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Victim Compensation Schemes in India: An Analysis

Dipa Dube¹

Indian Institute of Technology (IIT), Kharagpur, India

Abstract

The seeds of victims' rights germinated in India during the last few decades following the United Nation's Declaration of Basic Principles of Crime and Abuse of Power, 1985. Since then, the realization that the victim lies at the core of the entire criminal justice process dawned, whereby efforts were made to ameliorate their conditions. One of the principal aspects of victim support and assistance was compensation for injuries which was read as an integral part of 'right to life' by the Indian judiciary. Subsequently, however, the need to introduce the mechanism of statutory compensation led to the incorporation of section 357A in the Code of Criminal Procedure, 1973 making it obligatory for the state to provide compensation to the victims or dependents who have suffered loss or injury as a result of crimes and require rehabilitation. Almost all states of the country accordingly set up Victim Compensation Schemes to provide for adequate compensation. The present article analyses the schemes across select states and emphasizes the need towards development of an empathetic system which addresses the core concerns of victims.

Keywords: Compensation, Compensation schemes, Victim, Criminal justice, India.

Introduction

The purpose of the criminal justice is to protect the rights of the individuals, society and state from the criminals by punishing the accused for violating the law (Gaur, 2015). In case the accused is found guilty, he/she is punished with imprisonment and kept in prison with an object of reforming him/her. While the entire focus of the law is on the offender, to protect his/her rights, to punish him/her and thereby bring about his/her reformation and rehabilitation with all the resources and goodwill available through courts and other agencies, the victim, more often, is left to fend for himself/herself with little or no assistance coming his/her way (Dube, 2010). The violation of his/her rights, the invasion of his/her dignity, the actual losses incurred by him/her do not constitute matters of concern for anyone, but himself/herself (Dube, 2008). His/her role is limited to reporting the crime to officials who decide whether to prosecute the case, how to proceed, and what type of punishment to recommend (Erez, 1991). Strange but true, justice fails to redress the wrong perpetrated by the offender on the victim; on the

¹Associate Professor, Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology, Kharagpur, West Bengal, India. Email: dipa.dube@gmail.com

contrary, it aggravates the injustice by focusing solely on the offender, side-lining the victims' minimum needs and requirements (Chockalingam, 1993).

Simply speaking, the victim is a forgotten party to the criminal justice system. The historical evolution of the system, from private vengeance to state administered justice, has resulted in a criminal justice process in which the victims play only a secondary role (Raineri, 1995).

The old paradigm saw that victims played a role in the system. However, the systems completely co-opted the victims. The systems simply assumed that victim's interests and the system's interests were identical. Since victims could not punish themselves, the state had taken over- from this standpoint, it is self-understood that state and victims have the same interest: punishing the offender...That victims as witnesses might not want to serve the punishing state did not appear as a problem (Kirchhoff, 2017).

Even the aspect of losses sustained due to injuries inflicted as a result of the crime did not garner the attention of the state.

The modern day emergence of the idea of compensation for victims of crime commenced only in 1950s by the British Magistrate and social reformer, Margery Fry. In her writings, Fry advocated the incorporation of compensation as a feature of the criminal justice system (Davies, 1991). Its purpose has been described as (Freckelton, 2001):

not to award damages of a kind comparable or analogous to damages which an injured party, as a plaintiff, might seek and recover from a tortuous wrongdoer, but to give to the victim of a criminal act or omission, some solace by way of compensation out of the public purse for the injury sustained, whether or not the culprit is brought to book, and whether or not the culprit might otherwise be liable to the victim.

In 1960s, the 'victimology' movement made way for monetary compensation as also offered an incentive to governments by linking such compensation to victims' cooperation in the pursuit of criminal prosecutions. Canada and several states within the United States began providing victim compensation and thereby encouraged participation in criminal prosecutions. The early 80s witnessed the pioneers of victimology and victim justice taking predominant initiatives of reforming the criminal justice system on behalf of the 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 1985 (Groenhuijsen, 2014). The Declaration made way for specific rights and entitlements of victims of crime, including the right to compensation.

In India, the right of a victim of receive compensation was recognized under the old Code (Code of Criminal Procedure, 1898) as well but available only where a substantive sentence of fine was imposed and limited to the amount of fine actually realized. However, this provision was sparingly invoked (Vibhute, 1999). Subsequently, the right was read as a part of the fundamental right under Art 21 of the Indian Constitution. 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 (Bajpai & Gauba, 2016). Section 357A was inserted in the code, 1973

(Code of Criminal Procedure, 1973), henceforth Cr.P.C., obligating the states to provide for compensation to victims out of the victim compensation fund created for the purpose. The present article analyses the Victim Compensation Schemes as payable by the states (hereinafter referred to as VCS), in select states of the country, and highlights the anomalies and gaps in the same.

