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A Critical Study on Implementation of Section 357A of the Criminal Procedure Code with reference to the Rights of the Victims

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Abstract

It is a weakness of our jurisprudence that the victims of the crimes, and the distress of the dependants of the prisoner, do not attract the attention of the law. The District Legal Service Authority (DLSA) or the State Legal Service Authority (SLSA) needs to decide the quantum of compensation to be given under the scheme. Section 357A was a necessary enactment, and is useful, because the victim need not prove his case to get compensation under this section, which should hasten the process, but unfortunately the scheme is not being implemented completely. This paper analyses the plight of the victims of crimes under the Indian Criminal Justice System, and the importance of section 357A for protection of their rights. It further argues that that the scheme is not being implemented properly, and there is a lack of uniformity in the statute of each state. The verification procedure of these states is justified only if it does not hinder the compensation of a genuine victim. It explains the importance of immediate compensation, and the role of judiciary in the journey from the enactment to implementation of any scheme and statute. This paper concludes by suggesting changes that could be brought into the Indian Criminal judicial system for the betterment of the victim's right and society at large.

Keywords:1.Victim 2. Section 357A 3. Interim Compensation 4. Victim Compensation Scheme 5. CRPC 6. Justice 7.Rehabilitation 8.Punishment.

I.Introduction

The "victimology" movement started during the 1960s, which gave an incentive to the government to give monetary compensation to victims of criminal offences. The idea prompted a lot of countries like USA and Canada to give compensation to victims of crime. The UN Declaration on Basic Principles of Justice for Victims and Abuse of Power was unanimously adopted by the General Assembly in 1985¹. Crime affects the individual

¹Groenhuijsen, M., The development of international policy in relation to victims of crime, 20 International Review of Victimology 34, 31-48 (2014).

victims and their families. Many of the crimes also causes the severe financial losses in addition to physical losses viz. injury and trauma. Victims are unfortunately the forgotten people in the criminal

justice delivery system. Victims are the worst sufferers. Victims' family is ruined particularly in case of death and grievous bodily injuries. This is apart from the factors like loss of reputation, humiliation, etc. The court has to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace. The criminal justice system is meant for doing justice to all the accused, the society and the victim. Justice remains incomplete without adequate compensation to the victim. Justice can be complete only when the victim is also compensated. In India, compensation for victims was available in the old Code as well, but it was limited to cases where huge amounts of fine were imposed and the fine collected was comparatively small. As the clamour for victims' rights gained momentum, keeping in mind the broad principles enumerated in the 1985 Declaration, a statutory scheme of compensation payable by the state was enacted.² Section 357A was inserted in the Criminal Procedure Code of 1973, by the 2008 amendment, making it compulsory for the states to provide adequate compensation to victims of crime under the Victim Compensation Scheme.

II. Object and purpose of enactment

Section 357 used to do the same task, it provided compensation to the victims in need, it was an important provision under sub-section(ii), but it was seldom invoked³, and therefore the task remained incomplete. It could not compensate all the victims, because of its limited jurisdiction. Under section 357, victims could only be compensated after the trial took place, and the victim proved his/her case. This problem was pointed out in the 41st Law Commission Report of India. Thereafter, section 357A was introduced in CrPC on recommendations of the 154TH Law commission report. Before this amendment, it was the duty of the accused to compensate the victim after the conclusion of the trial, but the State had no duty to pay compensation whatsoever⁴.

2anbir Singh, Victim Justice: A Paradigm Shift in Criminal Justice System in India, 4 Journal of National Law

University DELHI, 115–117 (2016).

3Hari Singh and State of Haryana v. Sukhbir Singh, AIR 1988 SC 2127.

4State of Madhya Pradesh v. Mangu, 1995 Cr LJ 3852.

This amendment can be considered as a progressive step in order to ameliorate the conditions of all the victims, who have suffered substantial loss as a result of any crime being committed upon them. This Section addressed the lacuna in Section 357 with a focus on rehabilitating the victim even where the accused is not tried.⁵ Whereas the victim need to prove his/her case under section 357, same is not the case with section 357A, because the main purpose of enacting such a rule is to give immediate help to the victims, as it might be the case that it is too late to help the victim by the trial gets over, or the accused might get acquitted by the end of the trial due to insufficient evidence.

