paragraph 13 provides that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged and also to establish where appropriate, other funds for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

The UN Declaration, 1985 in paragraphs 14, 15, 16 and 17 talks about assistance to the victims. Paragraph 14 mentions that victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means. Paragraph 15 says that victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them. Paragraph 16 provides that police, justice, health, social service and other personnel who are concerned with providing assistance to the victims should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid. Paragraph 17 mentions that in providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those which are mentioned in paragraph 3 of the Declaration.

The Handbook on Justice for Victims, 1999 (Handbook, 1999) has outlined victim assistance scheme for the purpose of redress, relief and rehabilitation of the victims of crime. According to the Handbook, 1999 the victim support programme should provide services like crisis intervention, counselling, advocacy, support during investigation of the crime, support during criminal prosecution and trial, support after case disposition, training for professional and allied personnel on victim issues, violence prevention, public education on victim issues. The main objectives of the victims' assistance programme are:

1. The governments and voluntary social service organizations should come forward to assist the victims of crime in their restoration and rehabilitation;
2. The services and assistance for victims should not be confined only to the immediate injury, harm or deprivation of rights but should extend further throughout the aftermath;
3. Efforts should be made to expand victim's opportunity to participate in criminal justice process and the courts should also realize the impact of crime upon the victim and his family.
4. Developing community support to crime victims by mustering co-operation of all appropriate agencies, organizations, groups, social activists etc. Services affecting the treatment of victims should also be strengthened;
5. Criminal justice system should appreciate the 'unique needs' of victims who are under-served or rendered without service or support of any kind. (Paranjape, 2016, 738).

#### **4. Indian Criminal Justice System and victim compensation and assistance programme**

In India which has an adversarial model of justice delivery system, criminal cases becomes a matter of contest between two parties- the accused and the State. In our criminal justice delivery system which follows the British model, the role for the victims of crime is very minimally crafted.

Even though the criminal justice delivery system of India which is adversarial in nature has crafted a minimum role for the victims, concerns regarding victims of crime have been raised time and again by the judiciary, various commissions and committees. Judicial activism has helped in developing compensatory jurisprudence regarding victims of crime.

The Criminal Law Amendment, 2008 brought a change to the conditions of the victims of crime by recognizing and giving them rights. This Amendment reflected the UN Declaration, 1985. The Amendment defined for the first time under section 2 (wa) of Code of Criminal Procedure Code, 1973 (CrPC) the term victim to mean 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. The Amendment also introduced section 357A in CrPC under which the 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.

In India after 2008, the States/ Union Territories (UTs) have started framing their own Victim Compensation Schemes (VCS) with the introduction of section 357A to the (CrPC). These schemes provide compensation for various injuries or losses. However, concerns regarding disparities in the rates of compensation in these schemes have been raised time and again. To do away with such disparity, the Central Victim Compensation Fund (CVCF) Guidelines- 2016 has come into effect.

The Criminal Law Amendment Act, 2013 has further advanced the status of the victims of crime. Special mention of newly introduced section 357C in CrPC which provides that all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims.

Providing assistance to victims is essential. However, India lags behind regarding support services unlike the other countries in the world. India does not have a comprehensive program regarding victim support services as contemplated under the Handbook, 1999. However, subsection (6) of section 357A mentions that in order to alleviate the suffering of the victim, the State or District Legal Services Authority may order for immediate first-aid facility or medical benefits. Section 357C of CrPC lays down provision for providing treatment to victims.

The Criminal Law Amendment Act, 2013 introduced many provisions which further interests of the crime victims. They are:

1. A provision under section 357C of CrPC for providing treatments to the victims has been introduced.
2. Insertion of a new section 166B in the Indian Penal Code which deals with punishment for non-treatment of victims.

## **5. Indian Judiciary's role on victim compensation and assistance programme**

The Supreme Court of India in the year 1979 in the case of *Rattan Singh v. State of Punjab* (1979) 4 SCC 719, lamented against the complete desertion of the victim in the criminal jurisprudence of India

The Supreme Court of India in the case of *Dayal Singh v. State of Uttaranchal* (2012) 8 SCC 263, held that the criminal trial is meant for doing justice to all - the accused, the society and the victim. Then alone can law and order can be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that the guilty man does not escape.

In the case of *Laxmi v. Union of India* WP (Crl.) 129 of 2006, the Supreme Court of India regarding treatment meted to the victims of acid attack was of the opinion that free medical treatment was not confined to only physical medical treatment of such victims rather it includes that in the concerned hospital medicines, food and bed are made available.

In the case of *Mohd. Haroon and Ors. vs. Union of India (UOI)* (2014) 5 SCC 252, the Supreme Court granted the petitioners who were rape victims relief like arrangements for Relief camps; medical facilities to the injured and those living in the camps; arrangements of sanitation and Drinking water; arrangement of Tent, Dari and bedsheets etc; arrangement of fodder for cattle; financial assistance by Government of Uttar Pradesh to the wounded and the families of deceased persons; employment to the dependents of the deceased persons; confidence building measures; compensation for damage to movable and immovable property

In 2018, the Supreme Court of India in the case of *Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka & Ors* (2019) 2 SCC 752 has observed

The courts have provided solace to the victim with monetary compensation, but that is not enough. There are victim compensation schemes in force due to the mandate of section 357A of the Code of Criminal Procedure, 1973 (Cr.P.C.) but even that is not enough though they are being implemented in several parts of the country. We are of the view that the judiciary is obliged to go and has gone beyond merely awarding compensation and has taken into consideration the larger picture from the perspective of the victim of an offence, relating to infrastructure in court buildings and has recommended and implemented some recommendations such as the construction of child friendly courts and courts that address the concerns of vulnerable witnesses. The Courts have done and are continuing to do their best for the victims of crime.

## 6. Conclusion

The position of victims of crime under the modern criminal justice system remained that of a forgotten man till the birth of the victims' movement. Victimization results in victims being harmed physically, financially and emotionally by the offenders. The physical injury suffered by the victim can range from little scratches to disfigurements or death. Financial loss may arise in the form of loss of property, costs incurred for medical treatment, etc. Emotional damage to the victim may range from depression, anxiety, post-traumatic stress disorder (PTSD). It is in this situation that victims of crime need support to revive and restore. The most effective way to do justice to victims of crime is by providing them with compensation and assistance. There is no denial of it. India too has recognized this. However, there is a need of better implementation and evolution of victim compensation and assistance programme in India.

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