

CRIME VICTIMS' RIGHT TO COMPENSATION IN BANGLADESH: A COMPARATIVE APPROACH

Fhameda Qudder

LL.B honours, LL.M, University of Chittagong, Bangladesh
Assistant Professor, Department of Law, Premier University, Chittagong

Abstract

The true dictum of criminal justice system is to ensure justice for victim. But the whole criminal justice system of Bangladesh is planned in such a way that an accused can acquire fair trial and justice. As far as victim is concerned, common belief is that, trial and conviction of an accused can adequately redress the injury suffered by victim. Therefore they do not have the right get compensation. Nevertheless, State is supposed to ensure a better deal to the victims of crime to make the proceeding equally fair to both sides. Considering the importance of victims' right to compensation this write up beginning focuses on the development of victims' right to compensation, as well as justification for the same. Subsequently stating the existing compensation scheme within the current criminal justice system, the write proceed to discuss a comparative picture between other states and Bangladesh.

Keywords: Crime Victim, Compensation, Criminal justice, Legal, Injury

Introduction

A formal judicial system is needed to ensure justice in every sector of life and society. It has been accepted that discovery, justification and establishment of truth are the ends of a traditional judicial system. Its main principle is to ensure fair trial and justice to both, the accused and the victim of crime (Anand Abhishekr, 2014) To this end, after commission of an offence, state apprehends the accused, brings him to trial and after being found guilty, he is convicted and is to undergo punishment. But from the victims' point of view, the traditional justice system has not invariably been ideal. Many research works have been devoted in determining the loopholes of the criminal justice system for the purpose of protecting the rights and interests of the accused. On the other hand, almost nothing has been done on what happens to that other group of citizens touched by the criminal justice

system, namely the victims. It is a common complaint of all victims that they are treated like defendants, that while the accused is protected with all the resources available at the expenditure of the State, the victim is left to fend for himself with little or no support from the State machinery (O'Connell Fiona and Mulvenna Gareth , 2011)

Unlike the accused, the victim has no rights to protect his or her interests in the proceedings, which are supposedly conducted on his or her behalf by the state and its agencies (The Impact of victimization, 2005). And when the state agencies fail to do their duty, as has often happened in many cases in the recent past, the victim is left to suffer injustice silently or to take the law into his or her hands and wreak vengeance on the offender (The Impact of victimization, 2005).

However, the initial and traditional approach of criminologists to deal with the victims of crime by the criminal justice system has been changed when the focus started shifting and they encountered with the fact that the person who is victim of crime is getting nothing out of the whole process of criminal justice system or is getting a so called satisfaction by seeing the offender punished. Therefore, jurists, penologists, criminologists etc. started to give their attention in reforming the traditional criminal justice system which was not actually victim friendly. In Bangladesh, however, some legal provisions do exist regarding compensation to crime victims in the Code of Criminal Procedure, 1898 (Act no. V of 18980) (hereafter Cr.PC) as well as in some special laws. But these provisions are almost dormant which makes the victim's life miserable and causes victim's right to receive compensation uncertain. The blame goes for such needless suffering squarely on our criminal justice system, especially, the reluctance of the Judiciary of Bangladesh to exercise discretion in this issue.

The whole criminal justice system of Bangladesh is planned in such a way that a person accused of an offence can acquire fair trial and justice. Article 35 of the Constitution of Bangladesh guarantees this right to fair justice as a fundamental right. Therefore, the practical scenario of the status of victims of crime requires scrutiny. To this end, the main objectives of this article are to analyse the legal framework on the right to compensation of victims, and to identify lacunae in the existing system by comparing it with current criminal justice system of different countries.

Nature of the Right of Crime Victims: An Overview

Crime takes an enormous physical, financial and emotional toll on its victims (Justice for victim, 1999). A sentence of imprisonment or a death sentence to the accused person may only give some mental consolation to the victim or to the family members of a deceased victim, but it will not compensate the actual financial loss sustained by the victim or the family

members of a deceased victim. The rights of an accused or a convict, are well safeguarded both by the Constitution and other laws of the country which have often been discussed and debated at various forums, but in all these, there has been hardly any reference to the rights of the victims of crime towards restorative justice. So right to compensation and restitution are really very significant to provide relief to the victim of crime or his family members for the injury or loss suffered by them. This section elucidates the term ‘victim of crime’ and describes about the nature of victims’ right and it also focuses on the right to compensation as an important right of the crime victims and also exploring the reasons why compensation is crucial for crime victims.