Compensation to Victims

The Indian Constitution, the supreme law of the land, enunciates no specific provision for victims. However, Part IV, Directive Principle of State Policy, Art 41 and Part V, Fundamental Duties, Art 51A lay down the duty of the state to secure “the right to public assistance in cases of disablement and in other cases of undeserved want” and to “have compassion for living creatures” and “to develop humanism” respectively. These articles have been interpreted in an expansive manner to find support for victims of crimes (Sahni, Dhanda, & Palit, 2017). The right to compensation has also been interpreted as an integral part of right to life and liberty under Art. 21 of the Constitution. As early as in 1983, the Supreme Court recognized the petitioner’s right to claim compensation for illegal detention and awarded a total sum of Rs. 35000 by way of compensation. In delivering the judgment, Chandrachud C.J. observed (*RudulSah v. State of Bihar*, 1983):

Art 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of relief from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art 21 secured is to mullet its violators in the payment of monetary compensation.

In several cases thereafter, the apex court has repeated its order, making compensation an integral aspect of right to life (*Bhim Singh v. State of Jammu & Kashmir*, 1985; *Dr. Jacob George v. State of Kerala*, 1994; *Manju Bhatia v. N.D.M.C. AIR 1998 SC 223*, 1998; *Paschim Bangal Khet Mazdoor Samity v. State of West Bengal & Ors.*, 1996; *People’s Union for Democratic Rights Thru. Its Secy. v. Police Commissioner, Delhi Police Headquarters*, n.d.; *People’s Union for Democratic Rights v. State of Bihar*, 1987).

Besides, there are provisions in a number of legislations for payment of compensation to the victim, either by the trial court or by specially set up claims tribunal (Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985; Consumer Protection Act, 1986; Fatal Accidents Act, 1855; Indian Airlines Non International Carriage (Passenger and Baggage) Regulations, 1980; Indian Railways Act, 1989; Merchant Shipping Act, 1958; Motor Vehicles Act, 1988; Probation of Offenders Act, 1958; Protection of Women from Domestic Violence Act, 2005; Sexual Harassment (Prevention, Protection and Redressal) Act, 2013). Thus, under the Probation of Offenders Act, 1958 while releasing an accused on probation or admonition, the court may order the offender to pay compensation and cost to the victim under s. 5 of the Act. Similarly, s. 250 (compensation for accusation without reasonable cause), s. 357 (order to pay compensation out of fine or even without a sentence of fine), s. 358 (compensation up to Rs. 100/-to persons groundlessly arrested) and s. 359 (order to pay cost in non-cognizable cases) of the Cr. P. Code, 1973, provide for payment of compensation and costs to the victims of crime under different circumstances (Chakrabarti & Dube, 2018).

Section 357 Cr.P.C. 1973, specifically empowers a court imposing a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, in its discretion, *inter alia*, to order payment of compensation, out of the fine recovered, to a person for any loss or injury caused to him by the offence. However, such compensation to victims can be awarded only when substantive sentence is imposed, of which fine forms a part, and not in cases of acquittal (Chakrabarti, 1998).

Under section 357 (3) Cr.P.C. 1973, however, the court is empowered to award compensation for loss or injury suffered by a person, even in cases where the fine does not form a part of the sentence. In other words, the power to award compensation is not ancillary to other sentence, but it is in addition thereto (*Balraj v. State*, 1995). There is also no limit to the amount that may be awarded and is left entirely to the discretion of the court to decide in each case depending on the facts and circumstances of the case. In *Rohitash* case (*Rohitash @ Pappu v. State of Haryana*, 2008), the court raised an apt question, “Should justice to the victims depend only on the punishment of the guilty? Should the victims have to wait to get justice till such time that the handicaps in the system which result in large scale acquittals of guilty, are removed?..”. Responding that the need to address ‘cry of victims of crime’ is paramount and separate from the issue of punishment of the offender, the court held that,

The victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the state in a society governed by Rule of Law. But if the state fails in discharging this responsibility, the state must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated (*Dr. Jacob George v. State of Kerala*, 1994).

In spite of this, there has been a general reluctance on the part of courts to exercise the power under Section 357 to the benefit of the victims (*Hari Krishnan and State of Haryana v. Sukhbir Singh*, 1988). Somehow, the courts have limited themselves to award of sentences with no mention of adequate compensation, thereby denying victims the basic right. More than three decades back, Hon’ble Mr. Justice Krishna Iyer stated that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty and victimology must find fulfillment not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn (*Maru Ram v. Union of India*, 1981). Even the apex court in 2014 reiterated,

it appears to us that the provision confers a duty on the courts to apply its mind to the question of awarding compensation in every criminal case. ...the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system (*Ankush Shivaji Gaikwad v. State of Maharashtra*, 2013).

