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UNDERSTANDING THE ROLE OF THE JUDICIARY VIS-A-VIS KARNATAKA VICTIM COMPENSATION SCHEME, 2011: AN ANALYSIS

Dr. Kiran D Gardner*

Dr. Rahul Mishra**

Introduction

It is very much known to us that criminal justice system is basically meant for protecting fundamental rights. The aggrieved persons could knock at the doors of apex court under the provision of Article 32 of the Constitution of India. So much so, he or she can avail of the remedy under Article 226 of the Constitution of India in order to approach High Courts. Whenever, it is noted that a heinous crime has happened the automatic response given by any civilized society is to punish the wrongdoer strictly so that people have faith in the judicial system as well as remedies so provided under criminal justice system though equitable opportunity is also provided to the wrongdoer to prove in the court that he or she has not done any wrong. It is a proven fact and experience that the victim of such an adverse situation has been a forgotten party. In countries like India, we have been following an adversarial justice delivery system where the role of the victim is merely reduced to be considered as WITNESS. and he or she is found to have no say during the entire process of investigation. It is also seen that he is merely at the mercy of the public prosecutor during the trial. The State has the accountability to get the guilty punished. Initially, courts were reluctant in passing any order for monetary compensation to be awarded to the victim who had suffered any injustice of this sort. But

* Professor and Dean, Alliance School of Law, Alliance University, Bangalore.

** Associate Professor, Manipal Law School, Manipal Academy of Higher Education (MAHE), Bangalore.

such a scenario has undergone a sea change now. In most of the cases the judicial bodies have held the State also liable for the misuse of power or any negligence done while exercising such powers to perform its functions. Accordingly, the concept of compensatory jurisprudence did come into being. Here in this paper, the analytical scenario is put in place by adopting a doctrinal research method. Landmark case laws have been looked into while discussing compensations which were paid to victims who suffered such pains. The victim compensation scheme made by the State of Karnataka is also critically evaluated.

Compensatory Jurisprudence as evolved by the Judiciary

As we know that compensatory jurisprudence¹ has been a new development in the system of criminal justice and has been on the upgrade. As it ensures the victim that his pains are taken care of and the accused is made to pay for the same as per law. Sometimes, it is also seen that the accused/offender is not in position to pay compensation for the ill act he or she has done to the victim. In such circumstances, provisions² are there where the State does pay compensation to the victim. This approach was recognised in a landmark case³ in which the apex court had awarded compensation for the detention done unlawfully for fourteen years. Thereafter he was released. Accordingly, the State responsibility⁴

¹ Victim Compensation In Criminal Justice System. Web Source: <https://Kjablr.Kar.Nic.In/Assets/Articles/Victimcompensationincriminaljusticesystem.Pdf> (Last Accessed On Sep 11, 2022)

² Tackling Violence Against Women: A Study of State Intervention Measures (A comparative study of impact of new laws, crime rate and reporting rate, Change in awareness level). Web source: https://wcd.nic.in/sites/default/files/Final%20Draft%20report%20BSS_0.pdf (Last accessed on Sep 17, 2022).

³ Rudal Sah V State of Bihar 1983 AIR 1086

⁴ Nath, G. V. Mahesh, Victim Compensation: Understanding the Law to Sensitize Stakeholders. Web source:

was highlighted. Further, a new concept for providing compensation to the victims who suffered grievous hurt from government employees at the time they were performing sovereign functions came up. The State could be held liable vicariously for all ill acts being done by its employees. In the above mentioned case, Rudul Shah had been arrested for murdering his wife in the year 1953. Later he was released in the year 1968 by the court of sessions, Muzaffarpur, Bihar. He was kept under custody for more than fourteen years. The Habeas Corpus writ was filed under Article 32 of the Constitution of India thereby praying for his release as it was unlawful detention. Though the accused had already been released the court concerned had also granted rupees thirty thousand as compensation which had already been paid accordingly. It was also said that right to have access to compensation was rightful addition to the right to approach civil courts for the recovery of damages. It was later held by the court that having refused to grant compensation thereby ordering him or her to approach the civil court will only be a lip service to the enjoyment of his or her fundamental right, which was violated by the State government.

In another landmark case⁵, the compensation for rupees fifty thousand was provided for the unlawful arrest of Bhim Singh who was an MLA. He had been arrested for showing brutal intention without any doubt. Such order so made to State government to pay compensation has ensured the weakening of the doctrine of Sovereign immunity⁶. In another case⁷, a principle was established by the apex court according to which

SSRN: <https://ssrn.com/abstract=3635598> or <http://dx.doi.org/10.2139/ssrn.3635598> (Last accessed on Sep 15 2022).