Characterization of ‘Crime Victim’:

Defining the term “Crime Victim” is of great importance as falling within the purview of ‘crime victim’ is the prime criteria to be eligible for victim compensation. Primarily a victim is a person who is injured as a direct result of an act of violence being committed against him. The word “victim” arises from the Latin *victima*, (Nash Andrew, 2008) a term used to describe animals sacrificed in religious ceremonies (Oxford Latin Dictionary, 1982). By the late seventeenth century, the English Language had incorporated the word ‘victim’, apparently under the influence of Rhemish translators of the Bible (Nash Andrew, 2008). The etymological meaning of the phrase suggests that it would mean or will encompass i) anyone suffering physical, emotional or financial harm as a direct result of a Crime; ii).Spouses and children of the person who has suffered; and iii). Parents, foster parents, siblings, guardians or other custodians of minor victims, mentally or physically incapacitated victims, or victims of homicide (Anand Abhishekr, 2014).

In a wider aspect Crime victim can be defined as a person who suffers direct or threatened physical, emotional or financial harm as a result of crime and may include the immediate family members of a minor, an incompetent person or a homicide victim and someone previously and properly designated by a homicide victim to make decisions for such victim (Nash Andrew, 2008).

According to the Code of Criminal Procedure, 1973 of India, ‘victim’ means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her legal guardian or legal heir (Act no II of 1974 of India)

An exhaustive definition of crime victim is found in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (General Assembly resolution , 1985), which through Article 1 & 2

gives exhaustive definition of the phrase. Article 1 of the Declaration defines victim of crime as “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.....”

According to Article 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 dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

Identification of offender and his prosecution has been purposely avoided to be used in this definition in order to make it more wider and beneficial to victims (O’Connell Fiona and Mulvenna Gareth , 2011)

Therefore the combined effect of these Articles probably encompasses everything under the sun that ought to have been the part of definition of the phrase (Anand Abhishek, 2014).

Hence, victim of crime means and includes person who has suffered harm, including physical or mental injury, economic loss and emotional sufferings etc. out of the commission of a crime.

The term also includes person who is who is injured as a direct result of witnessing an act of violence against another person termed as secondary victim. It also includes a related victim who is a close family member, or a dependant, of a primary victim who has died as a direct result of an act of violence being committed against them.

Compensation as a Right of Victim and its Historical context

Right to compensation is one of the most important rights of the crime victims as this right provides relief to the victims who have suffered injuries, losses, misery as a result of the crime. The word compensation in literal sense means a thing that compensates or is given to compensate (for); a counterbalancing feature or factor; amends, recompense; spec. money given to compensate loss or injury, or for requisitioned property (Kumar Abhishek, 2014). Compensation to victim means something given in recompense i.e. equivalent rendered.

As far as tracing of gradual evolution of the concept is concerned the whole era till mid of 1900 can be generally divided into three parts (Kumar Abhishek, 2014). In initial year of human civilization when the human started living together especially after Stone Age, because of absence of rule of law and authoritative political institution, right to punish or rather right to punish (in form of eye for eye or money) was with the individual and hence

in crude sense the concept of compensation existed at that time even but line of caution that need to be bear in mind is the fact that in primitive society criminal victim relationship was based on brutal mentality of attack being the best defense (Kumar Abhishek, 2014).

Historically in 12th and 13th centuries a distinction was made between various kinds of wrongs, i.e., civil wrongs and public wrongs (Gaur K.D., 2004). In the case of civil wrongs the injury was specific to the individual; hence the perpetrator was necessitated to pay compensation.

However, given that in public wrongs the offence affected the public at large, the State took responsibility upon itself to punish the accused (Kakkar Jhalak and Ojha Shruti, 2013)

In this sub-continent this concept was traced in more developed sense in Manu-Smriti where he revealed that compensation is payable to a victim for physical injury as well as injury caused by damages of property or goods (The Laws of Manu.)

Then came the era in which the social control in terms of mechanical solidarity creped in the society and the offence against an individual lost its individualistic character and the offence was considered to be against the tribe or clan to which individual belongs and from this era, due to advent of concept of collective responsibility clan or tribe started replacing the victim's right (Kumar Abhishek, 2014).

The third stage started with the advent of strong monarch after medieval period (Kumar Abhishek, 2014).In this stage on one hand criminal law saw far reaching change in all its discipline but on other the hand position of victim right to compensation remained unheard due to advent of more strong institution named state and crystallization of a notion that King or State is parent of his subjects and crime is breach of peace of King or State (Bajpai Kaushal Kishor ,2010).

