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## VICTIM COMPENSATION SCHEME: ROBUST OR FRAIL - A STUDY WITH SPECIAL REFERENCE TO TELANGANA STATE VICTIM COMPENSATION SCHEME -2015

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“It is the weakness of our jurisprudence that victims of crime and the distress of their dependents of the victim do not attract the attention of the law. Victim compensation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature”.<sup>1</sup>

**Hon’ble Jus. Krishna Iyer**

### Abstract

In recent years considerable attention has been directed to a wide variety of programs for assisting victims of crime. One such program is to compensate victims of crime. The idea of compensation existed since ancient times and is an old age one. But its systematic development on more scientific lines has begun during the last few decades following the United Nation’s Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985. The modern states have recognized the importance of compensation to victims and framed victim compensation schemes on the lines of the Universal Declaration. Many countries such as New Zealand, UK, Canada, Australia, India, etc. have constituted funds for payment of compensation to crime victims. In this article, an attempt has been made to analyse the various compensation schemes across the globe and special emphasis has been laid on the victim compensation scheme for the state of Telangana.

**Keywords:** Victims of Crime, Compensation, Victim Compensation Scheme, Criminal Justice System, Criminal Justice Process.

### Introduction

Victim compensation refers to the payment of compensation by the state to the victim from the state funds. The compensation to victims of crime is a matter of concern, throughout the world. Since long the victim was not the concern for the criminal justice system. Victim has no significant role in the criminal justice process. The victims of serious crimes are not getting their dues throughout the world. Initially, the focus of criminologists was on the aspect of punishment only. But eventually, they realized the fact that the victim of crime is getting nothing but mere satisfaction. This led to the development of victim protection jurisprudence.

The victim protection jurisprudence was first developed by the United Nations General Assembly (UNGA) in 1985 by adopting a ‘Declaration of The Basic Principles of Justice for the Victims of Crime and Abuse of Power. This was then ratified by a substantial number of countries including India. This declaration was a landmark in boosting the pro-victim movement. This declaration is considered as the Magna Carta for victims. In this paper, an attempt has been made to show that the compensatory rights of victims are not a vanishing point in modern criminology in India.

### Research questions

The primary questions this study sought to answer is

- (i) Who is a victim of crime?
- (ii) What are the theoretical foundations or bases upon which state compensation to crime victims are built?
- (iii) Is there any historical emergence and/or evolution, development and justification for state-funded compensation to crime victims?
- (iv) What are the various victim compensation schemes that are in existence globally?

### Aims of this research

Generally, this research study has aimed to analyse the means that exist in Indian law under which compensation can be obtained by crime victims for the victimization they have suffered. The study further emphasizes how crime victims can claim compensation from the government when the compensation awarded by courts is insufficient to meet the crime victims’ needs.

<sup>1</sup> Ratan Singh vs State of Punjab on 3 October 1979



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## Methodology of the study

To provide an answer to the research question of the study, the doctrinal research method was adopted.

For research, the primary and secondary sources of information were utilized. The primary sources that were relied on consist of statutes and legislations, decisions of judicial bodies, recommendations of law commission and relevant policy documents. The secondary sources of study are journal articles, academic publications, textbooks, published and unpublished thesis, conference and seminar papers.

## Literature review

An extensive study of the Constitution of India, Criminal Procedure Code and other relevant statutes have been made for this research.

The research questions for this study beginning with who is a victim of crime are discussed in the chronological order.

## Who is a victim of crime?<sup>2</sup>

The United Nations Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power, adopted in November 1985 gave an exhaustive definition to the phrase victim of crime which is as follows:

- Any person, group, or entity who has suffered harm, injury or loss due to illegal activities of others. The harm may be economical, mental, or physical.
- Thus, any person who has suffered harm because of a violation of criminal law is a victim.
- A person will be considered as a victim even when the offender is not identified or prosecuted. The term victim also includes individuals who have suffered harm as a result of assisting victims in distress or to prevent victimization.
- Not only the person who suffered loss or injury are the victims, but in some cases, the near and dear of victims (family members) are also the victims.

## Historical evolution of the concept of compensation by the state

At the outset it is important to understand how the concept of payment of compensation by the state has evolved.

In the early stages of human development, social control, restitution, reparation, compensation and revenge were handled by individuals who decided to be judges in their cause,<sup>3</sup> and in effect, the individuals made laws and carried out punishment in the form of revenge.<sup>4</sup> One of the earliest means of control of crime was through the crime victims' family's retaliation<sup>5</sup> and the restitution made in form of compensation by the criminals to the victims of crime. The idea of giving compensation to victims of crime is found in the opening section of the Code of Hammurabi of ancient Babylon.<sup>6</sup> Compensation was also found among the Greeks,<sup>7</sup> Romans,<sup>8</sup> and the ancient Germanic<sup>9</sup> peoples where restitution was awarded to crime victims.

