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**LAW RELATING TO COMPENSATION TO VICTIMS
UNDER INDIAN CRIMINAL JUSTICE SYSTEM**

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Law Relating to Compensation to Victims under Indian Criminal Justice System

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Abstract – A victim is a product of crime and his rehabilitation and restoration in the society is an indispensable facet under criminal justice system. Victim compensation is one of the several modes of rehabilitation, reparation and assistance of the victim of a crime. But there is not a single comprehensive law which exclusively related to compensation and rehabilitation of victim of a crime. Under the Code of Criminal Procedure, 1973 there are many provisions relating to compensation of victim, but these are lengthy and not uniform throughout the country. A comprehensive law is much needed solution which exclusively deals with and provided for the victim a speedier mode of compensation, rehabilitation and assistance in criminal justice system.

Keywords: Crime, Compensation, Rehabilitation, Victim

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INTRODUCTION

Victim compensation is an indispensable facet under criminal justice system in India and the rest of the world. It cannot be parted from criminal law. A victim of a crime is the person against whom an offence has been committed by the offender and in certain cases dependents, guardian or heirs of a person also falls under the definition of victim.¹

As it is the duty of the state to create an atmosphere in the state which should be free from any type of crime against the person or property of a person within the state, and in case of any invasion on a person's legal rights or fundamental rights by another person to punish the offender regarding such offence. Furthermore, the duty of state does not cease on punishing the wrong doer but it continues until the victim of such crime has been rehabilitated and restored.

Victim compensation is one of the several modes of rehabilitation or reparation and assistance of the victim of a crime. But it is often an ignored subject under criminal justice system. there are several enactments which exclusively deal with the crimes, their punishment and procedure relating to such crimes and punishments of the offenders. But there is not a single comprehensive enactment which exclusively related to the compensation and rehabilitation of the victims of crimes.

Though there are some provisions relating to rehabilitation and compensation of victims in Fatal

Accident Act, 1855; Probation of Offenders Act, 1958; Negotiable Instruments Act, 1881; the Code of Criminal Procedure 1973 and The Merchant Shipping Act, 1958, etc. which provide compensation to victims of the crime in different cases. But in spite of these provisions victim restitution is still the vanishing point of our criminal justice system and this deficiency in the system must be cured by the Legislature. Our Legislature should time to time make changes through amendments in laws relating to compensation to victim according to the need of the time.

In this paper we will try to study, analyze and to keep aware the readers about provisions related to victim compensation under the Code of Criminal Procedure Code, 1973.

R.V. Kelkar in his book says – "The main function and purpose of a criminal court is to punish the offender while that of a civil court is to make the wrong doer compensate for the injury or loss caused to the party. However, if these two procedures can be combined without affecting the criminal and civil process, it would be just and expedient to do so as it would save time and money in seeking remedies in two different codes"², and the Code of Criminal Procedure, 1973 incorporates that idea to an extent and also empowers the court to grant compensation to the victim of a crime.

"Victim" and "Compensation" defined

¹ Clause (wa) of Section 2 of the Code of Criminal Procedure, 1973.

²See kelker's code of criminal procedure 5th edition 613.

The term "victim" has been defined in The Code of Criminal

Procedure, 1973 under section 2 (wa), 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"³.

The literal meaning of word "victim" is a person to whom any harm or injury is caused, or a person killed as a result of an accident, crime or other event or action and also includes his guardian and legal heirs.

A victim is the creation of a crime, and every crime produces a victim. The victim is generally considered as an informant or a person assisting the court in trials. The main purpose of the criminal justice system is basically to redress the victimization of the victim and to do complete justice by punishing the offender, but until the victim of crime is rehabilitated and compensated and restored in the society, only by punishing the offender, the court cannot do complete justice. Thus compensation and rehabilitation of a victim is an inseparable part of criminal justice system. Thus if an offence has been committed, it is not sufficient to punish the guilty but rehabilitation, reparation and assistance to victim is also necessary to remove the injurious effect of crime upon the victim. So far as it is possible through compensation then it should be made to the victim either it comes from accused through fine or from state by victim welfare schemes.

