Abstract: This paper discusses the Compensatory jurisprudence in India with special emphasis on the idea of compensation to victims of crime that is gaining much importance. Compensation to victims is a recognised as principle of law being enforced through the ordinary civil courts. Though this idea is an age old one but its development on more scientific lines and also as a branch of criminology has begun since a few decades ago. The modern states have understood the importance of compensation given to the victims of crime and are accordingly taping up several victim compensation programmes as part of their universal welfare programmes. So many countries around the world have taken up the system of payment of compensation to victim of crimes. There is a fund for payment of compensation to crime victims in Canada, Australia, New Zealand, United Kingdom and India under the control of a board. As we too need such funds to support and reassure the victims that ‘we care for them on a humanitarian ground’.

Keywords: Compensation, victims of crime, Criminology, Human Rights, Fundamental Rights, Judicial System

Introduction

In recent times, the honourable Supreme Court of India took a revolutionary step in some cases for granting compensation to the victim of state excesses by invoking Arts. 32 and 226 of the Constitution. The Art. 32 confers the power on the Supreme Court to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari, which ever may be appropriate for the enforcement of any of the fundamental rights conferred by part III of the Constitution. It is worth notable that when the constitutional rights of person are invaded, the invasion cannot be washed away merely by the restoration of rights. So the Supreme Court while invoking Art. 32 of the Constitution provided two types of monetary reliefs namely compensation and exemplary costs. The Supreme Court of India, under Article 32 of the Constitution, introduced compensatory jurisprudence by invoking the powers conferred and gained tremendous importance in present times due to the increase of the incidents of political anarchy, custodial torture, police lawlessness, illegal detentions etc. Under the law of torts, the victims can claim compensation for the injury to the person or property suffered by them. But unfortunately, it is taking decades for the victims to get a decree for damages or compensation through civil courts which are resulting in a lot of hardship for them. In the light of Human Rights philosophy, the emergence of compensatory jurisprudence is a positive signal indicating that the judiciary has undertaken the task of protecting the right to life and personal liberty of all the people irrespective of the absence of any express constitutional provision and of judicial precedents.

Few decades ago, the criminologists/sociologists acknowledged the importance of compensation and its benefits for the victims of crime. In pursuance of the recommendations of Law Commission of 41st Report (1969), a comprehensive provision for the compensation to the victims of crime has been provided in Sec.357 of Cr. P. C. According to the sub s. (1) and sub s. (3) of s. 357, “The court may award compensation to the victims of crime at the time of passing of judgment, if it considers appropriate in a particular case in the interest of justice”. In 2008, the Government introduced major amendments to the CrPC, in order to strengthen India’s criminal justice system. The amendment for the first time made an attempt to define the term “victim” and restore the outdated laws related to provision of compensation to victims. Unfortunately it once again leaves the provision of compensation to the sole discretion of the judge; something that has been rarely exercised of their own accord in the past- the vanishing point of Indian victim compensation law.

The Rationale behind Establishing Government Liability

The traditional tort law distinguishes damages as a remedy that affirms rights, provides compensation, promotes deterrence, vindicates the citizens' reliance on the sacred nature of their rights and secures corrective justice. Imposing government liability for constitutional violations attempts to advance analogous goals, which include:
1. Affirming the plaintiffs rights

When an individual's constitutional rights are violated, remedies, such as injunctions can only serve to restrict future constitutional harm. Unless he is paid damages for the past loss he has suffered, his constitutional rights would be meaningless. Compensations paid for past violations, as opposed to writs for habeas corpus, etc. serve to underline the sacred nature of the rights concerned, and the stringent outlook of the judiciary towards the State.

2. Deterrence of Constitutional violations and the avoidance of over deterrence

Deterrence is of prime importance in the context of violations of constitutional rights, because the impugned conduct is the very action that the framers of the Constitution sought to avoid. Unlike an injunction or other remedies, damages are a tangible result, which forces the government to transfer funds from the public treasury to the private citizen. This in turn requires either higher taxes or government cost-cutting. In the process, the government, if held accountable through institutional liability, would then take the necessary steps to reduce its liability by selecting more competent employees, by providing them with better and more continuous training, by ensuring more supervision of its employees, and by creating internal disciplinary rules for violators of the Constitution. Simultaneously, as personal liability of the officers is removed, government agents can perform their governmental duties zealously, knowing that any unwitting/unavoidable constitutional infraction will be covered by their employer and not by their paycheck.

3. Breach of Social Contract:

A Constitution is a social contract through which individuals give up certain liberties, in exchange for government-provided community services like enforcement of social norms through criminal law, economic infrastructure, and social stability. However, the government also agrees to certain limitations on its authority in the form of constitutional rights. Whenever the government breaches this contract on which the people have relied to their detriment, they deserve compensation.