Statutory Scheme for Compensation

Amidst the increasing concern for compensation to victims of crimes, section 357A was inserted in 2009 (Code of Criminal Procedure, 1973), to give effect to Victim Compensation Schemes (VCS). The scheme made way for an institutionalized payment of compensation to the victim by the state for any loss or injury caused to him by the offender. The responsibility has been imposed on the states to create and maintain a fund for the purpose. In cases where compensation paid by the accused is inadequate or no such compensation is payable on account of acquittal or discharge of the accused or the offender not being traced or identified, the VCS is applicable. Such payment may also be allowed on the specific recommendations of the court, in addition to the compensable payable under s. 357 Cr.P.C., (1973). Section 357B Cr.P.C., (1973) specifically provides that in cases of acid attack (s. 326 A Indian Penal Code, 1860) and gang rape (s. 376D Indian Penal Code, 1860), the compensation payable by the state shall be in addition to the payment of fine to the victim under the said sections. The District Legal Services Authority (DLSA) or State Legal Services Authority (SLSA) has been authorized to decide the amount of compensation to be awarded to victims under the scheme, subject to the maximum limit prescribed by the State. In addition to payment of compensation, section 357A also attempts to respond to the immediate needs to the victims for first aid or medical benefit as well as any other interim relief, as may be required.

Pursuant to this legislative amendment, the states notified the scheme, though after an initial reluctance and prodding by the courts (*Suresh v. State of Haryana*, 2014). Till date, almost all states and union territories have set up the scheme to provide for payment of compensation and other reliefs to the victims and/or their dependants.

Analysis of VCS

In this article, an analysis has been made of VCS in about 12 states and 1 union territory of India. For the analysis, the VCS as notified by each of the individual states have been taken and thoroughly studied. Each scheme has been analyzed on the basis of the individual parameters and compared with the other states. Thereupon, an understanding has been sought to be achieved on the scope and efficacy of the scheme. The points of significance and importance have been separately highlighted as also the range of compensation stipulated by states under specific heads of offences.

There are 29 states and 7 Union territories in the Republic of India. Out of these, twelve states, viz., Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Karnataka, Odhisha, Uttar Pradesh, Madhya Pradesh, Tamil Nadu and Delhi (Delhi is neither a state nor union territory, it is formally known as the National Capital territory of Delhi) and one union territory, Goa, have been selected through the lottery method. These states represent all four corners of the country. Each of the states have taken their own time to notify the scheme for victims. While Arunachal Pradesh (Arunachal Pradesh Victim Compensation Scheme, 2011), Bihar (The Bihar Victim Compensation Scheme, 2011), Chhattisgarh (Victim Compensation Scheme, Chattisgarh, 2011), Karnataka (Karnataka Victim Compensation Scheme, 2011) and Delhi (Delhi Victims Compensation Scheme, 2011) have been states who were first to notify the VCS in 2011, few states like Uttar Pradesh (Uttar Pradesh Victim Compensation Scheme, 2014) and Madhya Pradesh (Madhya Pradesh Crime Victim Compensation Scheme, 2015) notified the same only in 2014 and 2015 while other states enacted the scheme in 2012 (Assam Victim Compensation Scheme, 2012; Goa Victim Compensation Scheme, 2012;

Himachal Pradesh (Victim of crime) Compensation Scheme, 2012; Odisha Victim Compensation Scheme, 2012) and 2013 (Gujarat Victim Compensation Scheme, 2013; Tamil Nadu Victim Compensation Scheme, 2013), almost three to four years after amendment in Cr.P.C., (1973).

1. Object of the Scheme

All states have put forward one simple object- “for providing funds for compensation to the victims or their dependents, who have suffered loss or injury as a result of the crime and who require rehabilitation”. This is in tune with s. 357A which is similarly worded with regard to the constitution of the VCS. However, Odhisha has somewhat attempted to make the scheme more broad-based. It lays down two objectives- i) to provide financial assistance to the victims and ii) support services such as shelter, counseling, medical aid, legal assistance, education and vocational training depending upon the needs of the victim (Odhisha Victim Compensation Scheme, 2017). Thus, so far as Odhisha is concerned, the VCS is not merely to provide compensation to victims of crime, but also makes an effort to provide holistic support to these victims. It offers a one- stop facility to the victims to ameliorate their conditions arising from the crime, ranging from financial assistance to restorative support services.

2. Definition of Victim

The term has been defined in the scheme to mean a person ‘who has suffered loss or injury’ as a result of the crime and who requires ‘rehabilitation. The definition is almost similar in all schemes, except for Assam (cl. 2(f) Assam Victim Compensation Scheme, 2012) and Himachal Pradesh (cl. 2 (h) Himachal Pradesh (Victim of crime) Compensation Scheme, 2012) which mention about loss or injury caused by reason of the act or omission for which the accused person ‘has been charged’. This is in line with the definition of ‘victim’ under Cr.P.C., (1973) (s. 2(wa) Code of Criminal Procedure, 1973). The use of the word ‘charged’ indicate that the offence has been investigated, accused identified and thereupon, the court has proceeded to charge the accused in accordance with the provisions of Cr.P.C. (1973) (ss. 228 & 240 Code of Criminal Procedure, 1973). However, Section 357A of the code is intended to assist those victims as well for whom the case could not proceed for want of identification of the accused. Hence, the definition of victim somewhat does not seem to be in line with the scope of the scheme.