The term "compensation" in present context means payment of money or amends for the loss sustained or anything given to make things equivalent, a thing given to amends for loss, recompense remuneration or pay⁴.

The literal meaning of compensation is the money which is given to compensate the victim for the loss and injury. The object of the compensation is to restore the victim in his pre-state if possible, and to make the loss and injury good. It does not mean benefit or profit to the victim but a fair and reasonable provision as necessary for the purpose of making good the loss sustained by victim of the crime. In *Hari Krishan and the State of Haryana v. Sukhbir Singh and Others*⁵, the Supreme Court held "that the power of imposing fine intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is to some extent a constructive approach to crime and step forward in a criminal justice system. It is because of this that all criminal courts should exercise this power liberally so as to meet the end of justice, by cautioning that the amount of compensation to be awarded must be reasonable".

³The Code of Criminal Procedure, 1973. section 2 (wa)

⁴State of Gujrat v Shantilal, AIR 1909 SC 634 – 644.

⁵AIR 1988 SC 212.

Victim Compensation under Cr.P.c.1973

In The Code of Criminal Procedure, 1973 there are several sections which provide for compensation to victim, the criminal code has recognized the principle of victim compensation in several sections. Section 237, 250, 265B, 265E, 357, 357A, 357B, 358 and 421 contain provisions relating to compensation in case of different situations and offences.

The court may make an order for compensation under section 237 in case where it is satisfied the accusation under section 199(2) of Cr.P.C. 1973 was made without any reasonable cause. Amount of fine under this section cannot exceed 1000 rupees. Amount of compensation under this section is paid to the accused (victim) for mental suffering and wastage of time and money.

A similar provision is under section – 250 provides for compensation for accusation without reasonable cause.

The main object of these two provisions (237, 250) is not to punish the complainant but award the person, against whom without reasonable ground the accusation is made, a reasonable compensation.

COMPENSATION UNDER PLEA BARGAINING

The law Commission of India's 142nd, 177th and 154th reports advocated for a new provision under criminal justice system for the purpose of inexpensive and speedy trial and to lessen the overload of criminal courts, and on the recommendation of 154th law commission report a new Chapter XXIA plea bargaining (containing section 264A to 265L) was added in The Code of Criminal Procedure, 1973⁶.

As the victim of a crime is always an ignored person in the criminal justice system, however, by insertion of plea bargaining this concept has changed to some extent. By virtue of the provisions of chapter XXIA Plea Bargaining a victim has a chance, under section 265B to enter into a mutually satisfactory disposition with the accused, where an application has been made by the accused for plea bargaining. The mutual agreement between the accused and victim may inter alia provides for compensation for loss, injury and expenses incurred, upon which victim gives his consent to disposition of the case. When any such agreement and its report is sent to court, and if the court after receiving it finds that the agreement was made voluntarily in accordance with the provision of the code by the parties, and the court is satisfied from terms of the agreement and disposition. It shall inter alia make an order for award of compensation to the victim by the accused in accordance with the terms of disposition. Plea Bargaining is time saving process makes speedy disposal of criminal case, saving the time of court and victim, putting a certain end to

⁶Ins. by Act 2 of 2006, Section – 4 C w.e.f. S-7-2006

uncertain life of a criminal trial from the point of view of giving relief to victims.

Thus, we can say that Plea Bargaining is beneficial process to the victim as he could get the compensation, without getting involved either as witness or seeker of compensation.

GENERAL PROVISIONS RELATING TO COMPENSATION

Section 357 is the general provision relating to the compensation to victim after the conclusion of the trial, by the court, while sec – 357A is a general provision relating to compensation where it is given by the state on recommendation of the court or on application of the victim of a crime.

Any court either trial or appellate, High court or session court may make an order, under section 357, for compensation to victim after the conclusion of trial. Sub section (1) of section 357 provides for when the fine form a part of sentence or when court impose a sentence of fine. In *Swarn Singh v. state of Punjab*⁷. The Apex Court observed that while awarding compensation, it is necessary for the court to decide whether the case is fit enough to award compensation. It is the necessary for the court to decide whether the case is fit enough to award compensation. If the case is found fit for compensation, then the capacity of the accused to pay the fixed amount has to be determined.

