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Fundamental Rights Violation and Compensatory Jurisprudence in India: A Critical Analysis

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ABSTRACT

In the era of increase in the number of cases involving police lawlessness, political anarchy, crimes and harassment against women, custodial torture and various other human rights' violations, introduction of compensatory jurisprudence took place. The revival of the doctrine of natural rights among the nations is of great importance in the field of jurisprudence in the present scenario. This article would understand the need and object of compensation to the victims and would examine the existing laws governing compensation to the victims. This paper would evaluate the role played by judiciary in granting compensation to the victims. Compensatory jurisprudence is an emerging concept and it provides that victims of crime are not to be ignored and the offender been convicted must be aware of his obligation and liability towards the victims who suffered loss as a result of his wrong doings.

Keywords: *Compensatory Jurisprudence, Compensation, victims, fundamental rights, Restitution.*

I. INTRODUCTION

In the current scenario of human rights awakening the Supreme Court of India took a path setting step in certain cases by permitting compensation to the victims by way of Article 32 and Article 226 of the Indian Constitution². Article 32 of the Constitution comprises of power of the Supreme Court to issue orders and writs in the way of habeas corpus, mandamus, certiorari, quo warranto or prohibition as required for the enforcement of fundamental rights in India³.

In the light of recommendations in 41st Law Commission Report of 1969 a detailed provision regarding compensation to victims of crime has been provided in Section 357 of Cr.P.C. where the court may allow compensation if it deems fit in the interest of ensuring justice. In the dire

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² For more details see, Constitution of India, Arts. 32 and 226.

³ Justice G. Yethirajulu, Article 32 and the remedy of compensation: (2004) 7 SCC (J) 49

need of enhancing and building a strong criminal justice system, the legislature in 2008 introduced major amendments in Cr.P.C. These efforts lead to providing a proper definition of “victim” and who all are included in the definition in order to claim compensation which lead to renovation of old and outdated laws. However the critical issue is that the provision of compensation is at the sole discretion of the courts and they may or may not provide it. Looking into the past records it has been observed that awarding of compensation has been a rare occasion and when granted then the amount varies according to their own accord which has badly affected the past compensatory jurisprudence in India.

The criminal justice system in India basically focuses on punishing the offender and safeguarding the society however such equal importance is not given to the victims of the crime who rely completely on justice delivery system. The main focus of penalty must not be just to imprison or shelter, reform and rehabilitate the offender but also to protect the concern and interests of the victims too⁴. In current scenario imprisonment or being found guilty is not the sole criteria of providing justice and satisfaction to the victims of the crime but also showing equal concern for victims in terms of compensation for loss or injury done. Modern criminologists must not just focus on non-acceptance of retribution and retaliation as a method of dealing with criminals but also not neglect the injury and suffering of the victims.

II. COMPENSATORY JURISPRUDENCE IN INDIA

In developing and building the theory of compensatory jurisprudence in India a lot of Reports of Law Commission of India and Committees on Reforms of Criminal Justice Administration have played a significant role. The issue pertaining to justice to victims of crime has been discussed widely by the Law Commission of India with respect to reforms in Indian Penal Code, 1860 and Code of Criminal Procedure, 1898 and of 1973. With respect to compensation and restitution of victims of crime a pivotal role has been played by Malimath Committee Report of 2003 on Reforms of Criminal Justice System in India. This report has emphasised on the participation of the victims in the process of criminal justice.

(A) 42nd Report of Law Commission of India, 1971

While we talk about the compensation to victims of crime we observe that the criminal law in India doesn't provide for compensation for any loss or injury whether it be physical, mental or psychological caused to him by the wrong doer⁵. Insertion of section 62 of IPC was

⁴ S. Murlidharan, 'Rights of Victims in the Indian Criminal Justice System' [2005] NHRC 1, 3.