The term ‘victim’ has also been extended to include ‘dependent family members’ in some cases, and ‘guardian or legal heirs’ in case of others. In the case of *Chattar Singh v. Subhash* (2011), the Delhi High Court ruled that the word “legal heir” refers to the people who would inherit property according to the personal laws of a person (*Chattar Singh v. Subhash*, 2011; *D. Sudhakar v. Panapu Sreenivasulu*, 2013). That means the line of succession as laid down in the personal laws would be applicable in each case. A larger bench of the Delhi High Court overruled the case to hold it is not necessary for all the legal heirs ‘to undergo emotional harm or experience injury’ due to the crime or even have a motivation to take part in all legal hassles of justice system (*Ram Phal v. State*, 2015). In *M/s Tata Steel Ltd. v. M/s Atma Tube Products*, the court held that for the purposes of VCS, only those dependents who have suffered loss or injury due to the crime and need rehabilitation are eligible and the “legal heir” do not have anything to do with sec 357A of the code (*M/s Tata Steel Ltd. V. M/s Atma Tube Products*, 2014). Madhya

Pradesh specifically clarifies that the guardian or legal heirs cannot be taken to include “persons responsible for such injury” which seems to be an obvious analogy which may be drawn (cl. 2(j) Madhya Pradesh Crime Victim Compensation Scheme, 2015).

However, one important thing is that none of the schemes define the term ‘rehabilitation’. It has been left to the discretion of the DLSA/SLSA to decide on the matter. In other words, who requires rehabilitation and what may be included in such rehabilitation have not been spelt out clearly, though through logical inference it may be taken to include medical assistance, psychological counseling, temporary shelter, vocational /professional training in some cases and definitely, appropriate financial assistance.

3. Implementation Authority under the Scheme

All states have entrusted the task of deciding compensation and providing other interim reliefs to the DLSA/SLSA. The Legal Services Authority at the state and district levels have been constituted under sections 6 and 9 of the Legal Services Authorities Act, 1987 to provide free legal services to the weaker sections of the society. The constitution of the committee at the state level includes the Chief Justice of the High Court as the Patron in Chief, along with a serving or retired Judge of the respective High Court as well as other members nominated by the government in consultation with the Chief Justice of the High Court. At the district level, it is chaired by the District Judge of the respective district.

d. Function of the Authority

As is clear from the object enumerated, the DLSA and SLSA have the primary responsibility of awarding compensation to the victims of crime and/ or their dependents. In some states like Assam, Delhi, Goa, Gujarat and Madhya Pradesh, the responsibility has been simultaneously given to SLSA as well in appropriate cases (cl.5 Assam Victim Compensation Scheme, 2012; cl. 6 Delhi Victims Compensation Scheme, 2015; cl.6 Goa Victim Compensation Scheme, 2012; cl.5 Gujrat Victim Compensation Scheme, 2016; cl. 6 Madhya Pradesh Crime Victim Compensation Scheme, 2015). For the purpose, the authority is required to examine the case and conduct an inquiry to determine the amount of compensation to be paid to the victims. The DLSA/SLSA is also required to make provision for immediate relief to the victims, especially those requiring medical assistance.

Odhisha has clearly enumerated the functions of the DLSA under the scheme (cl. 8(B) Odhisha Victim Compensation Scheme, 2017):

- To consider the claims and provide financial assistance and support services in accordance with the procedure prescribed.
- To arrange for psychological, medical and legal assistance to the affected persons.
- To arrange for counseling support to the affected woman
- To arrange shelter for the affected woman
- To arrange for education or vocational/professional training for the affected woman should she require such a support for rehabilitation
- Issue directions to authorities to provide protection to the affected person

4. Monitoring Body

In most of the states, there is no body created to monitor the operation of the VCS. The SLISA may be deemed to have the general powers of reviewing the working of the scheme with regard to disbursement of compensation and deciding appeals. In Tamil Nadu, the Home, Prohibition and Excise Department has been designated as the nodal department for regulating, administering and monitoring the scheme in the state (cl.3 Tamil Nadu Victim Compensation Scheme, 2013), while in Bihar, the law department has been designated as the nodal agency (cl. 3 (3) The Bihar Victim Compensation Scheme, 2011).