⁵ Bhim Singh V State of J&K AIR 1986 SC 494

⁶ Compendium on Compensatory Relief to the Victims of Crime in Criminal Justice System. Web source: https://jhalsa.org/pdfs/other_publications/2016/compendium.pdf (Last accessed on Sep 18, 2022).

⁷ Nilabati Behera V State of Orissa 1993 2 SCC 746

compensation had to be provided by the court under Constitutional provisions -Article 32 and Article 226. The remedies which we have under public law are basically depending upon the strict liability regime if violation of fundamental rights is done where the doctrine of sovereign immunity does not arise. Moreover the sole purpose of public law is not supposed to decipher nomenclature for the protection of common man rather it is to ensure justice timely provided to such people on equitable terms. Accordingly, the payment for such compensations is to be done as 'Monetary Amends'.

In the above-mentioned case, police took under his custody a twenty-two-year-old boy on 1st December, 1987 as part of investigation pertaining to the offence of theft being committed and was detained in the said police station. Later, his mother had gone to the police station at 8.00 pm to serve him dinner. A police officer along with other persons were right there on this occasion. On 2 Dec 1987 at about 2.00pm, petitioner spotted the dead body of her son on railway track. Accordingly, police went to the site and kept hold of his dead body. Later a letter was sent to the apex court⁸ by the mother saying that her son had suffered custodial death and claimed accordingly for the compensation on the basis of Article 21 of the Constitution of India. The said letter was considered by the court as writ petition. Defendant said that the deceased had escaped at 3.00pm with the help of rope, as his hands were handcuffed and may have been run over by train. Having been through the data produced by the doctor and reports⁹

⁸ 2020 Country Reports on Human Rights Practices: India. Web source: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/india/> (Last accessed on Sep 23, 2022).

⁹ Now, SC/ST victims to get minimum compensation of Rs 8.5 lakh from state government. Web source: <https://economictimes.indiatimes.com/news/politics-and-nation/now-sc/st-victims-to-get-minimum-compensation-of-rs-8-5-lakh-from-state-government/articleshow/51834292.cms> (Last accessed on Sep 17, 2022).

submitted by the forensic science laboratory, it was held by the court that the deceased had died within the police custody and accordingly the State was ordered to make payment of rupees one lakh fifty thousand as compensation to the victim's mother. Moreover, it was also said by the court that it will not make an impression on the petitioner's right to go for compensation as provided under other proceedings.

In another case¹⁰ because of the negligence of a few army officials, one officer died during service. The wife of the deceased suffered huge mental and financial loss because of this happening as she had to bring up two minor children. Accordingly, the court awarded rupees six lacks as compensation to the widow along with family pension and child allowance. In another landmark case¹¹ the husband of the petitioner died on his way home from his office as he came in contact of nude wire and got electrocuted. It was the rainy season and the wire was lying unattended on the road and had not been removed after having made so many complaints. Accordingly, the compensation was awarded to the widow and her little children. In other case¹², the widow of the convict was given compensation. As we know that a prisoner does not cease to have access to constitutional rights except to the extent, he has been kept away from it as per law. As the death of the deceased happened because of the carelessness of jail authorities the compensation for rupees one lakh had to be paid by the State.¹³

¹⁰ Chiranjit Kaur v Union of India 1994 2 SCC 1.

¹¹ Sakuntala v Delhi Electric Supply Undertaking 1995 2 SCC 369.

¹² Kewal Pati v State of Uttar Pradesh 1995 3 SCC 600..

¹³ Law relating to Victim Compensation. Web source: <https://indianlawwatch.com/practice/law-relating-to-victim-compensation/> (Last accessed on Sep 24, 2022).

In another case¹⁴, a writ petition was filed by the petitioners as per Article 32 of the Constitution of India for the issuance of directions w.r.t the encounter done by Imphal police resulting into the killing of two persons, so as to take reasonable action against such officials. The compensation for members of the deceased was also claimed. Later, it was held by the apex court that the officials having done so had violated Article 21 of the Indian Constitution. Accordingly, the compensation for rupees one lakh was awarded to the family members of the deceased. In another case¹⁵ apex court of India gave compensation to the rape victim. The women group by way of public interest litigation fought for four women servants who were raped by seven army officials in a train. The victims belonged to the State of Bihar. No serious attention was paid to such a ferocious incident. It was held by the court that compensation had to be paid to the victim on conviction of the wrongdoer. The Court while doing so, took into consideration the agony and mental sufferings of victims.

