

Compensatory Justice Jurisprudence in India With Reference To Criminal Law: An Evaluation

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Abstract:

Crime is not just a violation of a criminal code but also causes harm to victims and their families, including economic loss, emotional suffering and physical, psychological or mental injury. The impact of crime on the victims and their families ranges from serious injuries to mild disturbances. At present, a crime victim or a complainant is only a witness for the prosecution. Whereas the accused has several rights, the victim has no right to protect his or her interest during criminal proceedings. Sometimes, even the registering of a criminal case in the police station depends upon the mercy of the police officer. Victims suffer injustice silently. Victim justice has been rendered through affirmative action and orders of the court, as no separate law for victims of crime has yet been enacted in India. Besides, many national level Commissions and Committees have strongly advocated victims' rights and reiterated the need for a victims' law. Present paper aims to trace the history of compensatory jurisprudence, understand the need and object of compensation to the victims, examine and evaluate existing laws governing compensation to the victims, understand the role played by judiciary in granting compensation to the victims and identify the future of compensatory jurisprudence in India.

Keywords: Victim, Rights, Compensation, Law, Justice,

Introduction

Crime is steadily increasing in present times; it not only challenges administration of criminal justice but also affects victims of crime adversely. The basic object of the Criminal Justice is to protect the society against crime and to punish the offender. However, Criminal Justice System remains generally unsatisfactory from the point of view of the victims of crime. So far as criminology is concerned it stresses on the reform, rehabilitation and legal aid of the accused. The object of penology is not merely to protect and reform the criminals but there is need for safeguarding the interests of the victims also. But the present criminal justice system does not satisfy the grief of the victim as it does not allow him to take part in system of criminal justice. In the name of maintaining law and order in the society, the state does not allow a victim to take the law in his/her hands either to punish the wrongdoer or to compensate the loss or injury suffered.

The criminal law in India is not victim oriented rather it is offender oriented and the sufferings of victim are totally overlooked in sympathy for the criminal. Though our modern criminal law is designed to punish as well as to reform the criminals, yet it overlooks the byproduct of crime, the victim. The right to life is one of the basic human rights guaranteed to every person by Article 21 of the Constitution of India and not even the state has the authority to violate this right. A prisoner, be he a convict or under trial or a detenu, does not

cease to be a human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the constitutional rights. In India the accused has been treated as a privileged person. He gets all possible help from all the corners of the country. Not only he gets defense counsel at the costs of the state at the time of trial but he is also benefited after conviction. Due to over vigilant NGO's and Human Rights Organizations, the aftercare reformative and rehabilitative programmes for the accused are also at the rise. The punishment can be considered more as treatment, rehabilitation, correction and re socialization through probation, parole and after care community services. Thus, the lack of victim-oriented jurisprudence causes the deterioration of the conditions of victims and their family members.¹

While the principles of retribution and retaliation as an approach to punishment of criminals cannot be accepted in today's criminal law jurisprudence, the injury and suffering caused to the victims should also be taken care of. Victimology is the new branch of study, which makes a scientific analysis of victimization. It includes the relationship between victim and the accused. Justice J.N. Bhatt has defined victimology as a science of suffering and resultant compensation. So far as *the dictionary meaning of victimology is concerned, it means the study of the victims of crime and the psychological effects on them of their experience*. It is possession of an outlook, arising from real or imagined victimization, that seems to glorify and indulge the state of being a victim.

Evolution of Compensatory Justice Jurisprudence

In late last century, the science of compensation, known as compensatory jurisprudence, has emerged for the welfare of the victims of crime. Compensatory jurisprudence as new part of criminal law is fast developing as it serves two purposes, firstly, a victim is not lost sight of in the criminal justice system and secondly, an accused convicted is made to realize that he has a duty towards those injured by his actions. Currently, movement is growing in several countries, including our own, to reexamine the problem of compensation or restitution to the victim. Realizing that the offender is in no position to pay the indemnity for his act, criminal

¹ Shah Akash, *Victims, Victimization and Victimology*, Published on Legalservicesindia.com, October 17, 2012

lawyers, criminologists and social workers, are contemplating the possibility of the State making compensation to the victim.