“As time progressed, the crime victims' right to compensation from the criminal offenders became a national issue because criminal law itself became a state issue. Retributive justice or the punishment of the offenders and retribution, rather than compensation, became the principal legal concepts”.<sup>10</sup> The victim has become a mere prosecution witness and his role has been limited to testify to convict the offender. With these developments, the crime victim has become a forgotten entity in the criminal justice system.

<sup>2</sup> <https://blog.iplayers.in/compensation-victim-crime-india/> (Accessed Jan 23, 2019)

<sup>3</sup> [https://shodhganga.inflibnet.ac.in/bitstream/10603/7936/9/09\\_chapter%203.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/7936/9/09_chapter%203.pdf) (Accessed Jan 23, 2019)

<sup>4</sup> PA Roger, 'The need for compensating victims of violent crimes' unpublished master thesis Western Michigan University (1983) 3.

<sup>5</sup> S Derene, S Walker & J Stein 'History of crime victims' movement in the United States' (2007) National victim assistance academy 5.

<sup>6</sup> CH Walter Johns 'Babylonian Law the Code of Hammurabi' "If a man stole either an ox a sheep or an ass or a pig or a goat if it be from a god or a palace, he shall pay thirty times its value if it be from a freeman or private citizen, he shall pay ten times its value if the thief have nothing wherewith to pay he shall be put to death. 11th edition of the Encyclopedia Britannica, 1910-1911.

<sup>7</sup> DL Cairns, 'Representations of remorse and reparation in classical Greece' (1991) 173 in M Cox (ed) Remorse and reparation.

<sup>8</sup> OF Robinson, Penal Practice and Penal Policy in Ancient Rome (2007) 3.

<sup>9</sup> HS Maine, Ancient Law (1887) 378.

<sup>10</sup> IT Davies, 'Compensation for criminal injuries in Australia: a proposal for change in Queensland' (1991) 3 Bond Law Review 1.



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A movement for the recognition of the rights of the crime victims was initiated by Margery Fry an English activist, a magistrate and a social reformer, who started the modern reform of state compensation to crime victims.<sup>11</sup> As a result of Fry's advocacy for state compensation, the first modern law on crime victims' compensation was passed in 1963 in New Zealand<sup>12</sup> which served as a source of inspiration for a crime victims' scheme for other countries such as Britain, US, Canada, Denmark, Australia, etc. The Council of Europe (C o E) recommended the concept of state compensation to member states and the United Nations also advised and encouraged member states to provide financial compensation to victims of serious crimes when compensation is not fully available from the offender or other sources.

### Payment of compensation by the state for crime victims-Theoretical basis

To understand the concept of compensation by the state for victims of crime, one must pay attention to the relationship between the society, the victim and the offender. Several theories have been put forward as to why the state should assume responsibility for the harm caused to victims of crime such as social contract theory, legal liability theory, accountability theory, etc.

Social contract theorists believe that when individuals surrender some of their freedoms and submit themselves to the authority of state, the state is under an obligation to protect their rights and pay compensation when their rights are violated.

Legal liability theory enjoins the state to compensate crime victims because the state owes the subjects the duty to protect them against crime and the state has failed in this duty if it does not prevent crime, hence liable to pay compensation.

The accountability theory attributes a symbiotic relationship between the state and the citizen. Accountability is the state of being answerable, liable or accountable. When there exists a relationship between individual and state, the state is accountable and liable to compensate victims of criminal behaviour.

### Victim compensation schemes in different countries - An Overview

A Society which protects the innocent and that condemns violence will be more safe, confident and stable. Though society to the maximum extent takes measures to prevent crime, crime happens. Now the question is how to alleviate the suffering of the victim? The compensation awarded by the courts may not be adequate. What could then be done to recompense the victim?

In a constructive response to the questions above, this study has paid attention to crime victims and the need to establish or institute state-funded victim compensation schemes by analysing the various successful schemes.

In New Zealand "The Criminal Injury Compensation Act 1963 introduced the first state-funded scheme to compensate crime victims, and in 1975, this scheme was subsumed within the then-new accident compensation regime. Currently The Accident Compensation Act 2001<sup>13</sup> and the Sentencing Act 2002<sup>14</sup> provides the mechanism for compensating crime victims for personal injury suffered by the victims owing to the commission of a crime.