⁵ See Vibhute K.I. Compensating the victims of crime in India: An appraisal, 1990 JILI Vol. 32 : 1, p 68

recommended by the Law Commission of India⁶. However the parliament did not give importance to their recommendations but this recommended provision was incorporated in Cr.P.C. by way of amendment. As a matter of fact J. R.L. Narasimham being the member of Law Commission gave his opinion that Section 357(section 545 of old Code) is completely non- satisfactory due to following reasons. Firstly, Section 545 of Cr.P.C. provides that compensation can be awarded only in money and no provision with respect to direct restitution for the harm done. Secondly, procedure involved is expensive and dilatory and led to harassment to the victim. As a result J. R.L. Narasimham advocated for removal of Section 545 from Cr.P.C. and bringing up a new section in IPC with respect of enhancing the law relating to compensation. As a matter of fact all the recommendations made by the L.C.I. were not incorporated in the Indian Penal Code⁷.

(B) 156th Report of Law Commission, 1997

This report emphasised on its earlier recommendations in 152nd and 154th report for developing a ‘Victim Compensation Scheme’ by the state governments. It highlighted the need for it as an ‘additional payment’ and that it would not be justified to not incorporate an order of payment of compensation as a way of punishment.

(C) 226th Report of Law Commission, July 2009, Recommendation Regarding Compensation under Indian Penal Code, 1860

The report was on “The inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime” which suggested that a separate legislation is required to ensure compensation to victims of rape, acid attacks, sexual assault,

⁶ “Whenever a person is convicted of an offence punishable under Chapter XVI, Chapter XVII or Chapter XXI of this Code or of an abetment of such offence or of a criminal conspiracy to commit such offence and is sentenced to a fine whether with or without opinion that compensation is recoverable by civil suit by any person for loss or injury caused to him by that offence, it shall be competent to the Court to direct by the sentence that the whole or any part of the fine realized from the offender shall be paid by way of compensation to such person for the said loss or injury.

Explanation— Expenses properly incurred by such person in the prosecution of the case shall be deemed part of the loss caused to him by the offence.” See 42nd Report of law commission, 1971,pp 53-54

⁷ 70A (1) In the case of conviction for an offence against the human body and offence against property, defamation or an offence against privacy, the Court may direct that the person convicted shall pay compensation to the person mentioned in sub-section (4).

(2) Such compensation need not necessarily be monetary and it may be in any form which the Court considers to be sufficient recompense to the injured party. But, while passing the order for compensation, the Court shall estimate its monetary value for the purpose of execution of the order.

(3) The Court shall not, under this Section direct payment of compensation whose monetary value exceeds the amount of fine which it is empowered to impose.

(4) An order under sub-section (1) may be made—

(a) In addition to any other punishment to which the person convicted may have been sentenced.

(b) In substitution of fine, where the offence not being a capital offence, is one punishable with fine.

etc. it recommended an enlarged version of inclusion of victims who are struggling for survival and who need rehabilitation and compensation.

(D) Malimath Committee Report⁸, 2003

This Report on reforms in criminal justice system came in March 2003 and it urged the parliament to frame a legislature on justice to victims and also highlighted the obligation of the state to provide for compensation of victims and recommended a law on victim compensation and creation of a victim compensation fund to be built and administered by Legal Services Authorities created under Legal Services Authority Act, 1987. Not only this, the Report also gave categories of offences where compensation to be awarded and where not to be awarded. The major contribution of Malimath Committee Report is that it recommended the participation of victims in the criminal procedure as an essential part of justice delivery system.

III. LEGISLATIVE PROVISIONS REGARDING COMPENSATION

There is neither a comprehensive legislation nor a well-designed statutory scheme or a public policy in India either allowing 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, a careful reading of provisions of Code of Criminal Procedure, 1973 as amended on date and that of Probation of Offender's Act, 1958 reveals that a few sections contained therein can be invoked to provide justice and compensation to the victims of crime.

(A) Provisions in India

There is no comprehensive legislation providing for compensation by the State or by the offender to the victims of crime. 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 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.

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.

(B) Power of Court to Pay Compensation on Conviction

Specifically, **Section 357** of the Criminal Procedure Code, 1973 enables the passing of an order

⁸ Government of India, committee on Reforms of Criminal justice system, 2003 p. 271

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:

- (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 bonafide 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.