This position remained as it is even with advent of democracy and the cause of victim remained unnoticed until 1950(Kumar Abhishek, 2014)and this saw a change with the stirrings of the prison reform movement in Europe during the nineteenth century (Report on the Code of Criminal Procedure, 1996). But the doctrine of state compensation to victim again attracted attention of sociologists and jurists. Jeremy Bentham believed that due to the presence of the social contract between the state and the citizen, victims of crime should be compensated when their property or person was violated. Thus modern approach of victimology acknowledge that a crime victim has right to be adequately compensated, rehabilitated and repaired irrespective of identification and prosecution of offender and the payment of such compensation should be made by state(O'Connell Fiona and Mulvenna Gareth , 2011).

At the international level, interest in victims can be traced back at least to the international congresses held during the late 1800s, where, for example, many called for a general return to reparation in criminal justice, an issue which has been dealt with in more recent years by organizations such as the International Association of Penal Law (AIDP, 1924). Article eight of the UDHR states that everyone has the right to an effective remedy. Article 9(5) of the ICCPR states that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. On the other hand, Article 10 of the American Convention on Human Rights (**O.A.S. Treaty Series, 1978**) mentions that every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice. The UN General Assembly and the UN Economic and Social Council have also passed several resolutions that articulate the importance of the rights of women and children who are victims of crime (Justice in Matters Involving Child Victims, 2005). The right to compensation to the victim was finally crystallized in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. In the Declaration, nations agreed to draw up action plans to help victims gain better access to legal proceedings, fair treatment, restitution for damages and general assistance in legal proceedings (Commission on Crime Prevention, 2008). It describes victim thus: “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 proscribing criminal abuse of power.” The Declaration has urged the States to treat the victims with compensation and respect for their dignity. It also recommends appropriate measures to be taken on behalf of victims of crime at the international, regional as well as national level to improve their access to justice and fair treatment(Article-4 to 7), restitution (Article-8 to11), compensation (Article-12 to 13) and assistance (Article-14 to 17).

Why Compensation for Crime Victim?

Whenever crime victims’ compensation is concerned, most of the time it is overlooked on the basis of the argument that, prosecution and conviction of the accused can sufficiently redress his injury. But most of the time crime brings life-changing effects on victims. Crime victimization is a frightening experience. Victims often are not able to overcome these kinds of sufferings. The impact of victimization may be physical injury as well as emotionally or psychologically affects the victim. Sometimes it also causes

financial and social injury to the person who has experienced the crime along with physical injury.

Most of the crimes against person affect the victims physically and the victim suffers physical injury of serious nature and needs to take immediate and very often prolong medical treatment and care to be cured. Sometimes they may suffer disfigurement and permanent disability because of physical injury and which cannot be cured entirely and compelled them to lead a miserable life. The injury caused from a crime may also cause death of the victim which cause irreparable loss as his right to life is infringed because of that incident.

Despite of physical injury, crime victims suffer psychologically or emotionally at the time of the crime as well as after the crime. The trauma of victimization can have a profound and devastating impact on crime victims and their loved ones (The Impact of victimization, 2012). Though the psychological impact of victimization cannot be generalized, however there may be some emotional impacts which are common to most of the crime victims. Many crime victims are unable to function like they did before the crime, and may get panic by reminding the horrible memories of the crime. Some of the victims can recover this initial shock but some may not. Feelings like shock or fear may cause great harm to the mental health of the victim. Sometimes out of anger and hatred feelings, victim turns vindictive and to meet his reprisal causes crime against the offender. Sometimes they blame themselves and feel humiliated for what have happened to them and they cause harm against themselves like attempt to suicide or suicide.

The most crucial consequence that a victim may suffer is pecuniary loss when crime is committed against property directly. Victim may incur costs for repairing the property damaged or for replacing the possession. In most of the cases these financial injuries cannot be recovered. Crime committed against person may also affect victim financially. Victim needs to bear the expenses for accessing health and medical services. Sometimes victims need spend money for obtaining professional counseling to come to terms with the emotional impact of the crime (Wasserman Eidell and Ellis Carroll Ann, 2007). When the victim of murder is the only earning member of his family, the family becomes completely helpless that it could not even provide sufficient necessities for its members. Moreover that he is required to spend money in every steps of participating in the criminal justice system.

Now it has been much evident and understood how do the victims suffer physically, psychologically, financially as well as socially from victimization and these effects can be long-term or it can be for the rest of the life of the victim (Barrin Fahima, 2008). Hence, the consequences of victimization emphasize the urgent need, not only to prevent victimization but also to protect the victims and provide them with all kinds of assistance

during and after the criminal justice process (Srinivasan Murugesan and Mathew Jane Eyre, 2007). Contrary to the traditional approach one recognized method of protection of victims is compensation to victims of crime. The impacts of crime on a victim cannot be measured or healed in terms of monetary compensation but at least it can repair the financial loss suffered by the victim.