In the UK, state compensation for victims of crimes of violence committed in England, Scotland or Wales is contained in the Criminal Injuries Compensation Scheme 2012 (CICS)<sup>15</sup> and the scheme is administered by the Criminal Injuries Compensation Authority.

<sup>11</sup> M Fry, Arms of The Law (1951) 124: "We have seen that in primitive societies this idea of making up for a wrong has wide currency; let us once more look into the ways of earlier man which may still hold some wisdom for us."

<sup>12</sup> AL Miller, 'Compensation for personal injury: social insurance in comparative perspective' (1981) 4 Comparative Law Yearbook 1980 221-227. New Zealand adopted a Criminal Injuries Compensation Act which was subsequently incorporated into a wider scheme of accident insurance.

<sup>13</sup> The Accident Compensation Act 2001. section 3 The purpose of this Act "is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has as its overriding goals minimizing both the overall incidence of injury in the community and the impact of injury on the community."

<sup>14</sup>Victims may receive compensation directly from an offender for harm which is not personal injury through a sentence of reparation under the Sentencing Act 2002 an offender levy charged to all persons convicted of an offence in the District or High Court is used to fund a number of compensatory initiatives for victims of serious crimes.

<sup>15</sup> 'Compensation schemes: comparative report on national state compensation schemes' <https://www.trust.org/contentAsset/raw-data/038ad26c-b7c2-4ce1-8e22.../file>. (Accessed Jan 23, 2019).



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In the United States, there is no federal compensation scheme for victims of crime.<sup>16</sup> Every state, however, has a crime victim compensation programme that can provide substantial financial assistance to crime victims and their families. New Zealand and UK led the world in the establishment of comprehensive state-funded compensation programs/schemes for crime victims.

India constituted a victim's fund to provide compensation to victims of crime following the path of New Zealand and UK. The government of India, in 2009, directed all its states to prepare a scheme for victim compensation with the principal aim of providing funds for compensating crime victims or their dependants who have suffered loss or injury as a result of the crime and who require rehabilitation.<sup>17</sup> In 2015, the government of India formulated the Central Victim Compensation Fund (CVCF) scheme to compensate every identified victim of crime.<sup>18</sup>

### History of concept of compensation in India

In our country, the concept of compensation is not new and it existed in a more developed sense than the present. The evolution of the concept of compensation can be traced back historically in the writings of Manu and Brihaspati. Manu in his writings mentioned that the assailant shall be made to pay the expenses to the injured and the concept of compensation can be found even in the works of Brihaspati.

### Laws governing compensation of victims of crime in India

Compensation to victims means something given in recompense. The whole purpose of compensation is to make good the loss sustained by the victim or the dependant of the deceased victim. There are different provisions under the Indian Constitution and Criminal Procedure Code which provide compensation to victims of crime.

In India, a crime victim's right to compensation was recognised under the Code of Criminal Procedure 1898<sup>19</sup> but this right is available only where a substantive sentence of a fine is imposed and is limited to the amount of the fine realized.<sup>20</sup> The provisions relating to compensation to victims of crime are contained in sections 357, 357(1), 357 (2), 357 (3), 357A, 358, 359 and 250 of the Code of Criminal Procedure, 1973. The Constitution of India also provides for certain safeguards to the victim of crime under Article 14 and 21. The 154th Law Commission Report on the Cr. p c devoted an entire chapter to 'Victimology' in which the growing emphasis on victim's rights in criminal trials was discussed extensively.<sup>21</sup>

### Victim Compensation Scheme in India

Section 357A has been inserted in Cr. p c which casts a responsibility on the state government in coordination with the central government to prepare a scheme to pay compensation to the victims or their dependants. Along with the provisions of the constitution and Cr. p c a scheme of payment of compensation to victims has been introduced by the central government. In furtherance of the scheme in 2009, the central government gave directions to every state to prepare a scheme which has to agree with the centre's scheme for victim compensation. In compliance with the directions the Government of Telangana introduced the Telangana Victim Compensation scheme 2015.

### Telangana Victim Compensation Scheme, 2015<sup>22</sup>

The Telangana government introduced the 'Telangana Victim Compensation Scheme' as contemplated under Section 357A of the Code of Criminal Procedure, 1973 and in compliance with the directions of the Supreme Court. The Telangana State government started implementing the scheme from April 1<sup>st</sup>, 2015. The Telangana Victim Compensation Scheme is aimed at providing money to victims or their dependents, who have suffered a loss or are injured. For the application of the scheme the crime should have occurred within the State of Telangana and should have been reported within 48 hours of the occurrence of crime. The scheme shall apply to a family whose income does not exceed Rs.4.50 lakhs per annum and the employees of State/ Central Government, Boards, Corporations and Public Undertakings and Income Tax Payees shall not be eligible under this scheme.