When fine does not form a part of a sentence imposes by the court section 357 (3) applies. In the former case power of court is limited to impose fine, court cannot impose more fine than is prescribed by the provisions of law so the provision for compensation to victim has to be made out of the fine imposed upon the accused, while in the latter case when fine do not form the part of sentence court have discretion to award compensation to victim who has suffered any loss by reason of the act for which the accused has been so sentenced. The supreme court in *Mangi Lal v. State of Madhya Pradesh*⁸ held that the basic difference between sub-section (1) and (3) of section 357 is that in the former case, the imposition of fine is the basic and essential requirement, while in the latter even the absence thereof empowers the court to direct payment of compensation.

Under sec. 357(1) compensation can only be granted on the conviction of the offender if there is no conviction or accused is discharged or acquitted court has no power under this section to impose fine or award compensation to victim. Further one more flaw in this section is in cases where victim has under the

urgent need of rehabilitation or assistance this section do not address the plight of the victim and ignored this perspective, to remove such flaw a new section 357A was added on the recommendation of 154th report of law commission of India⁹. Now the victim of a crime may get compensation from the state at any stage of investigation, inquiry or trial while under previous provision court may grant compensation only when there is a conviction. Under new provision state is liable to provide compensation with addition to any relief given by the court under section 357, it avoids a situation when victim is remediless due to very poor background of accused or he is reluctant to pay compensation considering his prolonged imprisonment.

SCHEME FOR COMPENSATION

The provision of victim compensation scheme is the much desirable relief to the victim of offences therefore one of the most progressive legislation in recent time. The scheme provides for that the state government in coordination with central government shall prepare a scheme for providing funds for the purpose of compensation to victim¹⁰. Under the scheme when an application for compensation is made to the court by victim and the court if find that victim is worthy of compensation or any interim compensation during the proceedings as the case may be, it may make recommendation to the District, or State Legal service Authority, and the quantum of compensation and award of compensation shall be decide and made respectively by the authority under the scheme made by State government in coordination with central government. In case where compensation is not adequate the court may recommend under this section for adequate compensation.

Provision under section 357A is a perfect example of beneficial legislation and can be relied upon by the victim in the following situations namely:

The offender

- (a) is not traceable, or
- (b) is not identified but victim is identified and where no trial takes place.

As Justice should not only be done but it must be seen to have been done, it necessitates just not only punishment to the offender but caring for the victim and protection of his rights and supporting him in time. The provisions under criminal procedure code support this idea after insertion of new Sections– 357A, 357B, 357C. The provisions also indicate that

⁷AIR 1978 SC 1525.

⁸AIR 2004 SC 1280.

⁹Ins.by Act 5 of 2009, Section 28 C w.e.f. 31-12-2009.

¹⁰ Section 357A (1) of the Criminal Procedure Code, 1973

the power of courts to award the compensation is not auxiliary to other sentences but it is in addition thereto.

Special provisions relating to compensation and rehabilitation are continues in sections 357B and 357C, in case of victim of rape or acid attack. It was added in 2013 after the commotion of the people of India over Nirbhaya case and victim of acid attack Luxmi's case. These sections not only provided for compensation to rape victim or acid attack in addition to other amount which has to be given them under any other provision of law but also provide complete rehabilitation of victim by providing free medical aid in any medical institute or hospital, either private or government run.

CONCLUSION AND SUGGESTION

The main purpose of compensation to victims is their rehabilitation, and assistance, so that they can be restored in the society again. Though there are many provisions under the code relating to the compensation but these provisions provide compensation on the discretion of the court, in many cases there is very meager amount is provided by the code, procedure to obtain compensation is lengthy and not uniform throughout the country. Apart from providing compensation nothing much has been done for prompt and complete rehabilitation. The government of our country must think about these aspects, if possible must enact and implement a law which exclusively deals with and provides for the victim a speedier mode of his compensation, rehabilitation and assistance in criminal justice system.

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