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Right to a Dignified Life: Victim Compensation for Acquitted prisoners

PAWAN BHARTI¹ AND CHUMTHUNGLO. Z. NGULLIE²

ABSTRACT

Indian judiciary is notoriously known for being very slow. Sometimes, the time taken by the court to deliver judgment in cases causes great injustice to parties. There are a plethora of instances where somebody has languished in jail for years. Usually, people are forced to stay in jail because of false charges against them. They spend years awaiting their turn to get justice. This happens in India even after we all know that 'bail, not jail' is the general approach. Indian courts have recognized these problems in many cases. We even have a victim compensation scheme in India. The current legal system provides compensation for the victim. But these victim compensation schemes do not include people who have been wrongfully convicted. This article aims at highlighting the need for such a mechanism.

I. INTRODUCTION

Do you remember how the world was 20 years before? We had keypad phones; the internet was not available on mobile phones. Metro was not the easiest mode to travel. There were no low-floor buses in India. These are just the normal things that one may notice if talked about what has changed in the country in the past 20 years. Now suppose you are locked in a room for 20 years. And then released in public. All the changes would be so difficult to understand and accept. Not to forget that you will be living now a trauma of being locked for 20 years. This is how most of the acquitted prisoners feel in India. The time they spend in jail may vary from few years to 20+ years. There is no dearth of such cases. If one tries, they can find many such cases. The case of Vishnu Tiwari and the Akshardham Bombing case are the latest ones. Sadly, the current legal provisions do not have any compensation scheme for such people. But we have seen few cases where courts have given compensation for wrongful convictions. The present system even though has a victim compensation scheme, ignores the victims of wrongful convictions. The word "victim" is defined under section 2(wa) of the Criminal Procedure Code³. The act defines a victim as any person who suffered loss or injury due to any act or

¹ Author is an Advocate in India.

² Author is a student in India

³ THE CODE OF CRIMINAL PROCEDURE, 1973 ACT NO. 2 OF 1974

omission. This act or omission must be the same with which the accused person has been charged. It further states that the word victim will include guardian or legal heir of the person who has suffered any loss or injury.

II. VISHNU TIWARI'S CASE

Vishnu Tiwari case⁴ is just another example of the law being used to do wrong with an innocent person. Vishnu Tiwari was accused of committing the rape of a woman belonging to the Dhobi community. The lady belonged to an SC/ST community. Hence, amongst the charge of rape, a case under SC/ST atrocities act was filed. He was jailed in 2000 after he was convicted in the lower court. However, he was acquitted in 2021 by the Allahabad High Court. The court found the testimony of the witnesses botched up. They had changed it several times. The main point of change was that during FIR registration, the lady had said that she recited the incident to the police. Meanwhile, during the cross-examination and examination in chief, she said that her father-in-law had filed the report. There was no presence of semen in the body of the women or on the dress. There was no mark of injury and neither the doctors said that they were sure that rape had happened.

The accused spent 21 years in jail and now after being released has no idea how to live. The world around him had changed a lot. He said that he doesn't know how to sustain himself now in society. Currently, a petition is pending in the supreme court by a BJP leader seeking compensation for Vishnu.

III. CURRENT VICTIM COMPENSATION SCHEME

There are various legislations that have provisions for victim compensation for specific scenarios. For this article, the major focus is on the provisions of the Criminal Procedure Code. The main provisions which deal with victim compensation in CrPC are section 357, 357A and 358. Section 357 deals with the court ordering the accused to make the payment of the fine or any amount as decided by the court to the victim. Sub-section (3) makes provision for payment of compensation even when the sentence given does not impose any fine. Further, subsection (4) lays down the jurisdiction and powers of the courts. It states that any order which awards compensation to the victim must have been made by an Appellate court, high court, or court of Session. They must do so when they are exercising their power of revision. Meanwhile, 357A is the provision that lays down the guidelines for the victim compensation scheme. Subsection (1) of said section asks the state government to form a scheme for compensation to the victim

⁴ Vishnu Kumar Tiwari V. State of Uttar Pradesh, CRIMINAL APPEAL NO. 1015 OF 2019

or their dependents. They should do so by the coordination of the central government. Hence, every state in India must have a victim compensation scheme. The quantum of the compensation has to be decided by the District Legal Services Authority or State Legal Service Authority. It also makes provision for the situation where the offender could not be traced and found. Whether the offender is found or not, this would not change the situation of the victim. Hence, provision for compensation in such cases has been made under subsection (4). The section also makes provision for rehabilitation.

Another important provision is section 358 of the CrPC. It makes a rather unconventional interpretation of the term victim. It provides compensation for any person who has been arrested without “*sufficient ground*”. The words sufficient ground however is not defined by the provision anywhere. The section states that compensation of Rs. 1000 to be given to any person who is arrested without sufficient ground on the complaint of other people. Here, the compensation is to be given by the complainant. There exists a requirement that the arrest must have been made without sufficient ground and a link must exist between the arrest and complainant.

IV. JUDICIAL VIEW

Indian Judiciary has not followed a single path when it comes to given compensation to wrongfully convicted prisoners. Or in the case of the people who have been discharged later on.

One of the major cases that India saw regarding compensation to the acquitted prisoners was in Rudal Shah’s case⁵. But the first case where the right to compensation was recognized is Khatri v. State of Bihar⁶. This case is also known by the name ‘Bhagalpur Blinding’ cases.

