

Need to Suitably Compensate the Victims in Criminal Cases : An Assessment

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Victimology is the scientific study of the sufferings of victims of crimes. Victimology speaks about the manner in which the victims need to be suitably compensated for their sufferings. Society is the victim as the society suffers because of the violation of laws. In our country State prosecutes the accused in all criminal cases except in offences relating to bouncing of cheques, defamation and bigamy. Any offence committed will be considered as though it is an offence committed against the state and hence the police wing of the State investigates the offence, the prosecution wing of the State prosecutes and courts of law try the accused. Thus State wants to protect the 'Victim'.

The word "Victim" is defined in Sec.2 (wa)² of Criminal Procedure Code and the same has come into effect from 31.12.2009 vide amendment Act 5/2009 of the Parliament. 'Victim' is a person who has suffered any loss or injury caused by reason of the act or omission for which the accused has been charged. The expression "Victim" includes his or her guardian or legal heir. Normally, a victim will have no say in the investigation or prosecution. Of course, now law enables the victim to file an appeal if he or she is aggrieved by the judgment, in respect of acquittal or conviction for a lesser offence or inadequate compensation. The powers of the victim within the criminal justice system are very much limited and the victim has no right to challenge the decision of the prosecutor at any stage, except after the final verdict. The rights of the accused have been suitably protected by various decisions of the Supreme Court keeping in mind the

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² Section 2 (wa) of Criminal Procedural Code, 1973 - "victim" means 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

scope of Article 21³ of the Constitution of India with reference to (a) fair and speedy trial, (b) inhibition against solitary confinement in jails, (c) hand cuffing (d) the procedure to be adopted while arresting an accused, etc. Similarly Courts are expected to suitably safeguard the interests of the victims.

A wrong sentencing of an accused will prejudice the accused and his family members. Whereas a wrong acquittal prejudices the interest of the State. Striking a balance between the rights of the accused and the societal interest by the Courts dealing with the criminal cases is essential in effectively maintaining the criminal justice system in which victim is equally an important stake holder. A constitution bench of the Hon'ble Apex Court in the case of *Maru Ram v. Union of India*⁴ has emphasized that the Court should not overlook the plight of victims who are maimed at the hands of the criminals. In the case of *State of Gujarat v. High Court of Gujarat*⁵ Apex Court has clearly observed that we cannot forget the victim or his family in case of his death or if he is otherwise incapacitated. Therefore it is relevant to look into the provisions of law providing for compensating the victim.

Sec. 357 of Criminal Procedural Code speaks about the power of the Court to award compensation to the victim. Sub-sec (1) of Sec. 357 states that in the event of imposing sentence of fine after finding the accused guilty, the Court has power to award the whole or part of it as compensation to the victim. Sub-sec (3) of Sec. 357 of CrPC enables the criminal court to award the compensation to the victim even when no fine is imposed on the convicted accused. Sec. 359 of CrPC speaks about the power of the criminal court to direct the accused, in a non-cognizable case, on conviction, to pay to the complainant in whole or part the cost incurred by him/her in prosecuting the accused. On reading the entire sections 357 and 359 of CrPC it is clear that compensation is payable to the victim only when an accused is convicted.

Introduction of Sec.357-A into CrPC vide Act 5/2009 which has come into effect from 31.12.2009 has revolutionised the whole system of victim compensation. This amendment is necessitated in view of the 152nd and

³ Article 21 of the Constitution of India, 1949 - "No person shall be deprived of his life or personal liberty except according to a procedure established by law."

⁴ *Maru Ram v. Union of India*, AIR 1980 SC 2147

⁵ *State of Gujarat v. High Court of Gujarat*, 1998 (7) SCC 392

154th Law Commission Reports. This section takes care of the interest of the victim when the compensation awarded by the Criminal Court under Sec.357 is either inadequate or even when the accused is acquitted. Sub-sec (2) of Sec. 357-A empowers the Criminal Court to make recommendation to the District or State Legal Services Authority to decide the quantum of compensation to be awarded. Sub-sec (1) of Sec.357-A mandates that every State Government, in consultation with the Central Government, shall formulate a scheme and fund to be provided by the respective State Governments for paying compensation to the victims.