Schemes governing compensation to the victims of crime in Criminal Justice System

There have been reforms pertaining to criminal justice system in India¹⁶ mooted by the Justice Malimath Committee which had advocated for compensation for victims to be taken as State's obligation thereby proposing a victim compensation law resulting in the creation of a victim compensation fund to be generated and administered by Legal service authorities Act 1987. Such recommendations did find place in the Crpc amendment done in 2009. Sections concerned are- Sec 357,357A,357B,358 & 359 of the Cr.P.C . Remedies in terms of

¹⁴ *Pepole's Union for Civil Liberties v Union of India* AIR 1997 SC 1203.

¹⁵ *Delhi Domestic Working women's forum v Union of India* 1995 1 SCC 14.

¹⁶ World Factbook Of Criminal Justice Systems. Web Source: <https://Bjs.Ojp.Gov/Content/Pub/Pdf/Wfbcjsin.Pdf> (Last Accessed on Sep 25, 2022).

compensation have been provided therein. In another case¹⁷ an order was passed by the Gujarat high court about the creation of victim compensation fund as per law¹⁸. As per section 375A, States had to create the same. Accordingly compensation had to be paid to the victims. Enquiries must be done by SLSA¹⁹ or DLSA²⁰. Once the conviction is done, proper analysis about the quantum of compensation and the payment scenario need to be framed. This scheme was notified in the year 2012 since then there is no looking back.²¹

The Schedule concerned is hereby provided for²²:

Serial No.	Particulars of loss or injury due to crime	Maximum Limit of quantum of compensation
1.	Loss of life	Rs 2.00 Lacs
2.	Loss of any limb or part of body resulting 80% or above handicap	Rs 1.00 Lacs
3.	Loss of any limb or part of body resulting to 40 % and below 80% handicap.	Rs 50,000/-
4.	Rape of minor	Rs 50,000/-
5.	Rape	Rs 40,000/-

¹⁷ State of Gujarat v Raghu 2003 1 GLR 205.

¹⁸ Criminal Justice System in India. Web source: <https://globcci.org/wp-content/uploads/2021/07/Criminal-Justice-System-in-India-2013.pdf> (Last accessed on Sep 28, 2022).

¹⁹ State Legal Service Authority.

²⁰ District Legal Service Authority.

²¹ Indian criminal justice system: reforming institutions for delivering justice. Web source: https://d19k0hz679a7ts.cloudfront.net/value_added_material/a1181-indias-criminal-justice-system-reforming-institutions-for-delivering-justice.pdf (Last accessed on Oct 1, 2022).

²² Karnataka Victim Compensation Scheme, 2011.

6.	Rehabilitation necessitated due to damage of house, vehicle, etc	Rs 20,000/-
7	Loss of any limb or part of body resulting below 40 % handicap	Rs 20,000/-
8.	Grievous injuries other than the injuries mentioned above	Rs 10,000/-
9.	Women and child victims in cases like human trafficking, who themselves or their dependents have suffered separation, dislocation, and disturbance	Rs 10,000/-

It is clear from the above table that compensation provided is meager. It is highly disproportionate to the gravity of offence. Compensation for the rape of minor is just Rs 50,000/- and for loss of life mere 2 lacs is provided to the victim. On 19th September 2013 the schedule was modified, and compensation was enhanced to certain extent, which is as under²³:

Serial No.	Particulars of loss or injury due to crime	Compensation to be paid
1.	Loss of life	
	a) 40 years of age and below	Rs 3.00 Lacs
	b) 40 years to 60 years	Rs 2.00 Lacs
	c) 60 years and above	Rs 1.00 Lacs

²³ Government order No. HD 1 PCB 2011, Bangalore, dated 19.9.2013.