Whenever compensation is paid under Section 357 it shall be taken into account by any Civil Court which subsequently takes up the civil suit claiming compensation. Section 357 visualizes a wide range of situations under which compensation may be ordered to be paid to the victims of crime. Under the section, the categories of victims which become 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 bonafide purchaser of property, etc. can claim compensation. But this Section 357 of Code of

Criminal Procedure 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 prosecution⁹ 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

⁹ See, Code of Criminal Procedure, 1973, Section 359 also empowers a Court, in its discretion to order a convict in addition the penalty imposed upon him, to pay reasonable costs, in whole or in part, incurred by the complainant in prosecution of a non-cognizable offence.

or otherwise) or injury caused by any offence and by death.

In order to claim compensation under clause (b) it is necessary to show that person suffered a loss. 'Loss' means that can be compensated in money including some substantial detriment from a worldly point of view and loss of support and even loss of mere gratuitous liberty while the word 'injury' has been given a very wide meaning and connection in Indian Penal Code, 1860. The compensation under this section not only corresponds to damages awarded in civil proceedings but is also to be taken into consideration by a Civil Court in determining the quantum of damages in a subsequent civil suit relating to the same matter.

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 simplicitor to the victims of crime even 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. Prior to inclusion of this clause no compensation could be awarded unless a substantive sentence of fine was passed and then too this was limited only to the extent of the fine actually realized. So it can be for any amount and not limited to the amount of fine imposed or recovered.

(C) Compensation to the Persons Groundlessly Arrested

Thus, Section 358 visualizes 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 thousand¹⁴ 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. Thus, this is definitely, important piece of legislation against groundless arrest by the police which upholds the rule of law by having democratic values¹⁰.

(D) Order to Pay Costs in Non-Cognizable Cases

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. So under Section 359, the complainant victim is entitled to claim only the expenses

¹⁰ See Mundrathi, Sammaiah, *Law on Compensation to Victims of Crime and Abuse of Power*, (2002), p. 75.

incurred in the launching of the prosecution for loss or injury suffered by him.

(E) Compensation for accusation without reasonable cause

Similarly, Section 250 of the Code also lays down 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, thus, 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 that the Court of Session taking cognizance of an offence under sub-section (2) of Section 199 shall try the case in accordance with the procedure for the trial of warrant cases instituted otherwise than on a police report before a Court of Magistrate.

This Section 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 acquisition against the accused exists.

It is clear from the observations that the Court is empowered to award compensation to the victim or his dependents out of the fine imposed upon the offender. After considering all the provisions of the Code it is; clear that Section 357(3) confer wider powers on the Court to award compensation irrespective of the fine amount imposed. Further, it is clear from the above provision which at least visualize a minimum scheme of compensation, for the victims.

If the provision of Section 357(3) is excluded then the purpose of the provision, become futile in case the offender is unable to pay the fine imposed. Therefore, in most of the cases, where compensation is awarded, it remains unreal.

(F) Recent Amendment in Cr P C

After section 357 of the principal Act, Section 357A has been inserted providing for

Victim Compensation Scheme—

Victim Compensation Scheme

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.

(G) Compensation under Probation of Offenders Act, 1958

The whole object of the Probation of Offenders Act, 1958 is to prevent conversion of youthful offender into obdurate criminals of matured age, 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.

IV. JUDICIAL RESPONSE ON PAYMENT OF COMPENSATION TO THE VICTIMS RELATING TO COMPENSATORY JUSTICE

The judiciary has played a vital role in bringing reforms to enforce human rights in diverse country like ours. Some of the landmark judgements on compensatory justice are as follows:

(A) Compensation relating to Constitutional Injuries

- *Sebastian Hongray v. Union of India*¹¹, monetary compensation in the nature of exemplary costs of around Rs. 1 lakh was awarded to the widows of the persons who were missing from the custody of the army. Part-III of the Indian Constitution deals with right to life and personal liberty and certain other rights. It provides for protection of personal liberty against arrest and detention to save human dignity¹².
- *Rudal Shah v. State of Bihar*¹³, the courts after getting satisfied that the powers were exceeded blatantly by the authority and the law was not being followed, the courts decided to award compensation. The Supreme Court laid down the principle that in cases where there is infringement of fundamental rights then the upper courts having authority to exercise the power must do “through the exercise of writ jurisdiction and evolved the principle of compensatory justice in the annals of human rights jurisprudence.”¹⁴ Justice Chandrachud held that Article 21 talks about right to life and liberty and that has to be considered as a significant content to issue orders for release from illegal detention. We need a due compliance with Article 21 so as to ensure monetary compensation. There must be a direct and proximate nexus between the complaint and the arrest for the award of compensation under sec 358 of the Cr.P.C.