Government of Karnataka has formulated a scheme notifying the maximum amount of compensation to be paid to the victims with reference to various types of offences. Earlier schedule of the scheme has stood modified w.e.f. 19.09.2013. Now maximum compensation payable is Rs.3 lakhs to a victim in case of murder of a person below 40 years or rape of minor or loss of limb or any part of the body resulting in disability ranging from 40 to 80 % because of acid attack. Since the Victim Compensation Scheme formulated by the State Government of Kerala provides for higher compensation to the victims of various types of offences committed on them, Hon'ble Apex Court in the case of *Suresh and Another v. State of Haryana*⁶ has directed all the State Governments and Union Territories to suitably revise their respective schedule appended to the Victim Compensation Scheme on the lines of the one formulated by the State of Kerala.

In the case of *Ankush Shivaji Gaikwad v. State of Maharashtra*⁷, Hon'ble Apex Court has held that Court is expected to assign proper reasons while refusing to award compensation to the victim. Therefore normal rule is to award compensation to the victim and exception is to refuse the same, that too on assigning valid reasons. A Division Bench of High Court of Karnataka, in the case of *State of Karnataka v. Rangaswamy*⁸, has held that the victim compensation Scheme is applicable to all the pending cases irrespective of the date of commission of offence or the date of judgment or the date of institution of the case.

⁶ *Suresh and Another v. State of Haryana*, 2015(2) SCC 227

⁷ *Ankush Shivaji Gaikwad v. State of Maharashtra*, 2013 (6) SCC 770

⁸ *State of Karnataka v. Rangaswamy*, ILR 2015 Karnataka 4879

Prosecutor's office being a public office, can effectively represent the interest of the victims without there being any extra burden on them. Hence in the case of *Ranganath Vs. State of Karnataka*⁹, High Court of Karnataka has directed all the prosecutors in the state to effectively represent the victim/s before the Courts in regard to the compensation to be awarded and the Karnataka State Legal Services Authority to prevail upon the State Government to suitably modify the Victim Compensation Scheme in the background of the mandate found in the case of *Suresh v. State of Haryana*¹⁰ and the Karnataka Judicial Academy to effectively sensitize all the judicial officers about the need to compensate the victims. If a victim of a road accident involving vehicle/s is either injured or dead, the victim/s will approach the Motor Accidents Claims Tribunal (MACT) seeking just compensation. The tribunal would award structured compensation depending upon the age of the injured or deceased or age of the Claimant/dependent, as the case may be, his earnings, his loss of future earning capacity, the amount incurred for medical expenses and treatment, conveyance charges, attendant charges, future medical charges, if any, the pain undergone by him because of the injury, the loss of amenities and pleasure in future life, loss of love and affection, loss of consortium, loss of marriage prospects etc. But that is not the case while awarding compensation in criminal cases.

Section 33(8) of Protection of Children from Sexual Offences Act 2012 enables the Special Courts dealing with offences under this Act to award suitable compensation to a victim child for any physical or mental trauma caused to it and even for immediate rehabilitation of such a child. Rule 7 of POCSO Rules 2012 has prescribed parameters to be considered while awarding compensation. The Special Court itself will decide the quantum of compensation to be paid and in such an event the same will have to be paid by the State Government from out of the 'Victims Compensation Fund' under section 357-A of CrPC.

In fact in the case of *Suresh Vs. State of Haryana* mentioned supra Hon'ble Apex Court has held that in deserving cases, the Criminal Court

⁹ *Ranganath v, State of Karnataka*, Criminal Appeal 660/1010 DD 20.11.2015

¹⁰ supra, note 6

can award interim compensation. The ratio of the decision in the case of *Suresh v. State of Haryana*¹¹ is worth mentioning and is extracted below:

“We are of the view that it is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.”

Since POCSO Act 2012 and the rules framed thereunder have come into effect subsequent to introduction of S.357-A of CrPC, these rules could well act as a guide to fine tuning the schedule appended to the Victim Compensation Scheme and the process of awarding compensation by the authorities concerned.

Therefore the Hon'ble Apex Court wants the States to formulate Victim Compensation Scheme so as to suitably compensate the victim. The decisions referred to above are binding precedents under Article 141¹² of the Constitution of India. Hence there cannot be any discrimination in the matter of compensation to victims; but it should be uniform and adequate throughout the country.

¹¹ *ibid*, paragraph 16 at page 250

¹² Article 141 of The Constitution of India 1949 - “Law declared by Supreme Court to be binding on all courts The law declared by the Supreme Court shall be binding on all courts within the territory of India”