4. Corrective Justice

The Aristotelian theory of "corrective justice" requires the award of monetary compensation whenever one party ignores the limitations placed upon its behavior with respect to another party. In certain cases, when the government oversteps its limitations, the plaintiff suffers loss while the state may realize gains through more efficient policy implementation. The transfer of funds from the wrongdoer to the victim restores the balance.

5. Responsibility as Principal and Employer

Since the government selects its own agents, trains them, and oversees their employment, the government alone is in the best position to institute the programs necessary to eradicate constitutional violations. Because most constitutional violations are attributable to systemic flaws in the state, it is the state that should face liability in order to facilitate correction of those flaws. By selecting the best employees, by providing them with adequate and continued training, and by disciplining them for their unconstitutional behavior, the government can substantially reduce the number of constitutional torts. Further, it is inconsistent that the government may be liable for the common law torts of its employees but not their constitutional misconduct.

In the USA, the concept of a "Constitutional Tort" implicitly recognizes that constitutional rights and liberties are specific limitations on governments and must be enforceable. Thus, it naturally follows that the courts must allow the traditional common law remedy, that is, damage suits, not because constitutional rights parallel the interests protected by common law tort actions, but because constitutions are enforceable in their own right.

Tracing the Evolution of Compensation in India

The foundations of justice can be traced to the notions of social stability, interdependence between liberty-equality-fraternity, and inherent dignity. The renaissance of the doctrine of natural rights in the form of human rights across the globe is a great development in the jurisprudential field in the contemporary era. The Pertinent Constitutional Framework Article 32 of the Constitution provides for the enforcement of fundamental rights by the Supreme Court. Enforcement literally connotes "compelling the observance of law." Thus, it not includes only the redress of particular violations, but also ensures that rights are not violated with impunity in the future. The Constitution has expressly placed this responsibility on the Supreme Court and the Court is the "sole arbiter" of the appropriateness of the relief that may be granted. Conventionally under Article 32, there was not
much scope for the award of positive, dynamic relief, even in cases where traditional methods of relief through writs would be wholly inadequate in actualizing the objectives of Part III. It is submitted, however, that a plain construction of Article 32 does not justify this narrow view. The Article specifically sanctions the passing of directions or orders independent of the mentioned writs. There is powerful support for the proposition that under Article 32(2), the Court may issue any direction or orders whatsoever, provided, that they are "appropriate" for the enforcement of rights. The manner in which this position was indubitably established by the Court may be seen through a series of cases, which document the shift from an initially hesitant approach, to an assertive, rights-oriented one.

Pecuniary compensation is a judicially recognized and an endorsed mode of enforcing fundamental rights by the courts of law for serving the lawful entitlements of persons on being victimized as offences of human rights abuse.

Traditional law of torts distinguishes damages as a remedy that affirms rights, provides compensation, promotes deterrence, vindicates the citizens’ reliance on the sacrosanct nature of their fundamental rights and secures corrective justice. The Aristotelian theory of “corrective justice” requires the award of monetary compensation whenever one party ignores the limitations placed upon its behaviour with respect to another party.

The provisions under the Indian Criminal Laws, a considerable importance was given in the Report of the Committee on Reforms of Criminal Justice System, headed by Justice V. S. Malimath on the need to provide “justice to victims of crime and abuse of power”. The report stated “medical justice to the Bhagalpur blinded victims”, “rehabilitative justice to the communal violence victims” and “compensatory justice to the Union Carbide victims” are examples of the liberal package of reliefs and remedies forged by the Apex Court.

The National Human Rights Commission and the State Human Rights Commissions can mark excellence in reinforcing statutory capabilities of laws and functions to provide interim compensation to victims of human rights’ violations as against the State or public functionaries.

Judicial Response to the Right to Compensation (Constitutional Jurisprudence relating to Compensatory Justice)

The legal dogmatic and reformative judicial precedents of the Judiciary prove to play a major role in enforcement of human rights and fundamental freedoms of individuals in the largest democracy of the world. Some of the landmark cases are listed as under:

1. Devaki Nanda v. State of Bihar. Here the petitioner’s pension had been delayed for twelve years. “Exemplary costs” were awarded to the petitioner for ‘intentional, deliberate and motivated’ harassment of the petitioner.

2. Khatri v. State of Bihar. (the Bhagalpur Blinding Case), it was alleged that the police had blinded certain prisoners and that the State was liable to pay compensation to the victims.

3. Rudal Shah v. State of Bihar, the courts awarded compensation only after completely satisfying themselves that the authority blatantly exceeded their power and acted with utter disregard for law.