In Madhya Pradesh, however, an elaborate provision for the purposes of monitoring the scheme has been laid down. Two committees have been constituted under the Home department of the state- The State Level Committee (SLC) and the District Level Committee (DLC) (cl. 4 Madhya Pradesh Crime Victim Compensation Scheme, 2015). The former consists of the Principal Secretaries of Home Department and Law Department, Member of the SLISA and Deputy Secretary, Home Department as members. The Principal Secretary, Home Department acts as the Chairman of the Committee. At the district level, the committee is chaired by the District and Sessions Judge along with the District Magistrate, Superintendent of Police and DLISA as members. The SLC is to hold quarterly meetings to review the pendency of applications and appeals. They are also required to get state level data which is to be presented by the SLISA. The DLC is required to meet and review the pending cases in the first week of every month.

5. Eligibility Criteria for Compensation

The scheme has laid down the eligibility for award of compensation. The basic condition for grant of compensation is that the victim must have suffered loss or injury causing 'substantial' loss to the income of the family making it difficult to make both ends meet or has to spend beyond his means on medical treatment of mental or physical injury. Arunachal Pradesh, Assam, Chhattisgarh, Goa and Odisha lay down this condition (cl. 5(2) Arunachal Pradesh Victim Compensation Scheme, 2011; cl. 4(2) Assam Victim Compensation Scheme, 2012; cl. 4(2) Goa Victim Compensation Scheme, 2012; cl. 7(b) Odisha Victim Compensation Scheme, 2012; cl. 4(A) Victim Compensation Scheme, Chhattisgarh, 2011). The word 'substantial' indicates 'considerable' or 'extensive'. Therefore, only in cases where the victim finds it extremely difficult to meet the expenses arising from the crime is he entitled to compensation, in other cases, he is not. Odisha, however, holds that where such loss makes it difficult to live 'as before without the financial aid or has affected his/her dignity or personality', the victim shall be entitled to compensation, thereby enhancing the standards from mere sustenance to a life of dignity (cl. 7(b) Odisha Victim Compensation Scheme, 2012). It may be stated herein that Madhya Pradesh has further clarified that in case the annual income of victim from all sources exceeds 5 lakh (half million), the amount payable will be 50% only of the award stipulated by the authority (cl. 6(12) Madhya Pradesh Crime Victim Compensation Scheme, 2015).

Additionally, certain conditions are common for most states, Arunachal Pradesh, Assam, Madhya Pradesh, Goa, Bihar, Tamil Nadu, Karnataka, Uttar Pradesh, including the victim should not have received compensation in relation to the crime from any other scheme of the Central or State Government or insurance company; compensation given

by the court is inadequate; cooperation of the victim with police and prosecution during trial. Karnataka stipulates a time period of forty- eight hours for reporting the crime as a condition precedent to grant of compensation(cl. 6(2) Karnataka Victim Compensation Scheme, 2011). This precondition may prove to be a serious constraint for victims, where due to threat, coercion, duress etc., they are unable to report the crime or unable to assist the investigation or trial.

6. Procedure for Grant of Compensation

The procedure in all states has been kept simple to help the victims. Thus, where a recommendation is received from the court or an application is made by the victim, the DLSA/SLSA has to examine and verify the facts raised in the claim and after due inquiry, has to decide on the grant of compensation. It is a time bound procedure with most states specifying two months as the statutory period, except for Arunachal Pradesh which provides for 30 days' time to decide the claim (cl. 6(iv) Arunachal Pradesh Victim Compensation Scheme, 2011).

The VCS, Delhi and VCS, Goa clearly provide the documents and materials which are to be submitted to support the application (cl. 5 Delhi Victims Compensation Scheme, 2011; cl. 5 Goa Victim Compensation Scheme, 2012). These include copy of the FIR (First Information Report) or complaint to magistrate, medical report, death certificate, where applicable, copy of judgment in specific cases. For other states, it has not been mentioned categorically which may make it difficult for victims to sustain their claim.

7. Criteria for Compensation

As such, no rule or guideline has been laid down for determining the amount of compensation. An upper limit has been set by the states for each offence and the amount must not exceed that amount. In general, the losses caused to the victim, the medical expenses incurred and the minimum sustenance amount required for rehabilitation, are the determining factors before the DLSA/SLSA. In this, the authority may seek the assistance of a medical board (in case of Arunachal Pradesh) or police officer (in case of Odhisha) or probation officer (in case of Madhya Pradesh).

