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The Constitutional Aspect of Compensatory Jurisprudence

ANUJ AGRAWAL¹

ABSTRACT

Compensation meant to provide the aggrieved party with an equivalent or with the substitution of good which is equal in value which is necessary to restore an injured party to his former position. "It can be in form of an act where a court orders to be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury. In developing Compensatory Jurisprudence in India, the law offices/committees such as the Law Commission and Committees on Reforms of Criminal Justice have played a great part by presenting their reports after due discussions and studies made on these crucial aspects of the law. Plenty of reports have been submitted on the Indian Penal Code of 1860 and the Code of Criminal Procedure of 1898 and 1973 by The Law Commission of India in its hitherto and has deliberated on the topic of victim justice and made several recommendations for change."

The paper has tried to cover every angle of the topic, from its genesis to its evolution. Also, in the analysis chapter of the paper, the audience will find that the author has even mentioned the law commission's reports which are presented in different years, such as- 156th Report Of Law Commission, 1997, 226th Law Commission Report, also, mentioned the important cases which are the precedents to this compensatory jurisprudence, the cases such as Rudal Shah v. State Of Bihar, Bodhisattwa Gautam v. Subhlra Chakraborty, etc. have been analysed in the paper. Further mentioned the acts which were enacted in the past as a gesture to compensate the section of society.

Keywords: *Compensation, Compensatory Jurisprudence, Evolution, Law Commission, Reforms, Precedents.*

I. INTRODUCTION

It is not allowed for the victim to take the law into his own hands to avenge his crime or to make up for the loss of his own losses. Traditionally, criminal justice requires that both the victim and the perpetrator believe the demand has been met. This is an old-but-accurate idea that, which

¹ Author is a student at SVKM's NMIMS School of Law, Indore Campus, India.

seems, however, unreasonable, in current circumstances when state and society actively seek to correct the victim and are often unsympathetic to his or uncooperative when it comes to compensating victims of crime. Both the deterrent and the concept of retribution and the victims' pain should be paid attention to in today's criminal jurisprudence. Compensatory damages as part of criminal law has two objectives: first, keeping a victim in mind in the criminal justice system, and second, ensuring the offender has empathy for his victims.

(A) What compensation is under law?

The word “compensation” is derived from the Latin word “compensare” meaning “weigh together” or “balance”. The term “compensation” as stated in the *Oxford Dictionary*, signifies that which is given in recompense, an equivalent rendered.²

As per the Black's Law Dictionary which is considered to be very prominent under law sources, it provides a lengthy definition for the word *Compensation* where in it clearly mentions that it does mean to provide the aggrieved party with an equivalent or with the substitution of good which is equal in value which is necessary to restore an injured party to his former position. “It can be an act where a court orders to be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury.”³

In the case of *State of Gujarat v. Shantilal Mangaldas*, the expression is interpreted as- “compensation” means anything given to make things equivalent; a thing given to or to make amends for loss of recompense, remuneration or pay; it need not therefore necessarily be in terms of money.⁴ Also, in the case of *Rustom Cavasjee Cooper v. Union of India*, it is explained as- “it means anything given to make things equal in value; anything given as an equivalent, to make amends for loss or damage.”⁵

The theory of compensating victims of crime is understood by the judicial system. People have a right to compensation for the physical or mental harm they experience as a result of another's behaviour. A decree for damages or compensation is taking decades to be issued to victims, causing them to suffer too much. Compensatory jurisprudence has emerged in the face of human rights and without any previous basis in the judiciary protection of all people's rights has been

² SCC ONLINE, <https://ezproxy.svkm.ac.in:2090/Members/wordsandphrases.aspx>.

³ HENRY CAMPBELL BLACK, M. A., BLACK'S LAW DICTIONARY, (ST. PAUL, MINN. WEST PUBLISHING CO. 1968).

⁴ State of Gujarat v. Shantilal Mangaldas, (1969) 1 SCC 509.

⁵ Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248: AIR 1970 SC 564.

included in the judicial system. The Courts of Ireland decided to grant monetary compensation to the state for its failure to uphold the citizen's fundamental rights. But these factors have not stopped the courts from devising measures, such as penalties awarded to the government, as well as liability for infringement.⁶

(B) Can court ask to compensate any authority?

Article 32 of the Constitution confers on the Supreme Court the power to issue a writ, mandamus, habeas corpus, prohibition, quo-warranto and certiorari, whenever it is necessary to secure those rights. The privileges conferred by Article 32 are "guaranteed", in absolute. Article 32(1) contains the required procedure for moving the Supreme Court to enact the following fundamental rights. Article 32(2) allows the Supreme Court to set up any mechanism for the protection of a constitutional right, and it is not restricted in any way. This interpretation of the Constitution implies that the Supreme Court can provide "restorative" in light of appropriate instances.