The law in the early stages of civilization was to compensate the victim and not to punish the offender. Narada was the first to recommend compensation to the victims by the offender in order to expiate his sins. If we go back to the origin of criminal law, we see that the victim and his family occupy a central position: it is the victim and his family who have the right to request revenge or penitence. However, over the centuries, with the evolution of the state and the organization of state prosecution the role of the victim has changed: from his central position the victim has been shifted to a marginal one.

The principle of compensation for victims of crime occupied a prominent place in mosaic law and the Penal Codes of ancient Greece and Rome. The Roman Law specified progressive rise in compensation payable depending upon the stage of nature of the crime. Apart from theft, assault, libel and trespass were other offences in which compensation was payable. The principle of compensation reached the high water mark of development in England in the Anglo Saxon period,² which first systematically used monetary payments in the form of damages or compensation to the victim of wrongs. In Anglo Saxon England the criminal had to make compensatory payments, the Wer or Bot to the victim or his relative and the writ to the King or the Feudal Lord. The money value set on a man according to his rank was 'wer' and the compensation 'wergild' or 'bot'. In addition there was wite, a penal fine payable to the King or other public authority as a penalty for having broken the King's peace.

However, towards the end of the middle ages, the payment of compensation began to lose its force, due to the growth of Royal and Ecclesiastical power. The demand for compensation for the victims of crimes was revived during the Penal reforms movement of the 19th Century. Bonneville, Lombrose, and Garofalo, the penal philosophers, strongly advocated for compensation and restitution to the victim. Bonneville stressed on "public responsibility" to the victim. Lombroso³ supported the idea of victim compensation and recommended that the victim of a crime should be properly compensated for injury. Garofalo supported the idea of "enforced reparation". He viewed, the damages are to be assessed in sufficient amount, not only adequate for complete indemnification of the injured party but to cover the expenses

² Hugh D: Barlow, *Introduction to Criminology* (1970), p. 453

³ "Cesare Lombroso" in Mannheim, *Pioneers*, p.279

incurred by the state as a result of the offender's dereliction. He also said that if the offender's means are inadequate his labour must be devoted to the required reparation. Some western countries such as New Zealand (1963), Great Britain (1964), and U.S.A. (California, 1965) introduced a type of state sponsored compensation programme in their criminal justice system at least for crimes of personal violence.⁴ It is, however, the work of contemporary Hans Von Hentig, *The criminal and his Victim* (1948), which was regarded as seminal text in developing victim studies.

Harvard Law Review (1984) in an article on "Victim Restitution in Criminal Law Process: A Procedural Analysis" sums up the historical perspective of the concept of restitution in the following words: "Far from being a novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was a means by which the offender could buy back the peace he had broken. As the state gradually established a monopoly over the institution of punishment, and a division between civil and criminal law emerged, the victim's right to compensation was incorporated into civil law."

Compensatory Justice Jurisprudence in India

Various Reports of Law Commission of India as well of Committees on Reforms of Criminal Justice administration have played an important role in developing compensatory jurisprudence in India. In order to give prominence in the Indian Penal Code, 1860 to the payment of compensation out of fine imposed and to give a substantive power to the trial Court to this effect, Law Commission of India in its 42nd report (1971) suggested the insertion of a new Section in the Penal Code.⁵

The existing provision relating to compensation was inserted in the Code of Criminal Procedure through amendment and its application was expanded. It was provided in the modified Section 357 (545 of old Code) of Criminal Procedure Code, 1973 that, in every case where the new Section 62 of the Penal Code is attracted, but the Court decides not to make an order for payment of compensation out of the fine, it should record its reasons.

