

VICTIMS' – LEGAL RIGHT TO COMPENSATION

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The word "victims" means persons who individually or collectively have suffered harm including physical or mental, emotional suffering, economic loss or substantial impairment of the fundamental rights through acts of omissions or commissions that are in violation of criminal laws operative including those laws proscribing criminal abuse of power. The General Assembly of the United Nations in its 96th Plenary Meeting held on 29th November, 1985 made a declaration of basic principles of justice for victims of crime and abuse of power, recognising that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognised and also that frequently their families, witnesses and other who aid them are unjustly subjected to loss, damage or injury. The Assembly affirmed the necessity of adopting national and international methods in order to secure universal and effective recognition of and respect for, the rights of victims of crimes and abuse of power. The Assembly also adopted the declaration of basic principles of justice for victims of crime and abuse of power. It was also declared that offenders or third parties responsible for their behaviour should where appropriate make fair restitution to victims, their families or dependants. Subsequently the General Assembly emphasised that when compensation is not fully available from the offenders or other sources, the State should endeavour to provide financial compensation to the victims, their families and in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization. In this context, it was also stressed that an establishment strengthening the expansion of National Fund for compensation to the victims should be encouraged. Now coming to the victims of the abuse of power, it is noted that though they are not the victims of violation of criminal laws yet they belong to the category who have suffered harm including mental or physical injury, economic loss or impairment of their fundamental rights through acts of omissions and commissions of those wielding power resulting in violation of recognised norms relating to human rights. The Assembly felt that the State should consider incorporating into the National law norms prescribing abuse of power and providing remedy to victims of such abuse by way of restitution or ordering compensation and other incidental supports. The concept underlying is that the State or the Community should restore the victims or their dependents as far as possible to their former conditions through compensation and neighbourly support.

The word "victimology" though appears to be a coinage is understood as the science dealing with the crimes and their victims and the history shows that the same is given considerable importance. We find that in Britain as early as in 19th century considerable thought had been given to the victim from the point of view of compensation and reparation. Apropos to the same from time to time schemes providing for compensation to the victims of crimes have been framed and they have been in vogue. Now the latest enactment in that direction is Criminal Justice Act, 1988 which provides for victim of violence being entitled to compensation subject to some restrictions. The justification underlying is that wrong done to an individual extends to him as well as to his family and also to the community of which he is a member.

The concept of compensation to the victim has become popular in U.S. also. Though administratively the compensation in principle has been regarded as an extension of fine but in a large number of cases that may not adequate. It has, therefore, become necessary that the State should also rise to the occasion and provide legal remedies recognising the right of the victim to such compensation in appropriate cases and should set up a separate fund for the purpose. In Britain prior to 1988 there used to be some non statutory arrangements what are called "Criminal Injuries Compensation Schemes". The Criminal Justice Act, 1988 places the criminal injuries compensation scheme on a real awareness on progressive lines that the State must accept its responsibility to rehabilitate such victims.

Though the victim hitherto has not been totally left without any remedy or he has his remedy in tort and can also recover some damages by a suit but experience shows that this remedy is so dilatory, expensive and troublesome and that a victim may not get his due even in his lifetime. Therefore there is a growing awareness to rehabilitate the victim of crime or his family. It is only the State that can endeavour in any event and come to the rescue of the victim in this regard. In many of the countries, the criminal injuries compensation boards have been set up and are functioning for quite some time now. In India the provisions of the Constitution and the Code of Criminal Procedure and the Evidence Act provide for protection consistent with the world human rights conventions. It is, therefore, appropriate and necessary that the States in India too should rise to the occasion in conformity with the international understanding in respect of providing adequate compensation to the victims of the crime and evolve necessary schemes which have legal status. As to the details of implementation and the necessary infrastructure, adequate legal provisions should be made on the lines adopted by the other countries as far as practicable.

Under the Protection of Human Rights Act, 1993, the National Human Rights Commission at the National level is set up. Similarly in some States also similar Commissions of State level are set up. The violation of human rights as distinguished from violation of criminal laws is mainly due to abuse of power. Power as understood in common parlance is the pressure exercised by a person or a group over others so as to influence their actions or their attitudes, and such power may be political, economical, social or religious etc. The abuse of the power is understood as ill-use, inappropriate treatment, application by unlawful means to a wrong purpose of such power which results in the violation of civil rights, other privileges guaranteed under the law. In all such violations, the victims may suffer harm including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights because of acts of omissions or commissions by the persons wielding power, as declared by the United Nations General Assembly. In such cases also the State should consider incorporating into the National law certain norms proscribing abuse of power and providing remedies to victims including restitution and compensation and other social assistance and support. The concept of providing compensation to the victims of crimes would equally be applicable to the victims of human rights abuse. It is to be borne in mind that the setting of National Human Rights Commission is thought of at a time when our country is linking up with other countries to attain social, cultural and economic status at the international level.