4. Sebastian Hongray v. Union of India, the Supreme Court awarded compensation in respect of persons missing from army custody. The Court awarded Rs. 1 lakh to the widows as exemplary costs.

5. Mohan Lal Sharma v. State of U. P., it has been observed that the detenue is entitled to the right to monetary compensation under the patronage of Article 21 of the Constitution of India.

6. State of Maharashtra v. Patil., Handcuffing has been held to mandate compensation as a consequence in the case.

7. Saheli v. Commissioner of Police, Delhi, wherein the Court held that an action for damages lies for bodily harm, including battery, assault, false imprisonment, physical injuries and death.

8. Nilabati Behera v. State of Orissa, the jurisprudential reasoning behind the award of damages in cases of violations of fundamental rights was elucidated in, which can truly be considered as a landmark case in the development of law in this area.

9. M. C. Mehta v. Kamal Nath, the Supreme Court awarded compensation to the victims of pollution. The damages were appropriated under as

- damages for restoration of the environment and ecology;
- damages to those who may have suffered loss on account of the act of pollution;
Exemplary damages so that other people are detained from causing environmental pollution.

Compensation as Mitigating Factor

The list of compensation as mitigating factors in sentences have been commuted by courts and compensations have been awarded to victims is as:

1. Compensation for Murder  
2. Compensation for Sexual Assault  
3. Compensation under Public Law  
4. Public Wrong and Fundamental Right  
5. Custodial Death  
6. Wrongful Confinement and Encounters  
7. Riot Victim  
8. Gang Rape Victim

### Table 1  Trend of Compensation Cases under Constitutional and Statutory Provision 2008 - 2012

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Year</th>
<th>Number of Cases under s. 357 of Cr. P.C.</th>
<th>Number of Cases under Arts. 32, 226 of Constitution</th>
<th>Total number of Cases</th>
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<td>2008</td>
<td>11</td>
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<td>22</td>
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<tr>
<td>2</td>
<td>2009</td>
<td>6</td>
<td>11</td>
<td>17</td>
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<tr>
<td>3</td>
<td>2010</td>
<td>2</td>
<td>7</td>
<td>9</td>
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<tr>
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<td>7</td>
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<tr>
<td>5</td>
<td>2012</td>
<td>6</td>
<td>19</td>
<td>25</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>28</strong></td>
<td><strong>55</strong></td>
<td><strong>80</strong></td>
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### Table 2 : Amounts Awarded in Different Compensatory Judgements 2008 - 2012

<table>
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<tr>
<th>Sr. No</th>
<th>Amount of Compensation</th>
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<td>Below 50,000</td>
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<tr>
<td>2</td>
<td>50,000 – 1 Lakh</td>
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<td>3</td>
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<td>5 Lakh – 10 Lakh</td>
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<td>5</td>
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<tr>
<td>6</td>
<td>20 Lakh &amp; Above</td>
<td>2</td>
</tr>
<tr>
<td>7</td>
<td>No compensation</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>80</strong></td>
</tr>
</tbody>
</table>


Compensation Through National Human Rights Commission

In India, National Human Rights Commission was set up under the Act88 for the protection and promotion of human rights. The National Human Rights Commission came into being through an Ordinance promulgated on 28th September, 1993. The main function of the National Human Rights Commission is to inquire into violations of human rights.
rights and negligence in the prevention of such violation by State machinery.

Concluding Remarks

It is thus, evident that the fragmented legal framework providing for compensation by an offender to his victims for loss suffered or injury caused by commission of the offence is inadequate. It does not provide for a comprehensive legislative scheme for either compensating victims of crime or the payment of ‘compensation’ and ‘specified amount’ awarded to them. It neither mandates courts to compensate the victims nor creates any legal right in their favour. It is entirely left to their (courts’) discretion to compensate victims of crime as well as to initiate legal action to recover the fine, out of which compensation is ordered, or the specified amount of compensation from the offender to pay it to crime victims. The whole scheme of award and payment of compensation in India thus solely depends upon the sweet will of courts.

According to the penologists and criminologists, compensatory justice to be rehabilitative & restorative in nature and tendency. The right to compensation as an entitlement to guarantee the enforcement of other fundamental freedoms and human rights enshrined in constitutional & statutory laws of the nation covers within its ambit the concepts of restoration, restitution, rehabilitation and correction. The right to compensation remains rudimentary to the justice delivery mechanism to the victims of crimes and abuse of power. The constitutional and human rights’ jurisprudence relating to the elementary right to compensation is praise-worthy and elucidates the intellectual-legal-logical calisthenics of the doctrine of the rule of law with the changing modalities of management & its escalating subjugation.

References