Scope of Compensation within the legal purview of Bangladesh

Though most of the laws in Bangladesh are silent about the necessity for providing compensation to victims of crime some of them prescribe provisions regarding compensation to crime victims. According to section 545(1) of the Code of Criminal Procedure, 1898 criminal court may order the whole or any part of the fine in the payment of compensation to the victim of crime and the compensation is recoverable by him in a civil court where as going a step further Section 15 of Nari O Shishu Nijatan Daman Ain, 2000 makes it a right for a victim to get the fine as compensation in some specific offences mentioned in sections 4 to 14. In this issue it is worth enough to mention that the same view reiterated in section 9 of the Environmental Court Act, 2010, where Court may convert fines imposed by it as compensation to be paid to persons affected as a result of the commission of an offence under an environmental law.

According to section 16 (ref-16 s) of the Domestic Violence (Prevention and Protection) Act, 2010 victim of domestic violence has a right to make a complain for compensation for personal injury or financial loss or trauma or psychological damage or damage to movable or immovable property or any possibility of such damage or loss as a result of domestic violence which should be disposed by the court within six months of the claim. This Act not only specifically mentions the grounds on which the compensation can be given; it also sets down some guidelines to be taken into consideration by the court while awarding the compensation.

Again Section 28 of the Prevention and Suppression of Human Trafficking Act, 2012 confers power to the Tribunal to pass an order to the accused to pay compensation to the victim of the offence of human trafficking if the accused is convicted under this Act. While awarding compensation, the Tribunal shall take into consideration the matters regarding the costs of physical and mental treatment of the affected person, costs of necessary transportation or temporary housing, lost income, sufferance, the actual or emotional injury and the gravity of the distress. Section 39 of the Act contains a provision providing right to the victim to sue for compensation in any civil court without prejudice to the right to institute criminal proceedings and according to section 40 of the Act Government

may provide financial assistance to the victim from the fund established under this Act.

There are also some other laws prevalent in Bangladesh covering some specific area. The Acid Niyontron Ain, 2002 and the Acid Aparadh Daman Ain, 2002 were enacted in consideration to the interests of victims of acid related offences. These two statutes have incorporated provisions regarding compensation of acid victims. The victim of motor accident is entitled to claim compensation under Motor Vehicles Ordinance, 1983. Though there is not any express Constitutional provision regarding the concept of compensation for crime victim, a number of laws are there in Bangladesh dealing this issue, no matter their scope of application is limited to any specific kind of victims only. This positive trend of awarding compensation started to develop slightly from 2000 and onwards as the above mentioned special laws are enacted which silently pave the way for victims' right to compensation.

Legal Appreciation of Victims' Right to Compensation: A Comparative Approach

The trend to incorporate provision of compensation for victim is comparatively a recent practice in Bangladesh. Though it has been stated, the statutory laws of Bangladesh in this respect yet to achieve more both in the Constitutional perspective as well as statutory directives. Different western countries have already adopted their crime victims' compensation programs. In our sub-continent, even India, has recently taken initiatives to uphold the crime victim's right to compensation. In USA this right was first introduced in 1982 by President's task force created by Ronald Reagan. The statutory mandate was thus given by the Federal Act named Victim of Crime Act (VOCA) 1984, which provides crime victim fund made up of federal criminal fines, penalties and forfeited amount of bond money (Victims' Rights, 2015). This Act provides for a federal victims' compensation program and for supporting the state victim compensation and local victim service program (Afroze Tureen, 2007) and in pursuance of this in 1986, state compensation programs received their first funding from VOCA (Eddy Dan ,2013). A significant development affecting international crime victim compensation was the passage of the Antiterrorism and Effective Death Penalty Act of 1996,(The Antiterrorism and Effective Death Penalty Act of 1996) which mandates that crimes involving terrorism become compensable crimes under state crime victim compensation programs receiving VOCA funds, regardless of where the terrorism occurs (VOCA, 1984) . The most recent initiative in this regard is enactment of the Crime Victims' Rights Act (CVRA) which is part of the United States Justice for All Act of 2004(JUSTICE FOR ALL ACT OF 2004). This Act has noticeably

changed the scenery of victims' right. The CVRA enumerates the rights afforded to victims in federal criminal cases and provides mechanisms for victims to enforce those rights ('Victims' Rights' 2013). Section 3771(a) of the CVRA provides crime victims with the right to full and timely restitution as provided by law (Crime Victims' Rights Act' 2004).