No doubt there are certain provisions in the Code of Criminal Procedure and other enactments like Motor Vehicles Act, Fatal Accidents Act, Indian Railways Act, Workmen Compensation Act, Factories Act, etc. providing for compensation to the victims and their families but they are found to be wholly inadequate. Strictly speaking, the cases covered by these provisions belong to different categories and they are not the same as violations of human rights particularly by abuse of power and also do not cover all the categories of cases of criminal injuries. Therefore, a fresh look is necessary in the matter of giving due importance to the concept of "victimology" and the role of the State in its responsibility to rehabilitate the victims of crime or violation of human rights and their family members.

This takes us to the question as to what are the types of violations resulting in crimes and abuse of human rights that should be the criteria for awarding such compensation. In the Draft "Guidelines for measures about victims of crime and abuse of power", the United Nations Social Council has indicated, that the types of harm, injury, loss or damage caused by such violence should be determined

and redressed thus :

"It shall be the responsibility of the State, as the embodiment of justice, to provide for procedures, mechanisms and institutions through which determinations may be made as to whether the alleged conduct, violations, harm, injury, losses or damage have been committed or suffered, as to the means and the amount of redress or sanction as a result thereof that are appropriate, and to ensure the enforcement and implementation of such determinations."

In the declaration of basic principles of justice for victims of crime and abuse of power, by the General Assembly of the United Nations at its 96th Plenary meeting, the following paragraphs are of importance and noteworthy :

A. Victims of Crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power.

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 the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or group origin, and disability.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to :

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- (b) The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State

of which the victim is a national is not in a position to compensate the victim for the harm.

B. Victims of Abuse of Power

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness or changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts."

It is obvious that the expression "victims of crimes" is not confined to the victims of ordinary crimes only but also enfolds victims who suffer due to abuse of power by persons in lawful authority. With regards violation of legal powers by the agencies of the State resulting in harm to the citizens, the Economic and Social Council of United Nations in their draft guidelines stated thus :

"Victims of crimes and other illegal acts involving abuse of power shall be entitled to indemnification by the State, organised entity or person in respect of crimes or other illegal acts committed by their agents or other illegal acts committed by their agents or employees in the usual course of the performance of their duties and within the scope of their actual or ostensible authority. Unless it is otherwise proved, employees or agents of the State, organised entity or person shall even when committing crimes or other illegal abuses of power, be presumed to be acting in the usual course of the performance of their duties and within the scope of their actual or ostensible authority.

Thus it is clear that people will have to be protected not only against ordinary offenders violating State criminal laws but also from victimisation by those wielding power. To alleviate the sufferings of such victims and to ameliorate them from the consequences sufficiently by way of compensation and reparation it is felt in all civilised countries that the State should take up the responsibility and chalk out welfare measures and set up appropriate bodies for implementation of such welfare measures. Again the United Nations in its draft guidelines on this subject emphasised :

“It shall be the responsibility of the State as the embodiment of justice, to provide for procedures, mechanisms and institutions through which determinations may be made as to whether the alleged conduct, violations, harm, injury, losses or damage have been committed or suffered, as to the means and the amount of redress or sanction as a result thereof that are appropriate, and to ensure the enforcement and implementation of such determinations.”

In this context, the United Nations Economic and Social Council also suggested the establishment of a fund or funds at international, regional and national levels as means to help and ensure that victims are not left without full redress of the harm, injury, loss or damage especially when the offenders are not identifiable or available to provide or capable of providing such redress.

A perusal of the literature on the various working schemes in this regard in various countries would show that effective measures on somewhat legal basis have been taken for implementation of such criminal injuries compensation schemes. As referred to above one of the schemes proposed is to set up “Victims Compensation Fund” which goes beyond the simple notion of subsidy. One such important scheme is framed in Great Britain in 1990 to implement Criminal injuries compensation scheme by ‘Criminal Injuries Compensation Board.’ The scheme is very exhaustive and contains elaborate provisions and various other conditions and considerations for administrative implementation, filing application, processing and assessment of compensation etc.

As to what should be the nature of the scheme that a can be thought of having regard to the conditions obtaining in our country, a further indepth study has to be made. However, a growing awareness that the State should accept its responsibility to rehabilitate the victims of crime has to be taken cognizance of and the State ‘in the present context of international scenario should rise to the occasion and should try to give an immediate articulation and take all the necessary steps to formulate a scheme after due consideration of various conditions and circumstances.’