III. Eligibility for grant of compensation

Almost all the states have set up their own victim compensation schemes after the 2008 amendment, but the eligibility for grant of compensation differs slightly from state to state, and there is no uniform criteria followed by every state in India, which might lead to problems as explained later in the paragraph. For instance, the victim compensation scheme in Mizoram provides compensation to people below the poverty line only⁶. Whereas, Orissa has made the scheme more broad based with taking more holistic approach with two objectives i.e. financial assistance to all victims of criminal offences as well as support services such as medical aid, counseling, shelter and vocational training. Although as it has been shown procedurally that the victim need not compulsorily prove his/her case in the court of trial, there are certain examinations and verifications held by the state authorities, which needs to be done in order to see that the victim has suffered "substantial" loss due to the incident, and that it would be difficult for the victim's family to make both ends to meet without the compensation and/or in dire difficulties of living the life with dignity in the society. Therefore, keeping

in mind the intent of the legislation, the schemes of all state legislature has enacted that verification should be complete within sixty days in most cases, except for Arunachal Pradesh where the verification needs to be completed within thirty days⁷. They are allowed to seek help from other authorities for this verification, such as the medical board (in case of Arunachal Pradesh) or police officer (in case of Odisha) or probation officer (in case of Madhya Pradesh)⁸

5 Compensation to Rape Victims- A Critical Analysis. The Criminal Law Blog, wordpress.com/2019/08/30/compensation-to-rape-victims-a-critical-analysis/ (last visited Sep 27, 2020).

6 The Mizoram Victims of Crime Compensation (Second Amendment) Scheme 2013, s 5(f)

7 Arunachal Pradesh Victim Compensation Scheme 2011, cl. 6(iv).

8 Dipa Dube, Victim Compensation Schemes in India- An Analysis, 13 International Journal of Criminal Justice SCIENCES, 339–356 (2018).

All this is acknowledgeable and considered necessary to be sure that the government's funds are not going into fraudulent expeditions. The need of application along with the necessary documentation is justified so long as it does not come as a hindrance for the eligible case of victim's compensation. Instead, the documentation should be in the nature of medical report and self-declaration with identity and domicile proof. In almost all the states, the applications for the claim by the victim get rejected due to various reasons such as inadequacy of material, documents does not support the claim, non-reporting of the crime, or lack of support by Police and Court. Further the rejections were made by the states without citing any reasons for rejection, except in Delhi, where it is mandatory to state the reason of rejection vide clause 9 of Delhi Victims Compensation Scheme, 2015⁹.

In addition to these, there are certain schemes which go against the basic purpose of the enactment altogether. The Assam Victim compensation Scheme, 2012, defines victim as "a person who has suffered any loss or injury caused by the reason of the act or omission for which the accused person has been charged."¹⁰ The scheme explicitly specifies the words "accused has been charged", which means that the accused has been identified and found guilty, which is in contrast to the meaning of sub-section 4 of section 357 itself. The State of Himachal Pradesh defines victim in the same way. These schemes show the problems caused in implementation due to lack of uniformity and the lack of coordination between the centre and the state. Such differences between the centre and the state, due to rivalry between different political parties in different states, as well as the centre, or whatever the reason might be, leads to defeating to meet the ends of justice under this enactment, as evident from the schemes of Assam and Himachal Pradesh. If a uniform scheme would have been set up by the centre, giving no power to the state to amend the section whatsoever, the purpose of the scheme would not have been defeated.

IV. Interim compensation

The law in many jurisdictions particularly in continental countries recognizes two types of rights of victims of crime, firstly, the victim's right to participate in criminal proceedings and secondly, the right to seek and receive compensation from the criminal court for injuries suffered as well as appropriate interim reliefs in the course of proceedings.