⁴ Singh, S.C. "Compensation and Restitution to the Victims of *Crime*" 1992 Cri.L.J. 100 (Jr)

⁵ See 42nd Report of law commission, 1971, pp 53-54

Justice R. L. Narasimham, member of the Law Commission, recommended deletion of Section 545 (Section 357 New Code) from the Criminal Procedure Code and insertion of a new section in Indian Penal Code to make improvements in the law concerning payment of compensation by the offender. He felt that Section 357 (Section 545 of Criminal Procedure Code, 1898) is wholly unsatisfactory firstly because under Section 545, Cr. P.C. (357 New Code) compensation can be given only in money, to the injured party. There is no provision for direct reparation for the harm caused. Secondly, the procedure involved in the section is circuitous, dilatory, expensive and caused much harassment to the injured complainant. Besides, it does not cover cases of those accused persons who are unable to pay the fine. The evil effect of short term imprisonment persists and the complainant also may not be able to derive any advantage as far as reparation is concerned. The 14th Law Commission, in its 156th Report (1997) on the IPC recommended for a 'Victim Compensation Scheme' by State governments. It also opined that it would 'not be appropriate' to include order of payment of compensation by way of punishment.

Malimath committee on reforms of Criminal Justice System in India (2003) for the first time emphasized on the 'participation' of victims in criminal processes as an inseparable component of justice. It further said that compensating victims of crime is a state obligation and proposed a 'victim compensation law' providing for the creation of a 'victim compensation fund' to be administered by the Legal Services Authorities created under the Legal Services Authority Act, 1987. It also categorized the offences where compensation can be awarded, not be awarded and withdrawn. It's a matter of satisfaction that this recommendation of Malimath committee has been incorporated in Cr.P.C. Amendment 2009.

The law commission in its 226th report submitted in July 2009 recommended that a separate Act should be proposed for dealing with compensation to victims of acid attacks, rape, sexual assault, kidnapping etc. It suggested a broader legislation so that it can deal with the problems of victims of different crimes who need rehabilitation and compensation for survival.

Legislative Provisions Regarding Compensatory Justice in India

There is neither a comprehensive legislation nor a statutory scheme or a public policy in India which allows a victim of crime to seek compensation from the offender and/or state or to participate, as a matter of right, in the criminal justice process. However, few provisions of Code of Criminal Procedure, 1973 as amended on date and that of Probation of Offender's Act, 1958 provide for justice and compensation to the victims of crime.

Provisions Under Code Of Criminal Procedure, 1973

The **Criminal Procedure Code is the first and may be the oldest legislation in India** to deal with the subject of compensation to the victims of crime. The provisions for compensation envisaged in the Code of Criminal Procedure, 1973 are contained in Sections 357, 358, 359 and 357-A of the Code. Some other provisions on the subject matter are under Sections 237 and 250 of the Criminal Procedure Code, 1973. **Section 357** of the Criminal Procedure Code, 1973 enables the passing of an order of compensation by the trial Court, the Appellate Court and the High Court or Court of Session in revision at the time of passing of judgment, out of fine imposed by the Court under the following circumstances:

Firstly, (a) to the complainant, for meeting expenses properly incurred in the prosecution; (b) to a person, who has suffered loss or injury by the offender, when he can recover compensation in Civil Court; (c) to a person entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abetment thereof; (d) to a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or disposing of stolen property and which is ordered to be restored to its rightful owner.

Secondly, where there is an appeal against any sentence or fine, no compensation shall be paid till the appeal period lapses.

Thirdly, in all cases where no fine is imposed, the Court may order the payment of compensation to the victims of crime who have suffered any loss or injury.

Under section 357, the categories of victims which are entitled to claim compensation are the complainant victim or any person who has suffered loss or injury because of the offence. He can recover compensation in Civil Courts under the Fatal Accidents Act, 1855 and when there is a conviction causing death or abetment thereof or a bona fide purchaser of property, etc. can claim compensation. But does not provide interim or immediate compensation to the victim on motor accidents claim cases.

Considering Section 357, sub-section (1) of the Code empowers a Criminal Court to award the whole or any portion of the fine recovered for the purposes mentioned in clauses (a) to (d). Further clauses (a) and (d) in essence, deal with defraying pecuniary losses incurred by a person in prosecution and by a bona fide purchaser of stolen goods, respectively. Clause (b) and clause (c), on the other hand, respectively deals with re-compensating 'any loss' (pecuniary or otherwise) or injury caused by any offence and by death.____

Further, sub-section (3) was inserted in Section 357 of the Code of Criminal Procedure, in 1973, unlike sub-section (1), empowers a Criminal Court, in its discretion, to order the accused to pay by way of compensation a specified amount to victims of the offence even if fine does not form part of the sentence imposed on him.