Delhi has laid down certain factors to be considered while awarding compensation(cl.8 Delhi Victims Compensation Scheme, 2011). These include:

- Gravity of the offence
- Severity of mental/physical harm or injury suffered by the victim
- Expenditure incurred on medical treatment, mental health, funeral, travelling etc.
- Loss of educational opportunity
- Loss of employment
- Relationship of offender & victim
- Whether the crime was one isolated incident or series of incidents
- Whether victim pregnant or contracted STD/HIV or disabled as a result of the offence
- Financial condition of victim so as to determine the need for rehabilitation.
- In case of death, age, income, number of dependents etc. of deceased.
- Any other factor which may be considered just or sufficient by DLSA/SLSA

Even Uttar Pradesh has provided similar factors which should guide the authority in grant of compensation and rehabilitation services, which include the type and severity of bodily injury and expenditure incurred on medical treatment and psychological counseling, age and financial condition of the affected person, non-pecuniary loss entailing suffering, mental or emotional trauma or humiliation faced and lastly, expenses towards alternate accommodation (cl. 6 Uttar Pradesh Victim Compensation Scheme, 2014). Interestingly, Assam has made reference to the Motor Vehicles Act, 1988 in the matter of compensation stating that in fixing the quantum of compensation, regard must be had to ‘scientific, transparent and reasonable bases and not left to the whims and prejudices of the authorities.’ (cl. 5(6) Assam Victim Compensation Scheme, 2012; Sahni et al., 2017, p. 51).

Some states have made provision for additional assistance in view of the vulnerabilities and special needs of persons (cl. 5(4) Uttar Pradesh Victim Compensation Scheme, 2014). Thus, in case of minor girls (Sch. cl.5(8) Gujrat Victim Compensation Scheme, 2016) and mentally challenged persons, the DLSA may consider the need for specialized treatment and care and make provision for grant of additional amount, not exceeding Rs. 1 lakh (US \$1561).

8. Interim/Immediate Relief

All states, except Delhi, have provision for grant of interim relief to the victims of crimes. Generally, such relief includes medical support and/or first aid facility as well as any other relief that may be required in the situation, thereby including financial assistance as well. For victims of acid attack, some states, Gujarat and Tamil Nadu, have specifically provided for grant of Rs. 1 lakh (US \$1561) as immediate financial assistance within 15 days of the reporting of the crime (cl. 6(1) Gujrat Victim Compensation Scheme, 2016; cl. 6 Tamil Nadu Victim Compensation Scheme, 2013). However, for the grant of interim relief, a certificate from the officer in charge of the police station or magistrate is necessary which may prove to be daunting for the victim.

9. Refusal of Application

Majority of the states have not laid down the grounds on which an application for award of compensation may be rejected. Nevertheless, it may be analyzed that where the materials submitted for consideration of application do not support the claim, the authority is likely to reject the same. The states also have not laid down the requirement of a reasoned order, except for Delhi, which states that the grounds of rejection must be mentioned (cl. 9 Delhi Victims Compensation Scheme, 2015).

Goa, Himachal Pradesh, Karnataka and Madhya Pradesh are the four states which mention the grounds likely to result in rejection of the application or, in some cases, refund of the compensation with interest (cl. 7 Goa Victim Compensation Scheme, 2012; cl. 7 Himachal Pradesh (Victim of crime) Compensation Scheme, 2012; cl. 7(10) Karnataka Victim Compensation Scheme, 2011; cl.8 Madhya Pradesh Crime Victim Compensation Scheme, 2015). These include

- Non-reporting of the crime
- Lack of cooperation with the police or court
- Absence of reasonable assistance to DLSA/SLSA to decide the application
- Rejection of previous application for same crime

- Furnishing false information/ evidence
- Making false or vexatious complaint
- Turning hostile in court, not supporting the prosecution case
- Alleged crime collusive in nature and
- Eligibility of victim does not justify an award.

As may be seen, apart from false cases where rejection is justified, applications may also be refused for want of cooperation or assistance on the part of victims. A victim of crime, such as rape, acid attack or trafficking, may be under serious psychological trauma and may not be in a position to afford necessary assistance. In such cases, to expect the victim to provide necessary documents to support claims would be somewhat impossible.

10. Period of Limitation

The scheme lays down the period within which a claim shall be entertained by the authority. This period generally ranges from six months to one year after the date of commission of the crime for most of the states, except for Delhi (cl.16 Delhi Victims Compensation Scheme, 2015), where the period is set at three years or Gujarat, where no period has been mentioned in the VCS.

11. Appeal

There is provision for appeal which has been laid down in the scheme from the order of the DLSA/SLSA. In all cases, the SLSA is the authority to whom the appeal shall lie within a period of ninety days. Delhi and Gujarat have laid down no provision for appeal against the order of the authority. On the other hand, Madhya Pradesh, has laid down two levels of appeal, first to the SLSA and second, to the Home Department, Government of Madhya Pradesh within thirty days (cl. 11 Madhya Pradesh Crime Victim Compensation Scheme, 2015).