<sup>16</sup> 'Compensation schemes: comparative report on national state compensation schemes' <https://www.trust.org/contentAsset/raw-data/038ad26c-b7c2-4ce1-8e22.../file>. (Accessed Jan 23, 2019).

<sup>17</sup> AK Pandey, 'Compensation of victim of crime in India' (2017) <https://www.blog.ipleaders.in> > General. (Accessed Feb 1, 2019)

<sup>18</sup> Ibid.

<sup>19</sup> Criminal Procedure Code, 1898 ss.545(1)(2), 546

<sup>20</sup> S Muralidhan 'Rights of victims in the Indian criminal justice system' (2004) National Human Rights Commission Journal 3.

<sup>21</sup> [https://shodhganga.inflibnet.ac.in/bitstream/10603/28181/8/08\\_chapter%201.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/28181/8/08_chapter%201.pdf) (Accessed Feb 1, 2019).

<sup>22</sup> <http://www.telangana.gov.in/Style%20Library/GoT/Content/pdf/web/viewer.html?/PDFDocument> (Accessed Feb 1, 2019).



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On the recommendation made by the Court or on an application made by any victim or his dependent the DLSA shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and shall award compensation within two months, in accordance with provisions of this scheme.

## Conclusion

The quandary of victims of crime has always been of interest to society. This is evinced by the importance given to the victim by the print and electronic media, which attempts to highlight by embellishing the trauma that the victim suffers, in the criminal justice process in India. However, when one examines the role of the victim in the criminal justice system, particularly in countries that follow the adversarial system, it appears that the society seeks to empathize with the victim, but does not give a vital enough role to the victim in the prosecution.

It must be recognized that the victim is one of the pillars of the criminal justice system and that without the support of the victim the system will not work efficiently. The Justice Malimath Committee<sup>23</sup>, which was established by the Government of India to suggest reforms to the criminal justice system, states that support of victims and witnesses will not be forthcoming unless their status is considerably improved, and hence there is a need to reform the law to this extent. Similarly, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985<sup>24</sup> by the United Nations General Assembly states that victims of crime and their families are unjustly subjected to loss, damage or injury and that they may suffer hardship when assisting in the prosecution of offenders.

With the development of victimology, a sub-branch of criminology victim rights has been expended in substantive and procedural laws. New laws and schemes have been devised to promote a right based remedy. Courts have recognized a shift from retribution to restitution and compensation may be payable by the state. The court has envisioned the award of compensation as an essential methodology not only to redress the violation of rights but also as a deterrent on the offender. Judiciary played a proactive role towards realising the rights of the victims. Compensatory jurisprudence developed in India with the liberal interpretation of Art.21 and judicial activism of the Apex court. Still, a lot must be done. There is a need for the rehabilitation of victims. By the latest amendments and schemes, the victim can approach the State or District Legal Services Authority for compensation. Any issues in the getting of compensation should be appropriately solved by the concerned authorities and the spirit of the compensatory jurisprudence Scheme should not be dampened. The days are gone where the state had only liability to make a trial and punish the accused. Victims also have human rights and should also be considered as part of criminal administration. This new version of the criminal justice system has a component of universal humanism. Victim compensations is a basic human right which is recognized by all. The recognition of the compensatory rights of the victim is a major development in the present. But there are certain impediments in the implementation of the victim compensation schemes. The major problem in the implementation of victim compensation schemes is the lack of awareness of the schemes. We could not find any posters, materials or any other publicity material or relevant information on the scheme. The lack of awareness shows in the number of victims making use of the scheme.