9. Delhi Victim Compensation Scheme, cl. 9.

10. Assam Victim Compensation Scheme 2012, s 2(f).

It was observed by the Supreme Court of India in the case of Suresh v. State of Haryana¹¹ that interpretation of Section 357 CrPC is include interim compensation also, In a case of where state failed to protect the life two, an immediate or interim compensation is needed to rehabilitate a victim. Keeping aside the total compensation deserved by the victim, there should be something like an advance payment to meet the immediate needs. All states, except Delhi, have provision for grant of

interim relief to the victims of crimes.¹² For the victims of the acid attack, states of Gujarat and Tamil Nadu has provided a provision for the immediate financial assistance of a sum of Rs.1 Lakh subject to the certificate from the police station or a magistrate, which may again prove to be a daunting task for the victim. It should also be made sure that the amount of interim compensation is not very inappropriate, therefore it has been established that the total amount of interim compensation should not be less than 25% of what the victim deserves as the total amount of compensation according to the intensity of the damage. The judiciary of India has done a decent job in upholding the intent of the legislature and the rights of these victims, such as with regards to interim compensation, it was ordered in *Suresh v. State of Haryana*¹³ that if the available funds already allotted are finished, it is the duty of the State to place fresh funds at the disposal of the Legal Service Authorities.

All this is explained to show the immense importance of interim compensation, as the whole purpose of the enactment of the Act in 2008 is to provide the immediate relief by way of financial assistance, medical aid without cost, trauma centre against the physical and mental suffering, emotional suffering of the victim and their family and protection from the accused for the repetitive crime against the victim. But, unless the interim compensation be awarded by smooth functioning of the system of law, which is not being done in the present scenario, there is no point of donations, fresh funds or increasing the quantum of compensation. L. Nageshwar Rao, the Additional Solicitor General for India, while assisting the Court, had submitted that even though Section 357A of the Criminal Procedure Code was enacted for relief to victims, but the victim compensation scheme has still not become the rule and the Courts are also not granting the interim compensation to the victims.¹⁴ If a case goes on for 20 years, and the plea for interim compensation is rejected, it would be too late to rehabilitate the victim back into the society, thus defeating the purpose of this section.

11. (2015) 2 SCC 227

12. Supra note 9 2014 SCC OnLine SC 952.

13. Supra note 11

14. *Bhardwaj, Prachi, Devika, Arindam Chakraborty, and Bhumika, States Directed to Implement the Victim*

Compensation Scheme as per Section 357A CrPC, SCC Blog, (2015).

V. Judicial trend

Justice should not be confined to trial, conviction or acquittal of the accused but inspire the confidence of the victims. Keeping in mind the intensity of the situation, The honorable Supreme Court in *Nipun Saxena v. Union of India*, held that it passed various directions with respect to the compensation to the victims of the crime in pursuance to which Delhi Victims Compensation scheme 2015 was replaced by Delhi Victims Compensation 2018. In the said scheme part 1 deals with the victim of offences in the schedule where as part 2 deals with women victims / survivors or sexual assault and other clients¹⁵.

The Court in the case of *Sathya Prabha. P v. State of Kerala*¹⁶ analyzed that, under this section, even in such cases where the accused is found not guilty, the trial court can still order the committee to pay compensation to such a victim for its rehabilitation under sub-section

(ii) of section 357A. Even if a victim is already provided compensation under some other scheme, but if the compensation is not adequate, it is eligible for further compensation, irrespective of the fact whether the accused has been identified or not. This judgment made sure that the compensation is not denied just because some interim compensation was already granted.

The object and the purpose of the scheme was also duly taken into account when The State Legal Services authority of Bengal denied compensation by saying that both the condition under sub-part (iv) must be fulfilled, which are that the accused must not be identified and the trial must not have taken place. In the case of *Achiya Bibi v. State of Bengal*,¹⁷ half of the offenders were already identified.