Keeping this in view, Section 357(3) of Criminal Procedure Code has not only recognized the philosophy of the compensation to the victims of crime in the situation where no sentence of fine has been imposed but it also added a new dimension to the idea of re-compensating them. In the case of *Sarwan Singh v. State of Punjab*⁶ while awarding compensation the Court observed - "*the object of the Section, is to provide compensation payable to the persons who are entitled to recover damages from the person sentenced even though fine does not form part of the sentence.*"

Compensation to the Persons Groundlessly Arrested

Section 358 applies when any person has been caused to be arrested by the police, at the instigation of a person and the Magistrate finds that such arrest was caused on insufficient grounds, than he may order a sum of rupees not exceeding one thousand⁷ to be paid to the victim of such arrest. In these instances the State is to proceed against the erring officials and release the amount awarded as compensation. Section 358 aims at protecting the constitutionally guaranteed personal liberty of the person under Article 21 of the Constitution of India and also save them from illegal and arbitrary arrest, even without reference to any accusations or charge leveled against such person.⁸

⁶ AIR 1978 SC 1525 : 1978 Cri LJ 1598.

⁷ Subs. By act 25 of 2005, w.e.f. 23.6.2006, earlier it was 100 Rs. only

⁸ See Mundrathi, Sammaiah, Law on Compensation to Victims of Crime and Abuse of Power, (2002), p. 75.

Order to Pay Costs in Non-Cognizable Case

Under Section 359 of the Code when any person has been convicted in non-cognizable case the Court may order for the refund of expenses incurred by the complainant in launching the prosecution.

Compensation for accusation without reasonable cause

Section 250 of the Code makes special provision for the payment of compensation to the accused person in cases where he is discharged or acquitted as a result of finding no reasonable ground existing for launching such prosecution. Section 250 of the Code of Criminal Procedure, covers only those specific cases where case has been instituted upon a complainant or upon the information given to police or to the Magistrate accusing some person of having committed certain act or offence triable by a Magistrate and the case should have been ended in an acquittal when the Magistrate trying the case should have found that complaint or the information given was false and either frivolous then the Magistrate may order the informant to pay compensation.

Further, Section 237 of the Code lays down the provision of the payment of compensation to victims of crime by the Sessions Court in the cases involving the defamation of a person. The maximum amount of compensation that the Court may award under this Section is Rs. 1000/-. Under Section 237 to award the compensation the accused must have been discharged or acquitted on the ground that no reasonable cause for making the accusation against the accused exists.

Recent Amendment in Cr.P.C.

The amendments to the Cr.P.C. brought about in 2009 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A providing for Victim Compensation Scheme under which the Court is empowered to direct the State to pay compensation to the victim in such cases where "the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated." Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the

recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively.⁹

Compensation Under Probation of Offenders Act, 1958

'Reasonable Compensation' Under Section 3 And Section 4 For Loss Or Injury

The whole object of the Probation of Offenders Act, 1958 is to prevent conversion of youthful offender into hardened criminals, in case they are sentenced to undergo substantive imprisonment in jail. The Probation of Offenders Act enables the Court, directing release of an offender under Section 3 and Section 4 in its discretion to grant 'reasonable compensation' to any person for loss or injury caused to him by commission of the offence and costs of the proceedings. _

Released Offenders To Pay Compensation And Costs Under Sub-Section 5(1)

(1) The Court directing the release of an offender under Section 3 or Section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

(a) Such compensation as the Court thinks reasonable for loss or injury caused to 'any person by the commission of the offence; and

(b) Such costs of the proceedings as the Court think reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as fine in accordance with the provisions of Sections 386 and 387 of the Code.

⁹ **Victim Compensation Scheme** Inserted by act 5 of 2009, w.e.f. 31/12/2009 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.

(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.

(3) A civil Court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

Under Probation of Offenders Act, 1958 the Court's discretion plays vital role in awarding compensation when act is both a tort and a crime."¹⁰ Even the Appellate Court or High Court cannot interfere unless it is of the view that such power has been exercised capriciously and unreasonably.¹¹ The dependent may be paid compensation from within the fine amount which a Magistrate may impose on the accused under Section 357 of the Criminal Procedure Code.