(B) Compensation under Criminal Law

- *Hari Kishan and State of Haryana v. Sukhbir Singh & Ors*¹⁵, the major breakthrough in compensatory jurisprudence was seen in this case when Supreme Court suggested to all lower courts that to achieve social justice we need to award compensation to the victims of offence as per the procedure in Section 357 of Cr.P.C., 1973 in order to restore the loss suffered by the victim which is caused by the accused’s action. This power of granting compensation is not an ancillary power to other sentences but in addition thereto. However the court also opined that the compensation to be awarded

¹¹ [1984] AIR 1826 SC

¹² See, PatjoshiJoginder, *Custodial Death : A Violation of Human Rights* SCJ (1997) Vol. 3, p. 65.

¹³ [1983] AIR 1086 SC

¹⁴ Ibid

¹⁵ AIR 1988 SC 2127

must be reasonable that is it must not be excessive considering the facts and circumstances of the case. The amount of compensation must be calculated by taking into consideration the justness of the claim, the capacity of the offender to pay it and also the nature of the crime. Compensatory justice is an approach which is constructive in nature and it aids in fair and just criminal justice delivery system.

In this case even the Supreme Court guided the lower courts to award compensation in a liberal way so that there is no overburdening of cases in civil courts because otherwise the aggrieved party would knock the door of civil courts to grant compensation. T S Thakur and GyanSudhaMisra formed the bench and opined that “Section 357 of CrPC confers a duty on the Court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case.”¹⁶

It has been observed that the lower courts have occasionally given compensation and we see it in rare occasions only.¹⁷

It has been seen that the compensation that is awarded under Section 357 of CrPC sometimes is not adequate and therefore an amendment was brought to incorporate Section 357A in the code to direct the state and establish a liability on state to make schemes and thereby award compensation to the aggrieved victim.

- **NandBallabh Pant v. State**¹⁸, under Section 304-A of IPC the appellant was convicted and was sentenced to a rigorous imprisonment of two months and imposed a fine of Rs. 500/- however by way of appeal his imprisonment reduced to one month but the fine increased to Rs. 1000/- which was directed by court to pay the same as monetary compensation to the wife of the deceased.
- **Guruswami v. State of Tamil Nadu**¹⁹, in this particular case the accused was awarded death sentence by two courts and was found guilty under Section 302 of IPC for the murder of his father and his brother. The Apex Court however reduced the death sentence to life imprisonment and stated that in case of murder it is only fair that compensation that is proper to be allowed for those who are dependent on the deceased.

(C) Compensation relating to Rape

¹⁶ Deccan Herald, ‘Victims in criminal case be awarded compensation: SC’ (deccanherald.com 2013) <<http://www.deccanherald.com/content/332311/victims-criminal-case-awarded-compensation.html>> last accessed on 3rd September 2018.

¹⁷ Deepak Bade, ‘Concept of victimology in India’ (Academia.edu 2013) <http://www.academia.edu/1787492/CONCEPT_OF_VICTIMOLOGY_IN_INDIA#> last accessed on 3rd September 2018.