In addition to statutory provisions, most of the states have increased the strength, permanence, and enforceability of victims' rights by adopting amendments to their state constitutions guaranteeing rights to victims of crime ('About Victims' Right', 2013). Moreover, provision regarding Victims' Rights Amendment has been proposed for other states as well as for the Constitution of United States (Victims' Rights Amendment', available at 2013). In 2008, Human Rights Watch published an analysis comparing United States victims' rights laws to international Human Rights Standards (Victims' Rights', 2013) titled "Mixed Results: U.S. Policy and International Standards on the Rights and Interests of Crime," found that "while U.S. Jurisdictions, both federal and state, have made significant progress in recent decades, much more can be done to ensure that victims' rights and legitimate interests are upheld." (International Standards on the Rights and Interests of Victims, 2008).

If reference is taken from UK, since 1964 to 1996 a series of non-statutory schemes were administered by the Criminal Injuries Compensation Board ('getting it Right for Victims and Witnesses' 2013,). The first statutory Scheme came into force in 1996 following passage through Parliament of the Criminal Injuries Compensation Act, 1995 (Getting it Right for Victims and Witnesses: the Government Response' 2012) and subsequently in 2001, 2008, 2012 (Criminal Injuries Compensation Authority', 2009). These statutory Schemes have been administered by the Criminal Injuries Compensation Authority (CICA) which is a government organisation that pays money to people who were physically or mentally injured as innocent crime victims and also to the dependants of someone who has died because of a crime ('CICA - Criminal Injuries Compensation Authority', 2009). Under the scheme the victim as well as parent, child, husband, wife or partner (V.Roberts Julian and Manikis Marie, 2011) and even witness are eligible to apply for compensation (Right of Victims and Witnesses' 2012). Furthermore, Under the Powers of Criminal Courts (Sentencing) Act, 2000 a court, when sentencing, may make an order for the offender to pay compensation to the victim for any personal injury, loss or damage resulting from the offence.

Though there has not been any significant improvement in the position of victims in the criminal justice system it is India which gives the right of compensation of the crime victim a constitutional mandate. The principles of victimology has foundations in the Indian Constitution

particularly in the Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV), which form the bulwark for a new social order in which social and economic justice would be ensured (Kakkar Jhalak and Ojha Shruti, 2011). Article 41, which has relevance to victimology in a wider perspective, mandates, inter alia, that the state shall make effective provision for “securing public assistance in cases of disablement and in other cases of undeserved want” (Srinivasan Murugesan and Mathew Jane Eyre, 2007). Article 51A is a fundamental duty of every citizen to have compassion for living creatures and to develop humanism (Rattan Singh v. State of Punjab, 1979). This mandate expressly provided for in the Constitution, broadly forms the constitutional underpinnings for victimology. (100) Further, the guarantee against unjustified deprivation of life and liberty (Article 21) has in it elements obligating the state to compensate victims of criminal violence (Basu, D.D. 2003).

As far as the constitution of Bangladesh is concern, since 1972 to 2015, it has gone through sixteen amendments, but any positive or direct provisions have not been introduced in this respect. Still some may argue that fundamental rights are guaranteed by the constitution including right to fair trial under Art. 35, of the constitution, hence victims’ right is protected thereby. But it is frustrating that the Constitution is favorable to the accused rather than victim as it attempts to ensure right to fair trial from the outlook of the accused. Consequently because of lack of Constitutional recognition, the right is still out of focus by the State legislation.

On the other hand, apart from constitution, significant progressive changes have been made in statutory law of India. Though the Code of Criminal Procedure 1898, Section 545(1 & 2) and section 546 recognised the right of compensation, but the opportunity was hardly available (S. Muralidhan, 2004).

Later specific provision relating to compensation to the crime victims was inserted in Code of Criminal Procedure, 1973 in section 357. It has been done in pursuance of the recommendation of the Indian Law Commission in its Forty First Report, 1969 (Kamal Tripathi Himanshu & Singh Vishalakshi, 2008). This section empowers the Court to award compensation to victims of crime at the time of passing of the judgment, in both the case where fine forms as a part of sentence as well as cases where fine do not form a part of the sentence if the court considers it appropriate in a particular case, in the interest of justice. But it is left to the discretion of the court to decide the amount of compensation, depending on the facts and circumstances of each case (Kakkar Jhalak and Ojha Shruti, 2011).

After that, amendment of Cr.r.pc in 2008 is considered as a milestone regarding victim’s right to compensation. Insertion of section 357-A obliged the State Government to initiate a scheme for providing funds for

victims' compensation in coordination with Central Government. And the compensation is payable to (i) victims of crime and (ii) dependents of victim who died as a result of crime, who have suffered loss or injury and who require rehabilitation (Kumar C. Raj,2005). It also empowers the court to increase the amount of compensation where it is inadequate (Sub- section 3 of Section, 375-A), and also gives the right to the victim to apply for compensation where the offender is not identified and even where no trial takes place (Sub- section 4 of Section, 375-A).