“For instance, in Telangana, only 27 victims availed compensation under this scheme in 2016-19. Of the 27, half a dozen acid attack victims and nine victims of sexually assault got the compensation from the Telangana State Legal Services Authority (TSLSA). The scheme was also extended to a few families who lost their breadwinner to murders. Altogether, a sum of Rs 46.50 lakh was disbursed as compensation, ranging from sums of Rs 25,000 to Rs 3 lakh, from 2016 to 2019”.<sup>25</sup> “The victims availing compensation under the scheme is nowhere close to the incidents of crime being reported every year. As per government data, close to 39000 cases of rape were reported across the country in 2016. Even if we were to go with the conviction rate of around 25%, we are talking about thousands of victims each year. And if compensation of Rs 3 lakh in each case was extended to these victims, the total compensation for rape victims alone would be more than Rs 100 crore. Victim compensation must become a right of the victim and her family”.<sup>26</sup>

After the Nirbhaya incident in 2012, Government of India established the Nirbhaya Fund in 2013, with an initial corpus of Rs. 1000 crore. There have been widespread reports of the non-utilization of the fund. Government data also shows that a lot of projects are yet to take off.<sup>27</sup>In 2015, to ward off the criticism over non utilization of the Nirbhaya Fund, the Government of India (GoI) setup

<sup>23</sup> Mali math V.S. (2003), Report of the Committee on Reforms of the Criminal Justice System, New Delhi

<sup>24</sup>U.N. Doc GA Res. 40/34 (1985)

<sup>25</sup> <https://m.dailyhunt.in/news/india>

<sup>26</sup> <https://factly.in/implementation-victim-compensation-scheme-leaves-lot-desired/> (Accessed Feb 1, 2019)

<sup>27</sup> <https://factly.in/implementation-victim-compensation-scheme-leaves-lot-desired/> (Accessed Feb 1, 2019).



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the Central Victim Compensation Fund(CVCF). The CVCF was also set up to streamline the compensation amount in various states for different categories of crime. The Government of India issues guidelines for the CVCF in 2015 and allocated Rs 200 crore from the Nirbhaya Fund to this scheme. The CVCF was aimed at harmonizing the state schemes with a minimum fixed amount of compensation for victims of various crimes.<sup>28</sup>

Compensation to a certain extent will help the victim to overcome the trauma undergone by the offence. It is important to realise that the victims are not offenders. When offenders are being rehabilitated and are given an opportunity to lead a normal life, the victims too must be compensated. The victim compensation schemes must be given wide publicity by the legal services authorities both at the centre and state level. More funds must be allocated by the central government towards the state victim compensation funds. Compassionate treatment of victims by payment of compensation will enhance the belief of victims in the criminal justice system. While providing compensation to victims, international norms must be complied with. Compensation must be given as a right to the victim. We can conclude by saying that compensation is not only required but is, in fact, a very essential aspect of criminal justice administration.

### Suggestions

1. The authorities must give wide publicity regarding victim compensation schemes.
2. There must be a well organised institutional set up to deal with cases related to compensation.
3. The law must also provide a recording of the reason for not providing or providing the compensation.
4. N.G. O's and other social groups have to create awareness amongst the public as to the available victim compensation schemes.

### References

#### Books

1. G.S Randhawa., *Victimology and Compensatory Jurisprudence* (Central Law Publications, Allahabad, 2011).
2. J.D.W.E. Mulder, *Compensation. The Victim's Perspective* (Wolf Legal Publishers, March 1, 2013).
3. Richard H. Saldana, *Crime Victim Compensation Programs: A Reference Guide to the Programs in the U.S*(Quart Zite Publications, May 1,1994).
4. S. Mundrathi, *Law on Compensation: To Victims of Crime and Abuse of Power* (Deep & Deep Publications, India,2002).
5. William L. Ginsburg, *Victims' Rights: A Complete Guide to Crime Victim Compensation* (Galt Pr; 1st edn., June1,1993).

#### Articles

1. Chetan Kumar. T.M, Chetan Irrannavar, "Victims Right To Compensation International Perspective", Vol-I, Issue XXXVI, Asia Pacific Journal of Research (February 2016)
2. Dipa Dube, "Victim Compensation Schemes in India: An Analysis", Vol-13, Issue-2, International Journal of Innovative Research in Science, Engineering and Technology (July – December 2018).
3. David Miers, "Offender and state compensation for victims of crime: Two decades of development and change", International Review of Victimology (2013).
4. Halhalli Jayashree, Dr. Balasaheb Garje, "Legislative measures of victim's compensation", Vol.-3, Issue-8, International Journal of Multidisciplinary Research and Development Online (August 2016)
5. Marvin E. Wolfgang, "Victim Compensation in Crimes of Personal Violence, Minnesota Law Review (1965).
6. Sonia Shali, "Compensatory Jurisprudence in India", Vol-3, Issue-4, Imperial Journal of Interdisciplinary Research (IJIR) (2017).

<sup>28</sup><http://www.legalserviceindia.com/legal/article-332-victim-compensation-scheme-an-aspect-of-modern-criminology.html> (Accessed Feb 1, 2019).