¹⁸ AIR 1977 SC 892

¹⁹ AIR 1979 SC 1177

- ***State of Maharashtra v. Madhukar N. Mardikar***²⁰, in this case the apex court held that “even a prostitute has a right to privacy and no person can rape her just because she is a woman of easy virtue.”²¹
- ***BodhisatvaGautam v. Subra Chakraborty’s case***²², here the issue was regarding the award of compensation to rape victim and it was observed that rape is not just a crime against an individual but it is against the society at large. It pushes a woman into an ocean of emotional crisis and must be treated as a most heinous crime. It is infringement of right to life which is considered to be the most high and cherish fundamental right since for a woman it is vital to lead a life with human dignity and a crime like rape destroys the dignity of a woman. It was held that compensation to the rape victim will be upheld even when the accused has not been proven guilty of his offence.
- ***Delhi Domestic Working Women’s Forum v. Union of India***²³, In this case around seven military jawans brutally raped six girls of village who were travelling in a train. This case emphasised on working for rape victims and the dire need for establishing a Criminal Injuries Compensation Board. Herein it was a suggestion made to allow compensation whether or not that accused is declared guilty or not. Under Article 38(1) of the Indian Constitution the state shall strive for welfare of the society. The board will take into consideration a variety of issues for awarding compensation such as pain suffering and mental agony as well as loss of employment due to pregnancy and the probable expenses of the child born out of such crime.
- ***The Chairman, Railway Board and Others v. Mrs. Chandrima Das and Other***²⁴, monetary compensation of Rs. 10 lakhs was awarded as compensation for rape victim as it was opined by the high court that rape is not just a simple matter of violation of ordinary rights of an individual but it amounts to infringement of fundamental rights.

(D) Compensation relating to Medical Negligence

- ***Dr. Suresh Gupta v. Govt of NCT of Delhi***²⁵, herein the court held the accused liable both under criminal and civil law. It was observed that if the patient loses life due to the doctor’s negligence then the doctor could be put into trial under criminal law as well only if the amount and degree of negligence is serious and unpardonable which cannot be tolerated and that the negligent act has caused the death of his patient. Thus any act

²⁰ AIR 1991 SC 207

²¹ [1991] 1 SCC 57

²² AIR 1996 SCC 922

²³ (1995) 1 SCC 14

²⁴ (2000) INSC 26

²⁵ [2004] 6 Scale 432

of doctor which indicates a disregard to life and security of the patient then that should be treated as a grave crime against the State.

- **Poonam Verma v. Ashwin Patel**²⁶, herein the doctor prescribed the patient an allopathic medicine which was a wrong prescription since he was registered as a homeopathic practitioner and due to his act of negligence the patient was dead. It was held by the court that the accused is guilty and must compensate the widow of the deceased as he did an act which he was not allowed to practice.

(E) Compensation relating to Environmental Law

- **M.C. Mehta v. Kamal Nath**²⁷, herein the victims of pollution were awarded compensation by the apex court. It applied the 'Polluter Pays' principle²⁸. It was held to hold liable the person carrying out such activities which are inherently or hazardously dangerous so as to mitigate the loss suffered by another person as a result of such activity.²⁹The court emphasised on the requirement of compensation on the following grounds:

- Compensation for restoration of the environment that has been degraded by the disputed activities.
- Compensation to those who have suffered as a result of the pollution caused by the act.
- Compensation as exemplary damages to deter and detain other people from doing an act of environmental pollution.

The Court observed that *"The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words 'in appropriate cases' because we must make it clear that it is not in every case where there is a breach of a Fundamental Right committed by the violator that compensation would be awarded by the Court in a petition under Article 32. The infringement of the Fundamental Rights must be gross, patent, that is, incontrovertible and ex-facie glaring and either such infringement should be on a large scale affecting the Fundamental Rights of a large number of persons or it should appear unjust unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person*

²⁶ [1996] 4 SCC 332

²⁷ AIR 2000 SC 1997

²⁸ Also see, Indian Council for Enviro Legal Action v. Union of India, AIR 1996 SC 1446

²⁹ Also see, Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715

*or persons affected by such infringement to initiate and pursue action in the civil courts.*³⁰

The court's power is not fixed only with respect to Article 32 only that means it can also grant compensation in a PIL or a Writ Petition as well.

V. CRITICAL ANALYSIS OF COMPENSATORY JURISPRUDENCE IN INDIA

When a crime is committed against a person, the victim loses out a lot apart from incurring damages and injuries. The work of a judiciary should not only be to punish the guilty but also compensate the victim as even if the accused is punished, the victim's loss is not compensated. The compensation given should at least try to put the victim in a state in which he was before. It is not like victims of crime can never ask for compensation as such a prayer is available under civil laws, but filing two different suits for the same offence in two different courts. The proceedings for one suit are most of the times is agonizing, that such a procedure of filing different suits only gives the victim a second traumatisation.