Also, Article 142 of The Constitution of India allows the hon'ble Supreme Court "may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe."⁷ Under which Supreme Court can even ask the state, accused or to the convicted party to compensate the victim for the harms caused due to the act committed by the accused or convict. Since, it is the primary justification for restitution of victim was that the damage done to person himself or to his property and it is the obligation on state to prevent the crime and also to safeguard and make sure that the fundamental rights of the citizens doesn't infringed by anyone.

II. ANALYSIS

(A) Compensatory jurisprudence in india

In developing the Compensatory Jurisprudence in India the law offices/committees such as Law Commission and Committees on Reforms of Criminal Justice have played a great part through presenting their reports after due discussions and study made on these crucial aspects of law. Plenty of reports have been submitted on the Indian Penal Code of 1860 and the Code of

⁶ Manmeet Singh, *Compensatory Jurisprudence*, LEGAL SERVICE INDIA, <http://www.legalservicesindia.com/article/1888/Compensatory-Jurisprudence.html>.

⁷ INDIA CONST. art. 142 (1).

Criminal Procedure of 1898 and of 1973, by The Law commission of India in its hitherto and has deliberated on the topic of victim justice and made several recommendations for change. Also, The Malimath Committee in the year 2003 which is made to look into the reforms of criminal justice system in India has also placed emphasis on victim involvement in criminal justice systems and fought for victim compensation and restitution.

a. 156th Report Of Law Commission, 1997

The 14th Law Commission, in the year 1997, presented its 156th Report on the Indian Penal Code, reminding its earlier recommendations made in its 152nd Report presented in the year 1994 and in its 154th Report presented in the year 1996, on the Criminal Procedure Code and suggested that in State governments' formulation of a 'Victim Compensation Scheme,' and cognizant of the fact that payment of compensation as a 'additional punishment' not only includes an investigation into a range of situations, but also that some cases do not merit compensation by way of punishment, opined that it would be 'inappropriate' to include an order for payment of compensation as a form of punishment.⁸

b. 226th Law Commission Report, 2009

Recommendation Regarding Compensation under Indian Penal Code, 1860 The law commission submitted its report to the Hon'ble Supreme Court of India for its consideration in the pending proceedings filed by one Laxmi in W.P. (Crl.) No. 129 of 2006 on "The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime". The Law Commission recommended that a separate Act be introduced to address justice for victims of acid attacks, rape, sexual harassment, abduction, etc. It proposed a wider legislative framework to address the needs of victims of various crimes that need rehabilitation and restitution for survival.⁹

III. CASE ANALYSIS

(A) Compensation in monetary terms

Over time, the Supreme Court of India has provided a new dimension to Article 32 by implying the power to grant damages/compensation when a person's Fundamental Right has been violated and no other appropriate remedy exists to provide relief and restitution for the petitioner's injury. The Court has argued that its authority under Article 32 is not only injunctive in nature, i.e., preventing a violation of a Fundamental Right, but also remedial in nature. As a result, the Court

⁸ EGYANKOSH, <http://egyankosh.ac.in/bitstream/123456789/38912/1/Unit-2.pdf>.

⁹ *Ibid.*

cannot only prevent the infringement of a Fundamental Right but also provide redress after the right has been violated. The Court has argued that in the absence of such a force, Article 32 would lose all of its effectiveness, would become emasculated and made ineffective, and would become inefficient.¹⁰ As a result, when a person's Fundamental Right is violated, he or she can seek redress under Article 32. As the Court observed in the case discussed below. The Court has the authority to grant damages in order to compensate an individual for the harm he suffers as a result of a breach of his Fundamental Rights.

- **Rudal Shah V. State of Bihar**¹¹

In this case the writ of habeas corpus was presented by the petitioner, where the petitioner was kept in jail for 14 years even after his acquittal by a criminal court and here in this case the court had awarded the petitioner with damages against the state where the petitioner's right to personal liberty was infringed which is enshrined under Article 21 of The Constitution of India. The Court felt that not awarding damages in the instant case would "be doing merely lip service to the Fundamental Right to liberty which the State Government has so grossly violated".¹²

- **Consumer Education and Research Centre V. UOI**¹³

The hon'ble Supreme Court in this case has settled law that "in public law claim for compensation is a remedy available under Article 32 or 226 for the enforcement and protection of fundamental and human rights. The defence of sovereign immunity is inapplicable and alien to the concept of guarantee of Fundamental Rights."¹⁴

- **Bodhisattwa Gautam V. Sublhra Chakraborty**¹⁵

The victim of rape was awarded with an interim compensation by the rapist and was directed by the hon'ble Supreme Court to pay Rs 1000/- per month to the concerned woman pending the criminal case against him.¹⁶

- **Chairman, Railway Board V. Chandrima Das**¹⁷

A Bangladeshi woman was gang raped on the railway premises by railway employees. Under Article 226 of the Constitution, a writ petition was filed in the High Court as public interest litigation. The claimant was given damages against the Railways by the High Court. The

¹⁰ MC Mehta v. Union Of India, AIR 1987 SC 1087.