12. Quantum of Compensation

Lastly, the amount of compensation decided by the states indicate a wide degree of discrepancy, with compensation as low as Rs. 25000 (approximately US \$390) (Chhattisgarh) to Rs. 50000 (approximately US \$580) (Bihar) and Rs. 150000 (approximately US \$234) (Odisha) in case of rape. Goa has fixed an amount of Rs. 10 lakhs (approximately US \$15616) for rape victims. In case of rape of minor, the amount varies from Rs. 50000 (approximately US \$580) (Chhattisgarh, Karnataka) to Rs. 2 lakhs (approximately US \$3123) (Madhya Pradesh). In cases of loss or injury causing severe mental agony as in offences of kidnapping, human trafficking etc., different states had prescribed varying limits, some as low as Rs. 10000 (approximately US \$156) (Arunachal Pradesh) to others as high as Rs. 10 lakhs (approximately US \$15616) (Goa). For victims of acid attack, the compensation has generally been fixed between Rs. 1 lakh (approximately US \$1561) (Arunachal Pradesh) to Rs. 3 lakhs (approximately US \$4685) (Karnataka, Odisha, Gujarat). Delhi fixed a limit of Rs. 3 lakhs to Rs. 7 lakhs (approximately US \$4685 to 10931). Some states have kept the amount glaringly low, Bihar at Rs. 25000 (approximately US \$390) and Himachal Pradesh at Rs. 50000 (approximately US \$580). Chhattisgarh and Himachal Pradesh have quantified the cost of rehabilitation at Rs. 20000 and Rs. 50000 respectively (approximately US \$312 and 580).

In *Tekan v. State of Chhattisgarh* (2016), where a victim, a visually challenged girl was raped by the accused on promise of marriage and subsequently abandoned on her pregnancy, the Supreme Court delving on the issue of compensation opined, “it is clear that no uniform practice is being followed in providing compensation to the rape victim for the offence and her rehabilitation. This practice of giving different amount ranging from Rs. 20000 to Rs. 10 lakhs (approximately US \$312 to 15616) for the offence of rape under Section 357A needs to be introspected by all States and Union territories. They should consider and formulate a uniform scheme especially for rape victim in light of the scheme in the State of Goa.”

In the instant case, the court ordered the state to pay Rs. 8000 (approximately US \$124) per month as compensation till her life time. In another gruesome case of gang rape of a woman in a village in West Bengal on the orders of the panchayat as punishment for having relationship with a man for another community (*In Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News*, 2014), the court observed that as against an amount of Rs. 50000 (approximately US \$580) agreed to be paid by the state to the victim under the VCS, the state is required to make a payment of Rs. 5 lakhs (approximately US \$7807), in addition to the sanctioned amount. The court expressed concern over her security and safety and emphasized that merely providing interim measures may not be enough, but ‘long term rehabilitation’ is necessary (*Laxmi v. Union of India*, 2015; *Mohd. Haroon v. Union of India*, 2014).

Looking at the wide discrepancy in quantum of compensation payable by states, the Central Victim Compensation Fund Guidelines were issued with effect from August, 2015 to reduce the disparities across states and encourage states to effectively implement the VCS (Central Victim Compensation Fund Scheme Guideline, 2015). Under the guidelines, an amount of Rs. 200 crores (US \$2 billion) has been sanctioned as initial corpus fund. Expenditure incurred by states may be reimbursed from the central fund. A uniform minimum amount of compensation has been determined for all states, including Rs. 3 lakhs (approximately US \$4685) for acid attack and rape victims, Rs. 1 lakh (approximately US \$1561) for rehabilitation for victims of human trafficking etc. In case of victims being less than fourteen years, the compensation has been increased by 50% over the amount specified. Few states have amended the scheme in light of the central guidelines, except for Arunachal Pradesh, Assam, Chhattisgarh, Himachal Pradesh, Karnataka, Tamil Nadu, and Uttar Pradesh.

Overview of the scheme

Thus, as may be seen, all the states have complied with the mandate laid down in the code by formulating schemes for compensation. While the VCSs are more or less uniform on broad parameters, there are certain variances as well. Absence of clearly laid down criteria for determination of compensation, absence of scope of duties for the authority, absence of monitoring authority to oversee the functioning of the scheme and the grossly inappropriate amounts of compensation maybe identified as some of the drawbacks in the VCSs as operational in the various states. It may also be noted that the burden imposed on the victim to report the crime promptly, to cooperate with the investigation and court, to provide reasonable assistance in furnishing materials in support of the claim for compensation, to obtain certificates etc. from police or magistrate to avail of facilities under the scheme may prove to be barriers in the way of smooth operation of the scheme.