In Bangladesh the code of Criminal Procedure, 1898 section 545(1) states about compensation, but it is discretionary to the court, and where no fine is imposed upon the accused, court cannot award compensation. In Bangladesh major portion of Criminal justice is administered by this code and incorporation of section 545 in the Criminal Procedure Code make it clear that in a large number of criminal case compensation cannot be awarded if the court does not think it appropriate. But unfortunately our courts do not exercise their statutory powers under the sections available in Cr.PC providing compensation to crime victims as freely and liberally as they could be desired. However, if the judges continue to not exercise their discretion and invoke these provisions, these provisions will remain disused. The judges' discretion should not become the vanishing point of victim compensation laws. If we need to motivate judiciary we should change the above discussed provision, and in this regard we should follow the footsteps of India.

Though there are some special laws which (Environmental Court Act, 2010, Domestic Violence (Prevention and Protection Act, 2010, Prevention and Suppression of Human Trafficking Act, 2012, Acid Niyontron Ain, 2002, Acid Aparadh Daman Ain, 2002, Motor Vehicles Ordinance, 1983) provides for mandatory award of compensation to the victim. Still there is no noticeable progress on the part of the victim because that law provides compensation only some specific offences.

From the above discussion it is very much evident that India has done a commendable job in criminal justice system in comparison to USA, UK, and Bangladesh as it gives victims' right strong Constitutional mandate. In respect of statutory recognition and application of this right USA, UK, and India deserve much better position than Bangladesh. In Bangladesh application of compensation is still discretionary to the court, whereas Indian statute makes it a right for the victim. Unlike in the Western countries, the victims of crime in Bangladesh do not have a statutory right to be compensated. There is no compulsion on the court to record reasons for not invoking its powers to provide compensation. Moreover, there is no effective institutional mechanism for recovering the ordered compensation from the recalcitrant accused and paying it to the victim. However, it is apparent that

crime victim compensation is an established right in USA and UK and procedures have been taken to make progress in this field which can be the utmost example for those countries which have not made adequate provisions yet.

Conclusion

Recently the Bangladesh Law Commission has realized that there is an urgent need for making a new law providing for the rights and benefits of the crime victims and for payment of monetary compensation to them for their survival in the society with honour, dignity and prestige and as such in early 2007, the Commission prepared a Draft Bill (Final Report on a Proposed Law Relating to Payment of Compensation, 2007) to meet this end.

This draft bill proposed for monetary compensation for victim or his dependants if he is killed (sec. 2 Draft of Law commission, 2007). This Bill provides provisions for a ‘Victim Services Committee’ which will be established by the Government in each District within the office of the District and Sessions Judge under the control, supervision and management of the Ministry of Law, Justice and Parliamentary Affairs for carrying out the purposes of this Act (sec. 6 Draft of Law commission, 2007). The bill also proposed that Government shall establish a “Crime Victims Compensation Fund” in each District under the control and management of the Victim Services Committee for payment of compensation or other benefits to crime victims which shall consist of the Government contribution; collection of the Committee from other sources; any voluntary contribution, donations, grants or gifts from any individual or non-government voluntary organization; all criminal fines, amount of forfeited bail bonds and penalties(sec. 13 Draft of Law commission, 2007). However, it is disheartening to see that the Government did not take any initiative to introduce and pass the proposed draft bill as an Act in the Parliament. This is an indication of the apathy of our society towards the suffering of victims of crime. Bangladesh has ratified the Convention against Torture, Other Cruel, Inhuman or Degrading Punishment and Treatment, 1984 (CAT)(56, chap%5) with a reservation of Article 14 which stipulates, “The state-party shall ensure in its legal system that the victim of an act of torture obtains redress and gets an enforceable right to fair and adequate compensation including means of full rehabilitation as far as possible”(CAT, 1985). As a result of this reservation, the government does not accept its legal responsibility to provide compensation to a torture victim or their family, or rehabilitated the torture victims (Faruq Farzana & Ziaul Hoque Mohammed, 2012). That is another reason that government shows it reluctance for implementation of victims; right to compensation. Introduction of new law as well as amendments of existing laws can bring significant change to the status of victim in criminal justice

system. On the other hand the judges' discretion should not become the vanishing point of victim compensation laws, and judiciary should play a significant role so that criminal justice system can ensure justice for accused as well as victim.