Although the Probation of Offenders Act has self-contained provision for award of compensation to the victim, provisions under Probation of Offenders Act, 1958 are very rarely invoked by the trial Courts. Generally, it is agitated on the issue of releasing the offender straightway without grant of any compensation to the victim of the crime.

Judicial Approach Towards Compensatory Justice Jurisprudence

Compensatory Justice Jurisprudence has come a long way from the case of Rudal Shah vs. State of Bihar¹² when the Hon'ble Supreme Court gave a liberal interpretation to Article 21. Post Rudal Shah, there are a series of judgments of Supreme Court and High Courts providing compensation to the victims or their dependents for the excesses done by the State machinery or on failure of State to take care when there was a duty imposed upon them to exercise reasonable care.

Justice Krishna Iyer speaking in *Maru Ram & Ors. v. Union of India and Ors*¹³ said that “while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved... Victimology must find fulfillment not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn”. In one of the leading cases on compensatory justice jurisprudence *Hari Kishan and State of Haryana v. Sukhbir Singh & Ors*¹⁴ the Supreme Court lamented the failure of the Courts in awarding compensation to the victims in terms of Section 357 (1) of the Cr.P.C. The Court recommended to all Courts to exercise the power

¹⁰ Nanak Singh v. State of Punjab. 1983 Cri LJ 232 (P&H)

¹¹ Rajeswari Prasad v. R. B. Gupta. AIR 1961 Pat 19.

¹² 1983 AIR 1086, 1983 SCR (3) 508

¹³ (1981) 1 SCC 107

¹⁴ AIR 1988 SC 2127:(1988) 4 SCC 551

available under Section 357 of the Cr.P.C. liberally so as to meet the ends of justice. The Supreme Court recommended to all Courts in the country “to exercise the power of awarding compensation to the victims of offence in accordance with Section 357 of Criminal Procedure Code, 1973, so as to achieve the goal of social justice...It is an important provision but Courts have seldom invoked it, perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victim while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. It may be noted that this power of the Courts to award compensation is not ancillary to other sentences but it is in addition thereto.”¹⁵ In **Dilip S. Dahanukar's case**¹⁶ this Court even favoured an inquiry albeit summary in nature to determine the paying capacity of the offender. The Court said: “... The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other.

The Court again observed that power in this area must be used liberally and reasonably. It should not be excessive, having regard to the circumstances of the case like motivation of the offence, pecuniary gain likely to have been made by the offender and his means to pay the fine.¹⁷ The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay it.

The judiciary has also actively responded to women victims of rape, as they need a real, moral, ethical, legal and economic support to face the trauma. Some of the important judgments where compensation was awarded to the victims of rape are-

In ***Mukunda Martand Chatnis v. Madhuri***¹⁸ for mud slinging and character assassination of the wife, husband was fined Rs. 1 lakh and Rs. 36,000 was to be paid as compensation to the victim woman. In ***Dudalure M.J. Cherian v. Union of India***¹⁹ the Supreme Court directed the State of U.P. to pay Rs. 2,50,000 as compensation to each of the victims of rape.

¹⁵ Ibid. p. 2131, Also refer to *Sarwan Singh and others v. State of Punjab* (1978) 4 SCC 111; *Balraj v. State of U.P.* (1994) 4 SCC 29; *Baldev Singh and Anr. v. State of Punjab* (1995) 6 SCC 593; *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. And Anr.* (2007) 6 SCC 528

¹⁶ (2007) 6 SCC 528

¹⁷ *Palaniappa Gounder v. Tamil Nadu.* AIR 1977 SC 1323; *Sarwan Singh v. Punjab*, AIR 1978 SC 1525 : (1978) 4 SCC 111

¹⁸ AIR 1992 SC 1804

¹⁹ 1995 SCC (Cri) 925

In *Rupaldeo Bajaj v K.P.S. Gill*²⁰ Supreme court fixed the liability of offender and gave monetary relief to the victim.