The High Court stated that a trial cannot be commenced anyway, if the offender has not been identified and that “any multiple conditions must be independent occurrences”. The state authorities misinterpreted the section, by focusing on each word of the section. This judgment is significantly important because it made sure that the victim gets compensation, by showing the state authorities the intent of the legislative body while drafting that section. It acted as an important precedent, which proved to very helpful to get compensation immediately, for victims of a similar kind.

15.(2019) 2 SCC 703.

16. 2017 SCC OnLine Ker 1358.

17. 2019 SCC OnLine Cal1282.

It was further held in *Serina Mondal v. State of West Bengal*¹⁸ that a victim is granted compensation under section 357A because the fundamental right of right to life and personal liberty¹⁹ is violated under Article 21 of the Constitution, and denial or delay of compensation on any grounds whatsoever would “continue such violation and perpetrate gross inhumanity on the victim in question”.

The victim compensation scheme is also retrospective in nature, and a victim on whom crime is committed before the scheme was implemented, cannot be denied compensation if it otherwise deserves the compensation.²⁰ There is nowhere stated in the section explicitly about the victims who were criminally offended before the enactment. This judgment made sure that all the victims get compensation, irrespective of the year in which they were made victim of a criminal offence.

Under section 357 of code of Criminal procedure empowers the court to award compensation to victims of crime ²¹ Therefore, from the above discussed cases pronounced by the different courts in India, it is quite evident that the systems along with judiciary in India plays an important role in the framework of victim’s compensation and victim’s right in our country. By providing judgments such as it is a fundamental right of a citizen to get compensation, increases the chances of providing justice to victims of a similar nature in the future, as it sets a precedence for such future cases. Such judgments prove that a statute can state a law, but these judgments helps to enhance and elaborate the law and is the only thread which link the enactment to implementation of a statute. Still there are very few legal rights available to the victims and their family, which need to be addressed in the future system of law in India. It was observed in the case of *District collector v District Legal Service authority*, that the honourable Supreme court held that the victims under Section 357A(4) of the CrPC are entitled to claim compensation for incidents that occurred even prior to the coming into force of the said provision. While allowing the present petition, court concluded with the following remarks; (i) The provisions in Section 357A(1)(4)&(5) CrPC are substantive in character. (ii) The victims under section 357A(4) of the CrPC are entitled to claim compensation for incidents that occurred even prior to the coming into force of the said provision ²².

18. 2018 SCC OnLine Cal4238.

19. Article 21, Indian Constitution of India.

20. 2011 SCC OnLine Cal 1528.

21. 277 (2021) DLT 195 (FB) .

22. 2020 SCC Online Ker 8292 .

Further it was held by the honourable Supreme Court in the case of [*Indu Devi V. State of Bihar* that the victim of sexual assault suffering from HIV cannot terminate her pregnancy due to the risk involved in the procedure and directed the state of Bihar to pay Rs. 3,00,000/- to the petitioner as compensation under the scheme of section 357-A CrPC²³ . Moreover it is also observed in the case of ‘X’ vs State of Punjab the honourable court held that enhancement of compensation to the minor rape victim for a tune of 4,50,000/- as per the Punjab Victim compensation scheme 2017 under section 357-A CrPC²⁴. It is also observed in the case of *Dharmesh @ Dharmendra @ Dharmo ... vs The*

state of Gujarat, the honourable Supreme Court directed to award Compensation of Rs. 2,00,000/- to the victims under section 357 CrPC²⁵. Further, In *satyaPrakash v. State*, the court laid down the guidelines for awarding compensation by Criminal court to all victims of motor accident offences even if they are in receipt of compensation from Motor Accident Claims Tribunal. Further the court directed a summary inquiry to be conducted by criminal court for ascertaining quantum of compensation by directing the SHO of Police station to submit "Victim Impact Report"²⁶. A criminal Law provides compensation to the victims and their dependents only. In a limited manner. Section 357 of code of the criminal procedure incorporates this concept to an extent and empowers to the criminal courts to grant compensation to the victims. The principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The state should accept the principal of providing assistants to victims out of its own funds. The court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage off a criminal case where compensation ought to be given and has criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. While interpreting a provision brought in as a remedial measure, that too, as a means of welfare for the victims of crimes, in which the perpetrators or offenders have not been identified and in which trial has not taken place, the court must always be wary and vigilant of not defeating the welfare intended by the legislature. In remedial provisions, as well as in welfare legislation, the words of the statue must be construed in such a manner that it provides the most complete remedy which the phraselogy permits.