In the Rudal Shah case, the appellant was acquitted from a murder case in the year 1968. He was however kept in jail for 14 more years. In 1982, a habeas corpus petition regarding his release brought the case to the limelight. The court gave Rudal Shah a compensation of 35000 rupees. In another case of Bhim Singh v. State of Jammu and Kashmir⁷, Bhim Singh who was an MLA was arrested. This was to keep him out of the assembly session. The court gave a compensation of rupees 50000. The Supreme Court while hearing the case of Ram Lakhan Singh v State of UP⁸ ordered compensation for Rs. 10 Lakhs. The petitioner had fought the

⁵ Rudal Shah V. State of Bihar, 983 SCC (4) 141 (India).

⁶ Khatri v. State of Bihar (AIR 1981 SC 928)

⁷ Bhim Singh V. State of Jammu Kashmir, AIR 1986 SC 494

⁸ Ram Lakhan Singh v State of UP, 2015 16 SCC 715,

battle for 10 years and lived 11 days in jail. Another famous case is the ISRO espionage case⁹. The court awarded 50 lakhs as compensation to scientist S. Nambi, who was in jail for over 24 years. These cases might show a proactive Supreme Court regarding compensation for acquitted prisoners. But there are other major cases where nothing of this sort happened. The Akshardham Terror case¹⁰ is one such example. The court duly stated and reprimanded the authorities for not conducting an investigation in a judicious matter. All the accused were released. However, the court refused to entrain pleas regarding victim compensation. Similar things happened in the Hyderabad suicide bombing case¹¹. The accused were acquitted, yet no compensation was given. They had spent over 10 years in jail. The only time when the court proactively asked the family to file a petition for compensation was in the case of Mohd. Jalees Ansari and others v. CBI¹². However, the family didn't file any petition.

It is not easy to draw any conclusive jurisprudence from the judgments of the court. They don't give any specified guidelines as to in which case one will get compensation. The difference between the judgments and the Supreme court's view is quite contrasting. Ram Lakhan got 15 lakhs as compensation for spending 11 days in jail, meanwhile, Rudal Shah got 35 thousand for being in jail for 14 years. And the sheer surprise in cases of Akshardham Bombing and Hyderabad Suicide bombing case.

V. EVOLUTION OF VICTIM COMPENSATION

Lord William Blackstone once said that "*Better those ten guilty persons escape than that one innocent suffers.*" This famous saying is often violated in India. Over 69% of the people in jail are not prisoners, rather they are undertrials prisoners. The Indian Constitution in its Part IV, Article 41, and part V article 51A talks about developing humanism and that it is the duty of the state to create "*the right to public assistance in cases of disablement and other cases of undeserved want*".

It is a well-settled point that article 21 of the Indian Constitution that talks about the right to life include the right to compensation. Justice Chandrachud said that the importance of article 21 will be lost if the court's power were limited to passing an order of relief from such illegal detention. To keep the value of the article intact, monetary compensation would be required.

⁹ S. Nambi Narayanan v. State of Kerala, WP(C). No. 30918 of 2012 (L)(India)

¹⁰ Adambhai Sulemanbhai Ajmeri & Ors. v State of Gujarat, (2014) 2 MLJ (CrL.) 670 (SC) (India).

¹¹ Srinivasa Rao Apparasu, 10 Suspects in Hyderabad Suicide Bombing Case Acquitted, HINDUSTAN TIMES, <https://www.hindustantimes.com/india-news/10-suspects-in-2005-hyderabad-suicide-bombing-acquitted/story-fII02EQzHjVARjq3WhFDdO.html> (8/28/2021 9:17PM)

¹² Mohd. Jalees Ansari & Ors. v Central Bureau of Investigation (AIR 2016 SC 2461) (India)

In the case of *M.C. Mehta v. Union of India*¹³, the supreme court talked about the ambit of article 32. It said that the power under the said article was not limited to just preventive measures in case of infringement of fundamental rights. But it also covered the power to take remedial measures such as giving compensation.

The idea of victim compensation can also be traced in the 154th Law commission's report, 1996. The report laid down the base of the present-day section 357 of CrPC. It also talked about giving compensation to family members of the victim in some examples.

The next major moment was the Malimath Committee. They were the ones that recommended a victim compensation fund. It said that the compensation to the victim was a state obligation.

VI. CONCLUSION

One cannot ignore the words of senior advocate K.T.S. Tulsi in the Akshardham Terror case, that "*The Apex Court gave them back freedom but who can give them back the ten years they spent behind bars for no-fault?*".¹⁴ The answer to this question will be a creation of a compensation scheme for acquitted prisoners.

Our country's criminal system till now has been snatching the right of acquitted prisoners. It is the duty of the state to create a society that promotes humanism. But sadly, they have not done this till now.

The current system is not equipped to give justice to the acquitted prisoners. Existing victim compensation schemes do not cover them. There are two ways to proceed. Either bring new legislation or amend the meaning of victim. The current definition of victim is perceived in a manner that only the petitioner or their family member may be included in it. But if we amend the definition in a way that the acquitted prisoner may be included in the definition. Even they have suffered loss and injury. The judiciary needs to create a universal guideline which should be followed in giving compensation to the victim of wrongful conviction also

¹³ AIR 1987 SC 965

¹⁴ Eleen Garg, *The Lost Right to Compensation of Wrongfully Convicted Victims: A Critique*, Academike, <https://www.lawctopus.com/academike/the-lost-right-to-compensation-of-wrongfully-convicted-victims-a-critique/> (8/25/2021 9:18PM)