In the *Delhi Domestic Working Women's Forum v. union of India* case²¹ the Supreme Court emphasized upon the need to setup a Criminal Injuries Compensation Board for rape victims within 6 months having regard to the Directive Principles contained under Article 38(I) of the Constitution of India. Court opined that rape victims frequently incur substantial financial loss, as they are too traumatized to continue in employment. In *Bodhisattwa Gautam v. Shubhra Chakraborty*²², the supreme Court reiterated the above decision and further advocated for interim compensation.

In *Uttrakhnad Sanghrash Samiti, Mussorie v. State of Uttar Pradesh and others*²³ court held that women who were molested and subjected to rape shall be entitled to receive compensation being the same as victim of death.

In *The Chairman, Railway Board and Others v. Mrs. Chandrima Das and Other.*²⁴ a sum of Rs.10 lakhs was awarded as compensation for the victim as the High Court was of the opinion that the rape is not a mere matter of violation of an ordinary right of a person, but the violation of Fundamental Right.

Some other illustrative cases in which the Courts have awarded compensation for the excesses committed by the state or for negligence of the State are--In *Nand Ballabh Pant v. State (Union Territory of Delhi)*²⁵ the appellant was directed to pay fine to the wife of the deceased by way of compensation. In another case of *Palaniappa Gounder v. State*²⁶ the Supreme Court held that the amount of compensation must not be excessive, the court also stated that it is not proper to first decide what compensation should be paid and then to impose fine which is higher than the compensation. In *Guruswami v. State of Tamil Nadu*²⁷ Supreme Court remarked that in case of murder it is only fair that proper compensation should be provided for the dependents of the deceased. In *Prabhu Prasad Sah v. State of Bihar*,²⁸ it was observed by the Supreme Court that "criminal justice has many dimensions beyond conviction, sentence, acquittal and innocence...the victim is not to be forgotten but

²⁰ (1995) 6 SCC 194

²¹ (1995) 1 SCC 14

²² AIR 1996 SCC 922

²³ [(1996)UPLBEC 461]AUHC

²⁴ (2000) INSC 26 (28 January 2000) www.commonlii.org accessed on 28/05/2009

²⁵ AIR 1977 SC 892 : 1977 Cri LJ 549.

²⁶ AIR 1977 SC 1323 : 1977 Cri LJ 992.

²⁷ AIR 1979 SC 1177 : 1979 Cri LJ 704.

²⁸ AIR 1977 SC 704: See also Sukhdeo Singh v. State of Punjab, 1982 SCC (Cri) 467.

must be restored to the extent possible”. In *Mangilal v. State of Madhya Pradesh*²⁹, incorporating the principles of natural justice, Supreme Court observed that “a court is required to hear an accused before fixing quantum of compensation.”

In *Ankush Shivaji Gaikwad Vs. State of Maharashtra*³⁰ the court observed that “while the award or refusal of compensation in a particular case may be within the Court's discretion, applying the tests which emerge from the above cases to Section 357, it appears that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused”. *The above decisions of the Court clearly indicate that compensatory justice jurisprudence has gradually but steadily taken shape in India and is attaining new dimensions in present times.*

Conclusion

The provisions of Criminal Procedure Code concerning victim compensation occupy a prominent place in the progressive development of the law relating to victim compensation through judicial approach. Keeping in view the whole scenario of compensatory justice jurisprudence, the ambit of criminal justice system needs to be expanded keeping in view the overall change in the approaches, thinking and circumstances. The victim should not be forgotten while administering justice. The victim would remain forgotten in the criminal justice system if despite Legislature having gone so far as to enact specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision. Victim should fairly be compensated for the injury caused by the act of offender. This would prove to be an effective means to attain the ends of justice.

²⁹ 2004Cri LJ 880; AIR 2004 SC1280

³⁰ Criminal Appeal No. of 2013 arising out of S.L.P. (CRL.) No.6287 of 2011

The Courts should be empowered to impose compensation even in cases where the fine does not form part of sentence. The discretionary power of the Court should be converted into a legal mandate requiring it in all suitable cases to pass compensation orders and when it decides not to do so it may be made obligatory to record reasons for doing so. The victim of an offence should be legally allowed to intervene in the criminal proceeding against the offender to claim compensation for loss or injury. Such a provision will certainly enhance the use of statutory provisions to compensate victims of crime, as it would amount almost to presume that the compensation is to be considered in every case.

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