

## UNDERSTANDING HUMAN RIGHTS THROUGH THE PRISM OF COMPENSATION TO VICTIMS OF CRIME

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*"Human rights are what reason requires and conscience commands. They are us and we are them. Human rights are the rights that any person has as a human being. We are all human beings; we are all deserving of human rights. One cannot be true without the other.... One cannot pick and choose among human rights, ignoring some while insisting on others... Their purity is their eternal strength."*<sup>1</sup>

Human Rights- Rights which every human being is entitled to enjoy and to have protected sheerly by virtue of being a member of human species irrespective of any other factor.

Universal Declaration of Human Rights proclaims that all human beings are born free and equal in the dignity and rights and everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind such as race, colour, language, religion, potential or other status.<sup>2</sup>

**Human being is the kernel of human rights and these rights help to have an all round development.** But why do we need to protect human rights? Because, denial of human rights gives birth to conflict. In order to keep peace and security we require human rights. The roots of human rights can be found in religion, traditions and struggle for freedom. For example; *Dharma* protected human rights, *Hinduism* preached humanity and non-violence, *Buddhism* laid stress on equal and casteless life under the influence of which emperor *Ashoka* became an ascetic, *Christianity* gave the idea of equality before the law of god and recognized human dignity, *Islam* stressed upon equality and universal brotherhood and sanctity of life, signing of *Magna Carta* in 1215 AD is considered as the first milestone of England which provided:

'To no one will we sell, to no one will we refuse or delay right to justice'.<sup>3</sup>

In every organized society, certain acts are prohibited on account of punishment. The criminal law involves the idea of injury to the State or collective injury i.e. criminal law provides the ultimate means to society for protection of

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1. The Quotable Kofi Annan-Selections from Speeches and Statements by the Secretary General 33.E.98.I.10.New York. UN Publications(1998)

2. UDHR, 1948 Article 1 and 2

3. Clause 40

its individuals.

A victim cannot be ignored in a criminal justice system. He just cannot be a forgotten subject. Criminal justice would become a vacuum if victim is not given his due share of justice.

### **But who is a victim?**

In a layman's language, the term victim can be understood as a person who suffers some harm or injury.

**Principle 1** of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Powers<sup>4</sup> defines victim of crime as-

“Victims” mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.<sup>5</sup>

Victims of Abuse of Power means ‘persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights’<sup>6</sup>

In India the **Code of Criminal Procedure (Amendment) Bill, 2006** under Section-2(wa)<sup>7</sup> as-

‘Victim’ means a person who 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.

Out of the three organs of democracy justice is considered as the highest; as the Preamble of the Constitution recognizes principles of justice first in the order and then comes liberty, equality and fraternity.

**With the conviction of the offender, can we say that ends of justice are met?**

**The answer is No. But why?**

Because if we talk about a balanced approach then something needs to be changed in the ideology of law. The change is that of **adequate compensation to victims of crime**. There is no specific statute dealing with

4. General Assembly Resolution 40/34 of 29th Nov. 1985.

5. Human Rights: A Compilation of International Instruments’ Vol-1 1994, UN Publications at 382.

6. Ibid. 384

7. Bill No-LXXX of 2006 [www.prsindia.org/docs/bills/1167468093:bill21\\_2007032621\\_CRPC\\_2006\\_Bill.pdf](http://www.prsindia.org/docs/bills/1167468093:bill21_2007032621_CRPC_2006_Bill.pdf)

the compensation to victims of crime. Only a few provisions are there speaking very little about their right of compensation. In the long run of litigation it is very difficult to express in words the sufferings and pains of the victims. The victim has to face the stigma of being a victim all through her/his life. Even if he has the mental stamina to start his life afresh, the lack in monetary resources will not let him do so. Moreover he requires a whole life mental stamina to get back to his former position. Criminal law is the reflection of the public opinion.

***Indian criminal justice system is not victim oriented but accused oriented.***<sup>8</sup>

We follow adversarial system in which the accused is presumed to be innocent till his guilt is proved beyond reasonable doubt. Hence an in-depth thought is required as to how victim can be benefited the most under such a system. The rule of law demands that wrongs should not remain unredressed. Adequate compensation must be provided for breach of civil or criminal offences.

In *Kiranbala Dandapat Vs Secretary, Grid Corporation of Orissa Ltd*<sup>9</sup>, the court observed, compensation means anything given to make things equivalent, anything given, or to make amend for loss, recompense, remuneration or pay which need not necessarily be in terms of money because law may specify principles on which and manner in which court orders to be done, or money which court orders to be paid by person whose acts or commissions have caused loss or injury to another in order thereby that person damnified may receive equal value for his loss or be made whole in respect of his injury.

In *Smt. P. Ramadevi Vs C.B. Saikrishna*<sup>10</sup> the Court observed, compensation is an amount paid in advance for any loss of life, loss of earning or loss of dependency. It is not a debt.

In *State of Gujrat Vs Hon'ble High Court of Gujrat*<sup>11</sup>, the Court held- "... the court cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguards of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime.... A victim of crime cannot be a 'forgotten man' in the criminal justice system. It is he who has suffered the most. His

8. Chakraborty, N.K. Dr., 'Victim Assistance and Compensation to Crime Victims Under Indian Criminal Justice System', Legal News and Views, Vol-14, No. 5(May 2000) at 11

9. 2000 ACJ 1286 (Orissa) (DB)

10. AIR 1994 Kant 8(12)

11. AIR 1998 SC 3164

family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation etc. An honour which is lost, or like which is suffered out cannot be recompensed, but then monetary compensation will at least provide some solace.”

