

VICTIMS COMPENSATION RIGHTS

Key Note Paper: Justice Mohammad Hamidul Haque.

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Introduction:

1. The basic principles followed in the trial of a criminal case are: (i) a person accused of an offence shall be presumed to be innocent and (ii) from the moment a case is initiated against such a person either by filing a petition of complaint or by filing a FIR, he should be given all opportunities to defend himself. The entire legal system is designed in such a way so that a person who is accused of an offence may get a fair trial. To ensure this, provisions have also been made in article 35 of the Constitution. There cannot be any two opinions about this age old principle, it is agreed by all that an accused must enjoy a legal right to defend himself and that he should get fair trial. But it appears to me very much strange that except those who are aggrieved as a result of a crime, only a small section of the society are concerned about the rights of a crime victim. Most of the people are vocal about the rights of the accused but little awareness is found in the society about the rights of a victim. As the accused has a right to get fair trial, an aggrieved person or a victim has also a right to get justice, right of a victim of rape or of acid burn to get justice is no less important than the right of an accused to get fair trial, the right to get protection or compensation is also not less important than the right to defend.

Need for compensation

2. We all know about the tremendous sufferings of a victim or even of the members of his/her family, caused as a result of a crime but unfortunately nothing has been done to redress such sufferings. My purpose here is to create an awareness about the rights of the victims specially about their right to get proper compensation. Imprisonment for a certain period or even death penalty to the accused may not compensate the loss suffered by the victim or by the members of the family of the victim. It is true that when punishment is given to an accused, this may give some sort of mental satisfaction to the victim or the members of his/her family but in addition to such mental satisfaction, the victim or members of the family might be in dire need of some material help. To make the point clear, I may give reference to certain types of cases where a victim must get adequate monetary compensation as of right.

3. In an acid burn case, the disfiguration may be of such an extent that the victim may be permanently crippled and may not be able to earn his/her livelihood by engaging in any work or employment. If the victim is an unmarried young woman/girl possibility of her marriage shall be nil. What she will do for the rest of her life? She will be a burden to her parents but when they will be no more in this world, there will be none to look after her. Moreover, huge amount will also be required for her treatment. If she can be trained in some kind of work which she can do at her home, she would be able to earn her livelihood. All these will require a considerable amount of money.

4. Similarly, due to the social conditions prevailing in our society, no one will be willing to marry a victim of a rape case though she is not at all responsible for what had been done to her by a rapist. Not only the victim, sometimes it happens that no one is found to be willing to marry any other unmarried female member of that family. We can easily imagine the agony and helplessness of that family. So,

something must be done to save the victim and the female members of the family. This can be done by providing adequate monetary help so that even if their marriage cannot be arranged, they may be able to earn their livelihood by doing some work in their home.

5. We know that everyday much causality take place due to rash driving. Maximum punishment for such an offence is rigorous imprisonment for three years and fine. But it is strange that no one has any concern for the victim. If the victim survives, due to loss of a leg or a hand or due to head injury he may be crippled permanently and may not be able to pursue his normal life or employment. He will also be required to spend a huge amount for treatment. Only if he can get proper compensation, this may make his survival possible.

6. When only bread-earner of a family is murdered and if he leaves behind a wife and one or two minor school going children, there will be none to help them and the family will be virtually ruined if the family does not get any monetary help or assistance.

7. It is true that a loss or damage sustained by a victim cannot be compensated in terms money. But in some cases as mentioned above, a victim shall be entitled to get compensation as of right not as a solarium. The payment of compensation shall not be made part of the punishment imposed; it shall be in addition to such punishment. A victim may get such compensation only when this right is recognized and ensured by law. With that end in view, in different countries enactments were made enabling the victims to receive compensation in accordance with law.

8. If a legal right is conferred on the victim to get compensation, this will not only compensate the loss or damage sustained by him; this shall also act as a deterrent to some extent. An offender will be aware of the fact that in addition to undergo the punishment imposed on him by the court, he will be also required to pay a considerable amount to the victim as compensation. In case of an offence of rash driving, if the owners of the vehicle, specially bus or truck owners are compelled to pay compensation of TK. 2/3 lacs to a victim, in future they will be very much cautious about appointment of drivers. This will help to check road accidents.

Historical background

9. The idea of giving compensation to a victim is not a new idea. In most of the ancient societies such system was prevalent in one form or another. But the purpose of such a system of paying compensation was to affect a compromise. That is a different type of compensation. Here, our concern is not to make provisions for compensation as a consideration for compromise but to make provisions for payment of compensation, which a victim shall get as of right.

10. We find that there is a provision of giving compensation in the Code of Criminal Procedure of 1898, which is still in force in our country. This provision was substituted in 1923 by the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923). So, as far back as in 1923, the lawmakers made a provision in the Code to empower a criminal court to give compensation to a victim. The provision is as follows:

“545.- (i) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of

fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.”

