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Compensatory Justice for Rape Victims through the Manodhairya Scheme: Overview

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Abstract:

The idea of the victim and victimology is a recent development in criminology that has ushered in the era of human rights. Before, the victim had no voice, and the offender's punishment determined the victim's fate. Victimology, which developed gradually along with the concept of the victim, gave rise to a more concentrated focus on vulnerable groups like women and children.

The State had major concerns about the inferior status of women, their exploitation, and their vulnerability to sexual assaults, which shown in the provision of the Manodhairya - self-confidence program for the rehabilitation of rape and other sexual offence victims.

Our country's laws and policies are generally good, but they are rendered ineffective by power abuses, the failure to use power, and the system's unwillingness to follow the rules. These compensation-related issues must be handled delicately and with great care. Only after that is justice able to be administered.

Keywords: Victim, compensation, sexual offences, state obligation

Introduction:

Victims of crime are regarded as an unimportant party. Before 1940, there was no notion of victim or victimology. Victimology is a twentieth-century concept. When offender commits crime, he is being punished by the existing legal system, but with that act or omission three-pronged victimization takes place. One is the victim against whom the offence takes place, secondly the relatives who are sufferers of the dependents as primary victim and the society at large. In our country the offender is being taken care of through the Constitutional safeguards, various legislative frameworks but the voiceless victim and his dependent's sufferings go unattended, the prosecution on behalf of state plays a prompt role in convicting the accuse, but the legal system for years together have not thought of victims agonies, the crisis which he or his dependent undergoes. On the contrary if there are loopholes in investigation the accused gets benefit of doubt. The Justice which is given to victim is in terms of punishment of the offender. While giving him the punishment, the judges apply the sentencing policies taking in to consideration the aggravating and mitigating factors and give him the quantum of punishment taking in to consideration all these issues, but is victim expected to stay cool and satisfied with punishment of the offender? In fact, he should be the central focus of system who has innocently become victim due to the wrongs of the other person.

Basically, compensation to victims is the well-known principle enforced by the civil courts in the country. The emergence of the compensatory jurisprudence in the light of human rights philosophy is the signal indicating that the judiciary is an institution of rendering justice who has undertaken to protect the right to life and personal liberty of all persons irrespective of express constitutional provisions or judicial precedents. The idea of compensation is implicit in the notion of welfare state. It means anything given to make things equivalent, a thing causing loss. It is counterbalancing of victims suffering and loss that result from victimization. The idea behind the compensation is, to give something as social insurance, as welfare state's responsibility towards it's subjects, meeting the governmental obligation to all citizens. The compensation in criminal law is mainly about compensation to the victims of crime. Justice Krishna Iyer has in a case observed that, victimology is a burgeoning branch of humane criminal justice, must find fulfilment, 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 forlorn.¹

Who is victim of crime?

UN General Assembly Declaration of "Basic principles of Justice for Victims and Abuse of Power" adopted in 1985 contain exhaustive definition of the term 'victim of crime' in specific as

Art -1 Victim means those who individually or collectively, have suffered harm including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through act or omission that are in violation of criminal laws operative within member states including those prescribing criminal abuse of power.

Art-2 A person may be considered a victim under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted and regardless of familial relationship between the perpetrator and the victim. The term victim includes where appropriate, the immediate family or the dependents of the victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. It categorizes the victims as victims of crime and victims of abuse of power. Basically, victim of crime is one who has suffered loss because of some act or omission of the accused. He suffers injuries physically, psychologically, financially etc. when the process of justice goes on with lingering, due to behavioral and procedural aspects of police machinery, it worsens the victim. He is literally traumatized.