References:

Acid Aparadh Daman Ain, 2002

Abhishek Anand, 'Compensation to the Victim of Crime: Assessing Legislative Frame Work and Role of Indian Courts', available at <http://www.legalserviceindia.com>, last visited on 12 November, 2014

'About Victims' Right', available at <https://www.victimlaw.org/victimlaw/pages/victimsRight.jsp>, last visited on September 10, 2013

The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, (also known as AEDPA) is an act of Congress signed into law on April 24, 1996; available at http://en.wikipedia.org/wiki/Antiterrorism_and_Effective_Death_Penalty_Act_of_1996, last visited on September 10, 2013. https://www.ncjrs.gov/ovc_archives/nvaa/supp/h-ch9.htm

Basu, D.D. (2003); Constitutional Law of India; Nagpur: Wadhwa & Co; p. 32.

Crime Victims' Rights Act', 2004 available at http://www.justice.gov/usao/eousa/vr/crime_victims.html, last visited on September 6, 2013.

C. Raj Kumar, Emergence and Evolution of Victim Justice Perspectives in India, 25 (2) *Indian Journal of Criminology*, (2005), pp. 71, 74-77.

'CICA - Criminal Injuries Compensation Authority', available at <http://www.patient.co.uk/support/Criminal-Injuries-Compensation-Authority.htm>, last visited on August 15, 2013

Criminal Injuries Compensation Authority', available at http://en.wikipedia.org/wiki/Criminal_Injuries_Compensation_Authority, last visited on September 14, 2013

Dan Eddy, 'New Directions from the Field: Victims' Rights and Services for the 21st Century', available at https://www.ncjrs.gov/ovc_archives/directions/pdf/txt/bulletins/bltn15.pdf, last visited on September 13, 2013

Dr . Kaushal Kishor Bajpai, 'The History of Compensation of the Victims of Crime', AIR Web World, available at <http://airwebworld.com/articles/index.php?article=1058>, last visited Jan 30, 2012.

Domestic Violence (Prevention and Protection) Act, 2010

Dr. Kaushal Kishor Bajpai, 'The History of Compensation of the Victims of Crime', AIR Web World, available at <http://airwebworld.com/articles/index.php?article=1058>, last visited Jan 30, 2012.

Environmental Court Act, 2010

Eidell Wasserman and Carroll Ann Ellis, 'Impact of Crime on Victims', Chapter 6, Participant's Text, 2007 National Victim Assistance Academy, Track 1, Foundation-Level Training, available at <http://www.ccvs.state.vt.us/sites/default/files/resources/VVAA%20Ch%206%20Impact%20of%20Crime.pdf>, last visited on 23 June, 2014.

Fahima Barrin, 'Crime Victim Compensation Right: A look into the existing laws of Bangladesh', *Prime University Journal*, Volume-2, Number-2, July-December: 2008, p 58.

Farzana Faruq & Mohammed Ziaul Hoque, 'Compensation for Crime Victims in Bangladesh: A new era in criminal justice system', *Stamford Journal of Law*, Number 03, July 2012, p. 247

Fiona O'Connell and Gareth Mulvenna

The Status of Victims in the

Criminal Justice System (research paper, Northern Ireland assembly), 2011.

Getting it Right for Victims and Witnesses', available at http://books.google.com.bd/books?id=2JfdzLanDMAC&pg=PA49&lpg=PA49&dq=Until+1996+a+series+of+nonstatutory+schemes+were+administered+by+the+Criminal+Injuries+Compensation+Board.&source=bl&ots=PnLlwXGXd&sig=VufI8XP95S_hxRt7Aflm42xk7Q&hl=en&sa=X&ei=HlgVNUFo2XuATs8oCgBQ&redir_esc=y#v=onepage&q=Until%201996%20a%20series%20of%20nonstatutory%20schemes%20were%20administered%20by%20the%20Criminal%20Injuries%20Compensation%20Board.&f=false, last visited on September 14, 2013.

'Getting it Right for Victims and Witnesses: the Government Response', presented to the Parliament by the Lord Chancellor and the Secretary of State for Justice by Command of Her Majesty, July 2012, available at <https://consult.justice.gov.uk/digital-communications/victims-witnesses/results/a-gov-response-getting-right-victims-witnesses.pdf>, last visited on September 22, 2013.

General Assembly resolution 40/34 of 29 November 1985

JUSTICE FOR ALL ACT OF 2004

Jhalak Kakkar and Shruti Ojha, 'An Analysis of the Vanishing Point of Indian Victim Compensation Law', available at <http://jils.ac.in/wp-content/uploads/2011/.../Jhalak-Kakkar-and-Shruti-Ojha.pdf>, last visited on 2 May, 2013

International Journal of Law and Legal Jurisprudence Studies :ISSN:2348

8212(Volume 1 Issue6) Jurisprudential analysis of victimization :Need of Restorative theory and State Compensation in Indian Criminal justice system
Himanshu Kamal Tripathi & Vishalakshi Singh

Jeremy Bentham (15 February 1748 – 6 June 1832) was a British philosopher, jurist, and social reformer. He is regarded as the founder of modern utilitarianism

K.D. Gaur , Justice to Victims of Crime: A Human Rights Approach, in Criminal Justice: A Human Rights Perspective of the Criminal Justice Process in India 350, 351 (2004); available at <http://jils.ac.in/wp-content/uploads/2011/.../Jhalak-Kakkar-and-Shruti-Ojha.pdf>, last visited on 2 May, 2013

Law Commission of India, One Hundred and Fifty Fourth Report on the Code of Criminal Procedure, 1973 (1996), p. 57.