Table 1. Compensation to Victims (April 2016- June 2017)

States	Applications received by Legal Services Authority	Applications directed by Court	Applications decided	Applications pending	Compensation Given (in Rs.)
Arunachal Pradesh	38	7	12	11	960000 (US \$1499)
Assam	55	278	154	505	8356030 (US \$130480)
Bihar	694	116	432	26	18380415 (US \$287025)
Chattisgarh	373	389	484	466	8662000 (US \$135265)
Delhi	697	1158	2346	1495	569920467 (US \$8899585)
Goa	0	0	1	-	2500000 (US \$39038)
Gujarat	50	35	28	74	2120000 (US \$33103)
Himachal Pradesh	15	30	22	3	930000 (US \$14521)
Karnataka	5756	374	813	1910	51516260 (US \$804416)
Madhya Pradesh	610	599	381	442	29197553 (US \$455902)
Odisha	923	310	398	1354	24893644 (US \$388699)
Tamil Nadu	3308	64	356	539	23658021 (US \$369422)
Uttar Pradesh	229	0	226	0	14585000 (US \$227746)

Source: National Legal Services Authority, 2017

The statistics on VCS (Table 1) reveal that, in spite of a lapse of more than five years, in many states the scheme has not picked up (“Statistical Information in R/o Victim Compensation Scheme u/s 357A Cr.P.C.,” 2017). The number of applications for instance in Arunachal Pradesh, Assam, Gujarat, Goa, Himachal Pradesh and even Uttar

Pradesh are very low, compared to the incidence of crimes in the states. On the contrary, Delhi, Karnataka, Odhisha and Tamil Nadu indicate impressive number of applications signifying increased awareness of the scheme. The Delhi courts have also referred substantial number of cases to the legal services authorities for compensation, which is not true for the other regions. Another disturbing trend is the rising pendency of applications. Karnataka reports the highest pendency with 1910 applications, followed by Delhi, Odhisha and Assam. Such pendency may go a long way in defeating the purpose of the scheme, since crime injuries call for immediate financial assistance. Furthermore, for those states whose statistics are available, the amounts of compensation given appear to be grossly insufficient. Here, the average figures for some states have been calculated by dividing the number of applications with the total amount of compensation given. The actual figures of compensation may vary from case to case. Thus, for example, on an average, in Bihar, Rs. 25000 (approximately US \$390) was given as compensation to an acid attack victim in 2013-14, which increased to Rs. 243966 (approximately US \$3809) on an average in 2015-16 and Rs. 166666 (approximately US \$2602) in 2016-17.

The compensation for rape victims on an average was Rs. 27857 (approximately US \$434) in 2013-14, Rs. 69400 (approximately US \$1083) in 2014-15, Rs. 107353 (approximately US \$1676) in 2015-16 and Rs. 215625 (approximately US \$3366) in 2016-17 ("Data on Victim Compensation," 2016a). In Delhi, on an average an amount of Rs. 74486 (approximately US \$1162) was given to rape victims in 2014, Rs. 105568 (approximately US \$1648) in 2015, Rs. 103108 (approximately US \$1609) in 2016. The average amounts disbursed for acid attack victims was Rs. 266666 (approximately US \$4163) in 2015 and Rs. 233333 (approximately US \$3643) in 2016 ("Data on Victim Compensation," 2016).

Conclusion

There has been a paradigm shift in the approach of criminal justice system towards victims of crime in India. In line with the basic principles enumerated in the 1985 Declaration, restitution and compensation to victims have become predominant features. However, compensation to victims, out of fines imposed, have been used sparingly and the amounts paid have been minimal (Sarkar, 2010). To fill the gap, VCS is a bold attempt by the states to compensate the losses or injuries suffered by the victims as well as meet the needs for rehabilitation. However, the schemes across the states have been seen to be divergent on many aspects. Even the amount paid as compensation varies across states. It is important that the scheme should operate for the benefit of the victim and therefore, all plausible efforts must be made to facilitate the process.

The DLSA/SLSA must be empathetic to the pain and agony of victims of crimes and their consequent necessities and difficulties. Accordingly, orders must be made to provide the best deal to the victim, whereby he/she is able to rehabilitate, re-assimilate and re-socialize for a dignified living. Simplicity of procedures must be emphasized upon and imposition of burden on victims to secure certificates, provide documents etc. should be reduced, so far as possible. Interim relief to victims must be provided, especially in cases of gang rape, acid attacks, etc., without the least emphasis on formalities and technical procedures. The pendency of applications should be addressed since VCS largely works on the foundation of speedy relief to victims. Lastly, the amount set by the states must be in tune with the prevailing costs of living, medical treatment, psychological assistance etc. As

enumerated in the Declaration, appropriate measures to ‘minimize inconvenience to victims’, ‘avoiding unnecessary delay in disposition of cases...granting awards to victims’ as well as ‘proper assistance to victims’ must be fundamental to the entire process (Assembly, 1985).

Administrative mechanisms must be strengthened to provide redress through procedures that are ‘expeditious, fair, inexpensive and accessible’, something which the existing system does not completely cater to at present (Groenhuijsen, 2014). To reiterate the words of the apex court, no compensation can be adequate nor can it be of any respite for the victim but as the state has failed in protecting such serious violation of a victim's fundamental right, the state is duty bound to provide compensation, which may help in the victim's rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

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