¹¹ Rudal Shah v. State of Bihar, AIR 1983 SC 1086.

¹² MP JAIN, INDIAN CONSTITUTIONAL LAW, 1424, (Lexis Nexis 2018).

¹³ Consumer Education and Research Centre v. Union Of India, AIR 1995 SC 941.

¹⁴ *Supra*, note 11.

¹⁵ Bodhisattwa Gautam v Sublhra Chakraborty, AIR 1996 SC 922.

¹⁶ *Supra*, note 11.

¹⁷ Chairman, Railway Board v Chandrima Das, AIR 2000 SC 988.

Supreme Court upheld the judgement of the High Court on appeal. It was determined to be a violation of the victim's Article 21 rights, which applied not only to citizens but also to non-citizens. Additionally, the Court dismissed the argument that the case should have been brought in a civil suit rather than via a writ petition.¹⁸

(B) Compensation in kind

As we have already discussed that compensation is not restricted to money only. It can be anything to retribute the victim or the person on the disadvantage end. In this form, the jurisprudence is created or formed by the means of affirmative actions taken by the government at different levels in different forms. Affirmative action aims to reverse systemic patterns of prejudice against an individual's identity by assisting individuals perceived as having faced discrimination in the past or present. Its policies seek to effect reform in a variety of ways, including by demanding that certain quotas be met when recruiting, offering financial assistance in the form of grants and scholarships, and withholding federal funds and contracts from organisations that do not meet the necessary requirements.

On the other hand the critics of affirmative action point to a variety of perceived shortcomings of its policies, including the high cost of the services, the risk of recruiting less skilled applicants, and a lack of historical success in improving targeted groups' representation.

- **The Scheduled Castes And Tribes (Prevention Of Atrocities) Act, 1989**

The Act's primary purpose is to ensure marginalised people receive justice by proactive actions, by providing them with a life of dignity, self-esteem, and freedom from fear, abuse, or repression at the hands of the dominant castes. Additionally, protection is given against social disabilities such as denial of access to certain locations or the use of customary passage, personal atrocities such as forced drinking or consumption of rotten food, sexual abuse, and injury, as well as property-related atrocities such as malicious prosecution, political disabilities, and economic exploitation. It lists 22 offences relating to different habits or behaviours that result in criminal offences and violate the scheduled castes and tribes community's self-respect and confidence.¹⁹

- **The Protection Of Children From Sexual Offences Act, 2012**

The act was enacted to protect children from sexual abuse, sexual harassment, and pornography, and to provide Special Courts for the prosecution of such offences and related or incidental

¹⁸ *Supra*, note 11.

¹⁹ The Scheduled Castes And Tribes (Prevention Of Atrocities) Act, 1989.

matters. It is important for the authorities to ensure that the child's right to privacy and confidentiality is secured and upheld at all times and in the course of a judicial proceeding involving the child.²⁰

- **The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013**

The act was passed to protect women at work from sexual harassment and to prevent and resolve allegations of sexual harassment, as well as for matters connected with or incidental to them. Since sexual harassment violates a woman's fundamental rights to equality under Articles 14 and 15 of the Indian Constitution, her right to life and dignity under Article 21, and her right to practise any career or carry on any occupation, trade, or industry, which includes a right to a sexual harassment-free atmosphere. Additionally, sexual assault protection and the right to work with equality are widely recognised human rights under international treaties and instruments such as the Treaty on the Elimination of All Forms of Discrimination.²¹

- **The Street Vendors (Protection Of Livelihood And Regulation Of Street Vending) Act, 2014**

After hearing the cases where the small vendors were forced to leave the places where they sell their goods and sometimes a coerced action being taken by the executives which does infringes their right. So, in the year 2014, an Act to protect the rights of urban street vendors and to regulate street vending activities and for matters connected therewith or incidental thereto is enacted.²²

IV. CONCLUSION

If we look into the study done in the present paper the author concluded that even though the victim get its case's judgment delivered in his favour but still he sometimes be at the end of disadvantaged party. So, in developing the Compensatory Jurisprudence in India the law offices/committees such as Law Commission and Committees on Reforms of Criminal Justice have played a great part through presenting their reports after due discussions and study made on these crucial aspects of law. Also, the Judiciary and the Legislature have also played a great role in upholding this as discussed in the paper. Also, Article 32 of the constitution of India is titled as the "Heart and Soul of the constitution" which guaranteed the "remedies for the enforcement of the Fundamental Rights". So even I feel that providing compensation to retribute

²⁰ The Protection Of Children From Sexual Offences Act, 2012.

²¹ The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013.

²² The Street Vendors (Protection Of Livelihood And Regulation Of Street Vending) Act, 2014

the victim at full is nowhere against the constitution or bad in sense.

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