11. It is clear from the above provision that there is no recognition of the right of the victim to get compensation. It is only an enabling provision empowering the Court to pass an order to the effect that the whole or part of the fine recovered to be applied in the payment to any person of compensation for any loss or injury caused by the offence. Moreover, it is also clear that the substantial compensation shall be recoverable by such a person in a Civil Court. Thus in order to get substantial compensation, the victim shall have to file a suit in the Civil Court by paying ad-valorem court fee. So, the above provision cannot meet the demand of the day to give compensation to a crime victim, which she/he is entitled to get as of right.

12. Due to the inadequacy of the existing law to provide compensation to a victim, movements were initiated in different countries such as Great Britain, Australia, New Zealand, and United States of America in the early sixties. Crime victim compensation program was developed first in New Zealand and Great Britain. In USA, for the first time Senator Ralph Yarborough of Texas introduced a legislation in 1964 to establish a crime victim compensation programme in the pattern, which was established in the Great Britain, and New Zealand but his attempt failed. However, in 1965, the State of California passed the victims' compensation program. Subsequently, other states also introduced such programs. Ultimately, in 1984 The Victims of Crime Act was enacted by the Federal Government. This Act provides for a federal victims compensation program for victims of federal crimes and also provides for the federal subsidy to State victim compensation program.

13. In our country, in some special laws provisions have been made to pay compensation to the victim. We may refer here to the provisions of section 15 of the Nari-O-Shishu Nirjatan Daman Ain, 2000. It is provided in this section that if fine is imposed for any offence as mentioned in sections 4 to 14 of the Ain, the Tribunal may treat the fine imposed as compensation to be paid to the victim or the aggrieved person. Procedure for realization of fine is also mentioned in sections 15 and 16 and also in sub-section (4) of section 4 of the Ain. Here also we find that like the provisions of section 545 of the Code of Criminal Procedure, this provision is also an enabling provision empowering the Tribunal to treat the fine imposed as compensation. The idea of the victim's right to receive compensation is also absent in this Ain. I like to impress upon all concerned that time has come now to consider the making of an enactment conferring a legal right upon the victim of a crime to receive compensation for the loss or damage he/she suffered or sustained due to the crime committed.

Need for an enactment

14. I hope there will be no two opinions as to the need for making provisions for payment of compensation to a crime victim. Such provisions may be added by way of amendment of the existing penal laws or by adding necessary provisions in the Code of Criminal Procedure in chapter XLVI i.e., the chapter where the miscellaneous

provisions are contained. However, I myself is of the opinion that a self contained independent law should be enacted to meet the purpose more effectively.

15. An enactment as proposed above shall have to include various provisions regarding the eligibility to get compensation, definition of victim, aggrieved person, family etc, classification of offences, assessment of loss or damage, procedure for filing application for compensation, evidence to be considered in support of the claim, opportunity to the accused to oppose the claim, extent of the liability of the accused to pay the compensation assessed or determined by the Court, establishment of a Fund from which such payment may be made, extent of the liability of the State, procedure for realization and similar other many more provisions. In this Act, there shall also be a provision to the effect that whether a case is tried in the ordinary criminal Court or in a special Court or Tribunal established under a special penal law, the victim shall be entitled to file an application in that court or Tribunal for compensation. It will be better and effective if a separate independent enactment is made containing all such provisions.

16. We may have to face a difficult question as to from where money will come for making payment of compensation. I have already mentioned that such programs were started in the several developed countries including Great Britain, Australia, New Zealand and United States of America. In these countries, law authorizes payment from public treasury or from a Fund established for the purpose. Such fund is established with public monies and with the amount assessed against the offenders to be paid to the victims. The conditions prevailing in those countries and in our country are quite different. So, we may be required to evolve a procedure for raising the Fund.

17. In consideration of the socio-economic condition of our country, naturally State's contribution to the Fund may not be considerable but the State's initiative shall be of much help in establishing the Fund. The substantial portion, however, must be paid by the offenders. Of course, when the offender has no property, this may not be possible but if there is any scope of realization from his future property, provision may be made to that effect. In one word, the law shall be designed in such a way so that if and when possible, the maximum share of the compensation may be recovered from the offender. However, the Government may also consider the acceptance of donations from any individual, from any foreign or international body, which is concerned about the rights of the victims and their welfare. I also like to give emphasis on another point. Once the Fund is established, it shall be placed in charge of a Board or Committee comprising of a member from the Judiciary, a member from the medical profession, a member from any Human Rights Organization, Vice-chancellor of an University, a representative from the Bar, a representative from the Journalists etc. If necessary, there may be a committed in each District.

Conclusion

18. In the above, I have given the broad out line of the proposed enactment for victim compensation right. There is scope of making it more effective by deliberation and dialogue. First of all, there shall be awareness about the rights of crime victims. My effort may be considered as a small step towards that end.