23.2017 SCC online SC 560

24.2019 SCC online P&H 1026

25.SLP (crl) No. 673/2021 Supreme Court.

26.2013 (3) MWN(CR),373(Del)

VI.conclusion

Unlike western countries, the victims of crime in India do not have a statutory right to be compensated. There is no compulsion on the Court to records reasons for not invoking is power to provide compensation. Ultimately, the efficacy of the law and its social utility depends largely on the manner and the extent of its application by the courts. A good law badly administered may fail in its social purpose and if overlooked in practice, will fail in purpose and utility. Section 357-A Crpc. has a social purpose to serve and has to be applied in appropriate case. It is believe that compensation will at least provide some solace to the victim, even if his lost honour cannot be fully recompensated.

Victim is not only an individual, who has suffered the loss of physical and mental injury but his/her entire family and their legal heir along with the faith on the legal system by the society at large. every state should have an online portal for making a claim by the victim or the legal heir of the victim, which would include all the details of the complaint, along with the option to attach the necessary documents which in turn will be processed mandatorily within the specified time frame. We must understand the need of victim's identity's secrecy, as well as the value of time. Regular workshops should be conducted for the executives, the judiciary, and the relevant authority for its implementation. The Central Govt. should also come with a toll-free phone network for victims, witnesses, family and friends of victims and witnesses.

The DLSA/SLSA should be more empathetic to the pain and agony of the victims and their family members while dealing with each application against the crime against them and their consequent difficulty faced by them. Accordingly, order should be made which is more transparent and the best available deal for the victim in facing the life in the society, for rehabilitation, treatment, financial help to live the life in a dignified manner. The entire procedure should be made as simple as possible, and emphasis should be made on reducing the burden of the victims in providing the

documentation/certificates from Police Department or Medical Officer. Interim relief should immediately be provided in cases of grave crimes such as rape, acid attack etc., without the least formalities and technicalities, and avoiding the delay in final deposition of cases. All the rejection of application should be properly documented, and easy procedure should be implemented for appeal against the rejection of application of claim for victim's compensation.

There is no doubt in the fact that the victim need not proceed to trial in order to get compensation, because the rehabilitation is needed urgently and we might lose the victim or its rehabilitation becomes impossible in the course of trial. Therefore, section 357A is an important enactment as the victim need not prove his case to get compensation under this section, and it is ought to be so. It should be made sure that the purpose of the enactment is fulfilled. The documentation is justified so that the compensation goes to the right hands, but it should be efficient enough to avoid hindrance in the case of genuine victims, a uniform statute should be tried to set up by resolving the differences between the centre and the state, and anything needed by the victim, such as first aid, medical benefits, or financial assistance must be provided immediately with utmost efficiency, understanding the importance of interim compensation. The judiciary has been doing decent work, and it is important to continue doing so for its implementation. Therefore, keeping all my arguments in mind, it is concluded that insertion of section 357A is only one step forward towards recognition of the rights of victims in the criminal justice system, and it still has a long way to go, starting with proper and full implementation of this important enactment. The punishment for and protection from the accused have been talked about for far too long, and it is about time to keep rehabilitation of victims at an equal footing.

The court should be liberal in utilizing the discretion vested in them in granting compensation to the injured in a criminal case even in cases where the claim of compensation ordinarily lies in the domain of the civil suits, claiming compensation as well as the emotional strain of enduring a second trial.

Interim compensation ought to be paid at the earliest so that immediate need of victim can be met for determining the amount of interim compensation. The court may have regard to the facts and circumstances of individual cases including the nature of offence, loss suffered and the requirement of the victim. The establishment, strengthening and expansion of national funds for compensation to victim should be encouraged.