The right of a victim of crime to receive compensation is recognized under Section 357 of the Code of Criminal Procedure under which the court has the discretion to pay compensation to the victim from either out of fine imposed as part of the sentence or even where no fine is imposed.

In *Girdhari Vs State of Punjab*<sup>12</sup> the court held that no order for compensation under Section 357(1) can be made unless there is a substantive sentence of fine.

Under Section 357 every victim may not get compensation. Compensation can be awarded only when :

- ❖ Substantive sentence is imposed and not when accused is acquitted.
- ❖ Quantum of compensation is limited to fine imposed.
- ❖ If no fund is realized compensation cannot be directed to be realized.
- ❖ Under 357(1)(b) trial court can award compensation only when it is ‘recoverable’ by the victim in civil court.

‘Recoverable’ indicates the paying capacity of the offender.

**Here comes the violation of the basic human rights of the victims. Does it mean that only when the offender is rich, can victim hope for getting adequate compensation?**

In *Sarwan Singh Vs State of Punjab*<sup>13</sup>, the SC imposed a fine of rupees 3500 on each accused which was to be paid to the widow of the deceased (who was murdered) as compensation.

In *Nand Ballabh Pant Vs State(UT of Delhi)*<sup>14</sup>, a fine of rupees 1000 was imposed which was to be paid to the widow of the deceased by the way of compensation.

The *154th Report of the Law Commission*<sup>15</sup> of India recommended to incorporate Section-357-A in Criminal Procedure Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the courts. The compensation is for-

- a) Injury

12. AIR 1982 SC 1229

13. AIR 1979 SC 1177

14. MANU/MH/1032/2007

15. Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996), 63

- b) Any loss or damage to the property of the claimant which occurred in the course of his/her sustaining the injury and
- c) In case of death from injury resulting in loss of support to dependents<sup>15</sup>.

This recommendation has also not been given effect to by the government.

In *Kunhimon Vs State*<sup>16</sup>, justifying the necessity of compensation to the rape victim, the Court awarded a fine of rupees 3000 to four accused and to one accused rupees 10000 to be paid as compensation to the rape victim of 17 years along with three and a half years of imprisonment.

In *State of Punjab Vs Gurmeet Singh*<sup>17</sup>, imprisonment of five years and a fine of rupees 5000 was imposed upon the accused for raping a tenth class minor girl.

In *Rajan Vs State represented by The Inspector of Police*<sup>18</sup>, the victim of rape was a 17 years old girl. A compensation of rupees 25000 was paid under Section 357(1) of CrPC.

In *K. Sivasankar Vs State by Inspector of Police*<sup>19</sup>, the accused was charged with the offence under Section 376(2). The victim was a girl of five years. A compensation of rupees 25000 was paid to the victim under Section 357(1) CrPC. The rigorous imprisonment of ten years was converted into the period of sentence already undergone by the accused i.e. two years and four months after conviction. Taking into consideration the age of the accused i.e. 21 years at the time of commission of offence and superficial minor simple injury on the person of the victim girl, leniency was shown on the sentence of the accused.

In *Rupesh Kumar Vs State of Chattisgarh*<sup>20</sup> the accused was convicted under Section 376 and 511 for attempt to commit rape. The sentence of five years was reduced to three and a half years and a fine of rupees 5000 was imposed.

In *Trimbak Vs State of Maharashtra*<sup>21</sup> there was a sudden quarrel which resulted in a person's death. The complainant was awarded a compensation of rupees 2000.

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16. 1988 Cri.L.J.493 Ker

17. AIR 1996 SC 1393

18. MANU/TN/8881/2007

19. MANU/TN/8862/2007

20. 2009 Cri.L.J. 1882(Chh.)

21. MANU/SC/7284/2008

In the famous *1984 anti-sikh riots* number of victims are waiting for their compensation. A compensation of rupees 7 lakh has already been provided but most of the families are yet to receive it.

In the *State of Maharashtra Vs Manik Mohan Gaikward and Bhausahab Mohan Mali and Manik Mohan Gaikward and Bhausahab Mohan Mali Vs The State of Maharashtra*<sup>22</sup> the accused were convicted under section 376(g) IPC and a fine of rupees 500 was imposed along with rigorous imprisonment of 10 years.

Moreover whenever the amount of compensation is enhanced, the sentence is reduced. There are certain questions which strike our minds:

- ❖ Is the conviction of accused sufficient while delivering justice to the victim without compensating her?
- ❖ Is the amount of 500 or 5000 sufficient to let the victim start his/her life afresh?
- ❖ Although compensation is not mandatory but if awarded should it not be adequate?
- ❖ Why compensation is not mandatory?
- ❖ Why compensation is linked with the paying capacity of the offender?<sup>23</sup>
- ❖ Why the sentence is reduced when the compensation is increased?

### Conclusion

Society gets justice when the offender is punished but victim gets justice on receiving compensation and that too 'adequate' along with conviction of the offender.

Crime is inevitable but can be reduced by giving a feeling to the general public that their grievances are redressed appropriately.

We talk about fundamental rights and their protection. Is no or inadequate compensation not violative of a person's right to life? The answer to all these questions is only one and that is an immediate change in the criminal justice system by which the compensation should no more be a discretionary but a mandatory remedy which the victim is able to claim as a matter of right rather than beg. Till then the courts must not be reluctant in providing maximum compensation to the victim which will help him/her in restarting the life bypassing all the hurdles. The compensation in the times of Welfare State gives the

22. MANU/NH/1121/2008

23. This is the biggest reason why most of the offences are not reported because even after such a long litigation the victim is hardly given anything relevant. This increases in taking revenge at one's own level rather than approaching the authorities.

inference that it must, must and must be provided and it must be reasonable and in certain cases detrimental also where justice so demands. Compensation must not be a mere eye wash making a mockery of justice.