Motor Vehicles Ordinance, 1983

Mixed Results US Policy and International Standards on the Rights and Interests of Victims of Crime’ by Human Rights Watch, September 2008, available at <http://www.hrw.org/sites/default/files/reports/us0908webwcover.pdf>, last visited on September 16, 2013

Murugesan Srinivasan and Jane Eyre Mathew, ‘Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System’, 2007 available at www.doiserbia.nb.rs/ft.aspx?id=1450-66370702051S, last visited on 14 May 2013.

Nari O Shishu Nijatan Daman Ain, 2000

Oxford Latin Dictionary 2057 (1982) (defining “victima” as “[a]n animal offered in sacrifice”

O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978

Rattan Singh v. State of Punjab, (1979) 4 S.C.C. 719, 721.

Right of Victims and Witnesses’, available at <http://www.yourrights.org.uk/yourrights/rights-of-victims-and-witnesses.html>, last visited on September 15, 2013.

Status of the Victim in the Criminal Justice System’, available at <http://dc-siwan.bih.nic.in/Report/crime%20victims.pdf>, last visited on September 29, 2013.

S. Muralidhan, ‘Rights of Victims in the Indian Criminal Justice System’, available at <http://www.ielrc.org/content/a0402.pdf>, last visited on September 21, 2013

‘Status of the Victim in the Criminal Justice System’, <http://dc-siwan.bih.nic.in/Report/crime%20victims.pdf>, last visited on September 29, 2013.

The Acid Niyontron Ain, 2002

the Prevention and Suppression of Human Trafficking Act, 2012

The Code of Criminal Procedure, 1898

The Constitution of Peoples' Republic of Bangladesh, 1972

The Impact of victimization Prepared by Canadian Resource Centre for Victims of Crime', available at <http://www.crcvc.ca/docs/victimization.pdf>, last visited on 2 October, 2015 Unknown author

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46), available at <http://legal.un.org/avl/ha/catcidtp/catcidtp.html>, last visited on 21 December, 2012.

The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, (also known as AEDPA) is an act of Congress signed into law on April 24, 1996; available at http://en.wikipedia.org/wiki/Antiterrorism_and_Effective_Death_Penalty_Act_of_1996, last visited on September 10, 2013.

Tureen Afroze, 'Sentencing Practices in Bangladesh', *Bangladesh Journal of Law*, special issue (2007), p. 137

The Institute for Domestic and International Affairs, Inc.

Commission on Crime Prevention and Criminal Justice Victim's Rights, 2008

The International Association of Penal Law (AIDP) was founded in Paris on March 14, 1924. It emerged from a reorganization of the International Union of Penal Law (UIDP), founded in Vienna in 1889 which was dissolved after the First World War. The AIDP is the oldest global organization bringing together specialists of the criminal law and one of the oldest scientific societies in the world, available at http://en.wikipedia.org/wiki/International_Association_of_Penal_Law, last visited on 29 March, 2012

The Laws of Manu, Chapter VIII, available at <http://www.sacred-texts.com/hin/manu/manu08.htm>, last visited on May 3, 2014

UN Economic and Social Council, Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Resolution 2005/20, July 22, 2005; UN General Assembly, Declaration on the Elimination of Violence against Women, Resolution 48/104, December 20, 1993; UN General Assembly, Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, Resolution 52/86, February 2, 1998. This latter resolution gives detailed procedural recommendations in para 7.

UN Office for Drug Control and Crime Prevention, Handbook on Justice for Victims on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (New York: United

Nations, 1999), available at <http://www.uncjin.org/Standards/9857854.pdf> ,
last visited on 15 June, 2012

Victim of Crime Act (VOCA) 1984

Victims’ Rights Amendment’, available at
http://en.wikipedia.org/wiki/Victims%27_Rights_Amendment, last visited
on September 13, 2013.

‘Victims’ Rights’, available at
http://www.justice.gov/usao/briefing_room/vw/rights.html, last visited on
September 9, 2013

Webster’s Third New International Dictionary Unabridged 2550 (Merriam
Webster, eds. 1968)./ Washington university law review, volume 85, issue 6,
January 2008, Victims by definition, Andrew Nash.