The idea behind providing compensation is legal as well as humanitarian. The inability to protect the person by the State makes it legally obligatory for the State to compensate him. The victim goes through such pain and many times permanent loss of income only makes it logical for him to be compensated.

In cases where a person dies or is sent into a vegetative state, compensation should be very high as many times, the victim himself is the sole bread 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 small fine, no good happens to either the accused or the victim's family.

In the Indian society of the 21st century, many people want their brides to be "pure" virgins. A victim of rape in such cases not only loses out on the opportunity to marry into an otherwise decent family but is also discriminated upon for no fault of hers. It is often said that the most prized possession of a woman is her dignity and respect. In the society where people still have an old mind-set, the life of such a woman only degrades. It only makes sense to compensate such a victim well apart from punishing the accused. Mental shock, loss of income and cost of litigation should be taken into consideration when coming out with compensation and the Courts should hence compensate the victims more frequently.

The author suggests that while ordering for compensation a lot of criteria must be taken into consideration such as capacity and ability of the accused to pay, injury actually suffered the

³⁰Supra 36

justness of the claim of the victim and the nature of the crime committed and such other material facts. However in my opinion the compensation to be awarded must be reasonable that is it must not be excessive considering the facts and circumstances of the case.

The author applauds the activist judiciary for playing a predominant role in providing socio-economic justice for the growth and development of people in matter of protecting life, liberty and property. The criminologists, penologists, and eminent scholars as well as judiciary through its active role along with reasoned decisions have opened up the gates of jurisprudence to deal with compensation to the victims of crime who have been continuously been neglected and secluded from Indian criminal justice system.

VI. CONCLUSION AND SUGGESTIONS

The author would like to conclude that awarding of compensation is quintessential in every aspect of law whether it be criminal law, constitutional law, environmental law and other areas as well but the courts must construe it liberally. They must take utmost care of the quantum of compensation that it must not be higher than what should be awarded. The suggestions of Supreme Court in its various decisions and also Law commission's recommendations must be incorporated to establish a Compensation Board to assist the victims to mitigate the loss suffered and to cope up with financial issues.

The paper clearly points out that the current legal framework is inadequate in terms of providing compensation to the victims who have suffered as a result of the offence committed. All we need an elaborate and a comprehensive legal framework on the payment of compensation as when how and what amount to be granted and also a need for specified amount to prevent arbitrary decisions. It is solely a matter of court's discretion whether to grant compensation or not to grant depending on facts and circumstances of each case and also applying the principle of justice, equity and good conscience. The sweet will of the judges prevails in this particular matter which is an area of concern.

Earlier India did not possess a legislation that comprises of all kinds and categories of compensation to victims. "Compassionate treatment of victims under the criminal justice system itself leads to the belief in the system which is enhanced by way of compensation programmes, independent of conviction of offenders".³¹

"It is need less to point out that the whole legislative paradigm coupled with lack of judicial determination has exposed numerous flaws of the present legal system about the compensation

³¹Bhumika Sharma, 'Compensation to victims of crime under criminal law', <http://www.mightylaws.in/573/compensation-victims-crime-law> last accessed on 5th September 2018

therefore there is need for revamping the whole legal system once. The mandatory changes that are needed are as follows:

- The suggestion given by the law commission of India in its 42nd report on Indian Penal Code must be taken in to consideration and it would be better if the legislature also take in to account the separate note of Justice R.L. Narsimha a member of the commission.
- The law must also provide recording of reason for not providing or providing the compensation as we have in the case of death sentence in Cr.P.C.
- The law must also provide for institutional set up as we have in western countries.
- If possible it would be better to give the compensation as a right to victim.”³²

The right to compensation is seen as an entitlement to ensure enforcement of fundamental rights and freedoms that involves the incorporation of doctrines of restitution, restoration, correction and rehabilitation. The jurisprudence on human rights and constitutional rights with respect to compensation depicts logical and intellectual essence of the doctrine of rule of law with the corresponding changes as per the dynamic society.

³² Abhishek Anand, ‘Compensation to the victim of crime: Assessing Legislative framework and role of Indian Courts’ <<http://www.legalserviceindia.com/articles/pun.htm>> last accessed on 5th September 2018

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