Women Victims:

Victim like children, underprivileged class and women suffer as they are vulnerable due to their socio-economic and cultural factors. When women become victim of the traditional crimes, their situation is very deplorable, degrading as very often they are hold as soft targets of sexual greed. It is observed that offences against women specifically the sex offences are increasing everywhere. Indian society is tradition bound

¹ Maru Ram v Union of India (1981) 1 SCC 107

and women are held as symbols of family prestige hence sexual offence against her is taken as a blow to the dignity of family and she is looked down upon due to her subsidiary status in family, vulnerability of her not only makes her fall prey to criminal attack but even in its redressal, access to justice process everywhere she is facing discrimination, oppression and exploitation. Perhaps this class of victim needs more attention at the instance of state, they deserve maximum consideration in view of emotional, psychological and human problems involved in the experience with the police, court etc, as it proves traumatic. In case of sexual offences against women it is seen that the credit of rape victim may be impeached by showing that she was of a generally immoral character. On the contrary the evidence of the moral/immoral character of the accused is not given unless the good character is asserted by him in his evidence. The way the questions are asked in court are also causing harm to the dignity of women, they are found offending and humiliating. Now the legal provisions like in camera proceedings, certain protections to the victim are available but still the atmosphere is not up to the mark victim friendly. The cases of gang rape, rapes in custody, women suffered heavily due to social taboo.

The criminal law of the country provides the punitive object as well as act as a deterrent for the society. Variety of sexual offences against women of which offence of rape is a major threat to the dignity of women. The Apex court of the country has observed² 'rape is not only a crime against a woman, it is a crime against the society at large. It destroys the entire psychology of a woman and pushes her into a deep emotional crisis. It is only by her sheer will power that she rehabilitates in society which coming to know rape, looks down upon her in derision and contempt. Rape is therefore the most hated crime. It is a crime against basic human rights and violates victim's most cherished fundamental right to life under Art 21'

Why there is need for compensation to the victims of rape?

Though the prosecution has taken tremendous efforts in providing punishment to the offender, a victim has little to do with it, as law has been put into motion because of failure of the state to provide her safety and security to which it is bound by law. Hence providing only rigorous punishment is not sufficient. As well the stigmata caused due to the victimization and criminal proceedings, cannot be expected to just wash away with the punishment of the offender. Also, several times it has caused her economically burdensome, she might have lost the job due to the incident. Here the compensation is the only answer for getting her dignity back and rehabilitate herself. The need for compensation to the victim is also because state is under obligation to support the victim who became sufferer innocently and state cannot provide sufficient protection. The law of the land provides the right to public assistance in cases of disablement and in other cases of underserved want.³

Victim Compensation- statutory frameworks:

² Shri Bodhisatwa Gautam v Miss Shubhra Chakraborty 1996 AIR 922

³ Art 41(6)

1. Power of Court to pay expenses or compensation out of fine⁴-Criminal court can impose a fine or confirms in appeal, revision, or otherwise a sentence of which fine forms a part, the court may while passing judgment, order the whole or any part thereof the fine recovered to be applied—in payment to any person of compensation for loss or injury caused by the offence, when substantial compensation is in the opinion of the court is recoverable by such person in civil court.
2. Since 2008 many states have come up with their own compensation schemes in consonance with Sec 357 A of Cr.P.C,1973 which makes it mandatory for the state to provide compensation for the victims and their dependents who has been injured as a consequence of the damage caused.
3. Criminal law (amendment) Act 2013 was enacted to meet the inadequacy of law relating to sexual offences against women and it reflected in the creation of Nirbhaya Fund
4. Provision under Cr.P.C- sec 357A added which provides a state to frame a victim compensation scheme. Sections 357, 357A, 357B, 357C, 358 and 359
5. Manodhairya Victim Compensation Scheme:

State Government under section 357-A of the Criminal Procedure Code has framed two schemes namely Maharashtra Victim Compensation Scheme, 2014 and Modified New Manodhairya Scheme, 2017 as amended on 16th February 2018 and 16th October 2018. The Single Window System is made available through Maharashtra State Legal Services Authority and all District Legal Services Authorities in the State. The third scheme namely Compensation Scheme for Woman victims / survivor of sexual assault/other crimes, 2018 is introduced by National Legal Services Authority for the purpose of granting compensation to the victims. The compensation to the victims of rape has been provided for the offences Rape and punishment for rape⁵, offence of a rape by police officer or public servant⁶376-A offence under sub-section (1) or sub-section (2) of section 376 and in the course of such commission, inflicts an injury which causes death of a woman, offence under Sec 376-B, Sec. 376C, Sec 376 D, Sec 376 E. as well sec. 326 A and 326 B⁷ The scheme also covers offences under the POCSO Act ⁸Sec 3, Sec.4, Sec,5 Sec 6 The scheme also provides for the detail instructions about the role of police officers, how and when they are immediately act in cases of compensation to the District Legal Service authority. The scheme has comprehensively given detail guidelines to appoint District level committee consisting of Principle District Judge, Member secretary District Legal Service Authority, Social worker, Police officer and the Chief Medical officer of the Civil Hospital to consider the cases of compensation. Under the scheme the role of every person in administration

⁴ Sec 545 of Cr. P.C

⁵ Sec. 375 & 376 of IPC

⁶ ii) Sec 376 (2) IPC

⁷ 326A : Voluntarily causing grievous hurt by use of acid, etc. 326B : Voluntarily throwing or attempting to throw acid.

⁸ Protection of Children from Sexual offences Act,2012

of justice like Police, CMO, Role of Women and Child Development Officer is made clear. Section 228-A introduced in Indian Penal Code in 1983 prohibits disclosure of identity of the victim of certain offences. So also, section 23, section 24, and section 33 of The Protection of Children from Sexual Offences Act, 2012 prohibits disclosure of identity of child. The schemes provide the compensation amount up to 3,00,000 and the initial amount of 30,000 for the immediate relief of victim is also provided under the scheme. The scheme also provides the guidelines for the relief of victim, and her medical care, in addition to the compensations. The responsibility of the committee to provide every possible relief in case of rape victim is fixed under the Scheme and the timely review, trainings to the committee and member is provided to make the support structure strong.

Other salient features of the scheme:

1. The first ever scheme which provides immediate focus of the government officials as well judiciary for swift action for the victim of rape.
2. Precise time bound relief and care approach with full proof accountability of state
3. The provision for the 30,000 immediate relief and in case of minor the joint name of authority to protect interest of victim till she becomes major. 75% of the total compensation will be deposited in the bank account.
4. Keeping in mind victims who cannot afford a lawyer, the state has provided legal help by appointing a public prosecutor.
5. The scheme also asks setting up of "district trauma teams" to aid the victim's family as soon the incident takes place. The team has a woman representative Department of Women and Child Development (DWCD), medical officer, support person and a police official.

The Appraisal of the implementation of the scheme and challenges

The scheme in its early stage has been handballed purely by the executors and the legal service was not in picture, which paved way too many critiques and remarks on the effective implementations but gradually it was turned as the responsibility of the Legal Service authority and the intervention proved very user-friendly and systematic. The blemish of effective implementation was washed away and now it became more accountable as the data is constantly under scrutiny by the Judiciary as well the government.

Conclusion:

Manodhairya scheme is an important piece of welfare, designated to help who need assistance with physical treatments, mental support, etc. With this provision of the pecuniary compensation, funding the victims, at least the chances of her survival are increased. The state responsibility towards the victim of rape is actually a serious concern, in the time of increasing crime rate against women and children. But the issue of implementation of scheme is dragging in timely assistance due to slow filing of applications, incomplete applications, as well the ignorance of the victim. The High Court of Mumbai has also expressed its concern over the delay in getting compensatory justice to the victim by saying 'Rape victims are not beggars and giving compensation to

women victims of crime is the state's obligation and not charity, The laws, schemes are much benevolent in our country but the abuses of powers, no use of powers and the reluctance of the system to abide by the rules makes them ineffective. These issues of compensation must be handled with sensitivity and serious concern. Then only the dispensation of justice is possible.