	Note: In case of death of victim, expenses incurred for actual medical treatment, before the death, up to a maximum of Rs 25,000/- and a maximum of 20,000/- may be given as funeral expense, to the next kin of the victim in case of victim's death.	
2.	Loss of any limb or part of body resulting 80% or above handicap due to any crime including Acid Attack.	Rs 3.00 Lacs
3.	Loss of any limb or part of body resulting 40% and below 80% or above handicap due to any crime including Acid Attack.	Rs 2.00 Lacs
4.	Loss of any limb or part of body resulting below 40% handicap due to any crime including Acid Attack.	Rs 1.00 Lac
5.	Rape of minor	Rs 3.00 Lacs
6.	Rape other than minor	Rs 1.5 Lacs
7.	a) Rehabilitation necessitated due to damage to house etc, 80% or more b) Rehabilitation necessitated due to damage to house etc less than 80%	Rs 50,000/- Rs 20,000/-
8.	Grievous injuries other than the injuries mentioned above	Rs 20,000/-
9.	Women and child victims in cases like human trafficking, who themselves or their dependents have suffered separation, dislocation, and disturbance	Rs 1.00 Lac

The amounts mentioned in the above table are still on the lesser side. The Supreme Court in the case²⁴ has observed that Schedule as announced by the Kerala Government under section 357A of Cr. P. C. appears to be on the higher side and therefore the same needs to be followed by other States in case the amounts mentioned in the schedules of those particular States are on the lesser side.

Conclusion

Victim²⁵ was basically a forgotten entity within the criminal judicial system but with the passage of time victim centric provisions do occupy valid place in the development of laws concerning victim compensation through judicial approach. Accordingly, our legislatures have done a commendable job thereby creating provisions for the same through the 2009 Amendment to the Code of Criminal Procedure. Now it is to be ensured that section 357 of Cr.P.C is duly applied as and when required. Accordingly, one can say that due justice is being done to such cases. The discretionary power of the Judge to grant or not grant compensation needs to be converted as a mandate and reasons for not awarding compensation in suitable cases should be recorded. The victim of an offence, as a matter of right, be allowed to intervene in criminal proceedings against the offender to claim compensation for the loss of injury. When an offender is compelled to pay compensation for the injury caused, this will not only do justice to the victim but the offender will realize that he would be made to pay for the injury and will think twice before committing the offence.

²⁴ Suresh and another v State of Haryana (2015) 2 SCC 227.

²⁵ Role played by the Karnataka State Legal Services Authority under Victim Compensation Scheme-2011 and further steps to be taken for providing compensation to the victims of sexual abuse including rape and for their rehabilitation and support. Web source: <https://www.makkalahakku.com/main-control/uploads/Victim%20Compensation%20Scheme.pdf> (Last accessed on Oct 2, 2022)

Moreover, it has also been seen that the Supreme Court of India has made many efforts to sensitize the stakeholders about all such schemes. It also becomes essential that the citizens of this nation must be made aware of such legal provisions. It could be done thereby organizing legal awareness through camps to be organized in every nook and corner of India. There is a need to provide great publicity to all such schemes being run at the moment. Social media could also be used in this regard. Still, it is found that the compensation amount in some of the States has been very low. Therefore, steps must be taken to ensure the proper availability of compensation amount to the victim as per the schemes. The efforts put in by the Indian judiciary must be lauded. But there has to be a comprehensive approach to be established by the States thereby ensuring accessibility to such justice to the victims.²⁶ One can have hope that decisive steps are taken in this regard by all stakeholders in tandem to provide full proof cover as compensation which has to be provided on equitable footing to all concerned.²⁷ A formidable effort is required to be put to have a comprehensive rule book in this regard thereby establishing the blueprint of approachability, availability and accessibility regimes therein which shall be followed by the concerned in letter and spirit. The criminal justice system²⁸ must be strengthened thereby keeping in view the aforementioned suggestions and recommendations in letter and spirits

²⁶ Need to Suitably Compensate the Victims in Criminal Cases: An Assessment. Web source: <https://www.cmr.edu.in/school-of-legal-studies/journal/wp-content/uploads/2021/03/Article-4.pdf> (Last accessed on Oct 7,2022).

²⁷ Gray-Ray, Phyllis, Melvin C. Ray, Sandra Rutland, and Sharon Turner. "African Americans and the Criminal Justice System." *Humboldt Journal of Social Relations* 21, no. 2 (1995): 105–17. Web source: <http://www.jstor.org/stable/23263012>. (Last Assessed on Oct 3, 2022)

²⁸ Bakshi, P.M. "Continental System of Criminal Justice." *Journal Of the Indian Law Institute* 36, No. 4 (1994): 419–28. Web source: <Http://Www.Jstor.Org/Stable/43952366>. (Last accessed on Oct 5 ,2022)

so as to provide an equitable platform to the victim to get justice of this sort.