

## EXECUTIVE SUMMARY

### CONTEXT

Physical, mental, psychological and moral integrity of a person is an inalienable right. By virtue of being humans, everyone is entitled for right to bodily integrity. Crime against an individual or victimisation of a person in any manner distorts this very basic right of the individual. It not only impacts the bodily integrity of the individual, it severely influences the enjoyment of the other human rights. In this background, the present research is to analyse the impact of the victimisation of an individual in the backdrop of diverse consequences of the victim of crime.

No doubt, crimes are acts which have harmful effect on the public. It endangers and threatens well-being of society. Crime will devastatingly impact physical, psychological, mental, emotional and financial status of the victim. Causes of the victimisation, based on the various scholarly literatures are four-fold. *Firstly*, institution-based factors such as non-enforcement of laws by the enforcement authorities, non-regulation of crime breeding activities, and over-regulations or criminalisation of the activities. *Secondly*, offender-oriented factors such as inherent qualities and biological traits of the criminals. *Thirdly*, victim-oriented factors such as victim precipitations and victim routine activities. *Finally*, system-oriented factors such as poverty, inequality and State anarchism are generally responsible for the victimisation. Consequences of such victimisation are divergent and varied from case to case. These misdemeanours have remarkable impact on physical, mental, psychological and moral integrity of a person. In fact, the feelings of grief and shame left with victims on account of crime committed on him cannot be gauged straightforwardly.

However, the consequences of crime which are capable of assessment in terms of compensation should be taken care by the State. The compensatory assistance to compensate loss of income, medical expenditure, funeral costs and payments made to avail other services etc., is to be addressed by the State. From the perspective of fair and equitable principles, the one who commits crime on a person is liable to make the good loss. However, the number of the cases compensated by the offenders to victims is negligible. Barring exceptional cases, the criminals may not be able to assume the responsibility due to their financial status. Under these circumstances it would be inevitable on the part of the State to compensate the victim and strengthen the victim against the distressing conditions.

It is evident from the contemporary human rights regime that they have garnered in a significant scale the interest of the offender against the victims of crime. The human rights instruments such as Universal Declaration of Human Rights, 1948(UDHR),<sup>1</sup> International Covenant on Civil and Political Rights, 1966 (ICCPR),<sup>2</sup> International Covenant on Social, Economic and Cultural rights, 1966 (ICESCR)<sup>3</sup> have largely concluded that States shall strive to ensure justice in investigating, prosecuting and punishing offenders. It is further generally asserted under international legal regime on the criminal law that offenders should be treated with just and equitable manner. Gross disproportional tendency is evident from both the international criminal as well as human rights mechanisms so far as protection of offenders and victims' rights are concerned. Despite, in line with existing international standards and best practices, many of nations across the globe have set up a legal mechanism to address the distresses and sufferings of the victims of crime.<sup>4</sup>

In this context, the Government of India decided to amend rudimentary criminal law of the country to address this core issue of criminal justice system of the country by carving proper provisions relating to victim compensation. Sec.357 of the Code of Criminal Procedure, 1973 was amended through Criminal Law (amendment) Act, 2008 and Sec. 357 A was inserted to Cr.P.C. Though the new legislation came out with principled objectives of criminal justice system, lethargic attitude of the States diluted the very purpose of the amendment. This listless attitude of the State in enforcement victim compensation scheme is crystal clear from the comparative analysis of the total crimes committed and number of cases compensated in the State. This cracked success rate of the government is due to a variety reasons.

According to the newly structured legal system of the country, the State governments have to strive to implement victim compensation scheme. Sec.357A of Cr.P.C had set a general and directive provision and instructed the State governments to articulate the scheme in their respective State. Accordingly, in the backdrop of Sec.357A of Cr.P.C various State governments devised their own legal mechanism to augment the intent of the central government. The success rate of the States as to victim compensation grossly varies.

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<sup>1</sup> . G.A Res 217A (III) UN Doc A/810,71

<sup>2</sup> . G.A.Res.2200A (XXI) 999 UNTS 171

<sup>3</sup> . G.A.Res.2200, U.N.Doc.A/6316 (1967)

<sup>4</sup> . See for e.g., *Criminal Injuries Compensation Act*, 1995 of the United Kingdom, *The Victims of Crime Assistance Act*, 1996 of Victoria; *The Victims and Witnesses Protection Act*, 1982 of U.S.A; *The Crime Victim Rights Act*, 2004 of U.S.A; *Victims of Trafficking and Violence Protection Act*, 2000 of U.S.A; *Victims Compensation Act*, 1996 of New South Wales.

Some of the States showed keen interest towards victims of crime by expediting the framing of the Victim Compensation Scheme (VCS) and some of the States postponed it for many years. Fortunately, today, all the States have come out with victim compensation scheme prescribing varied compensatory amounts for different kinds of crime.

## **FINDINGS**

As mentioned in preceding section, VCS introduced by the government of India followed by the VCS's of the States and Union Territories were regarded as revamping steps for criminal justice system of the country. The principle of dignity of victim of crime was foundation of these principles of compensatory jurisprudence. It was presumed that the rights and status of victim of crime could be elevated to the highest level by compensating victim against physical, mental, physiological and emotional impact of crime. However the new regime proved its inefficiency and inadequacy. Instead of doing any sustained effort to wipe out agony of the crime, the scheme merely continued as one of common programs of the government. The scheme beclouded the core area of criminal justice system of the country.

The empirical study undertaken in this research project focuses on the level of commitment and dedication showed by the criminal justice system of the country in general and State of Karnataka in particular in ensuring compensatory jurisprudence in its letter and spirit. The universe of the research area selected for this empirical research was whole Karnataka by electing two districts from each administrative division of the State. The survey conducted in these research area and responses drawn from different stakeholders of the victim compensation scheme have systematically been analysed and utilised to prove the research questions. The questionnaire and interview methods are fundamentally used to extract the opinion of the respondents in the context of their respective official functions. Based on the responses and opinions expressed by the various stakeholders such as officers and staff of the legal services authorities, victims of crime compensated by the legal services authorities, police officers, public prosecutors, law teachers, advocates, law students and general public clearly indicated that the victim of crime should be compensated by the State as the State failed provide adequate security to victim of crime.

**Compensatory Jurisprudence:** In line with the rights of accused, victims of crime are also equally entitled for human rights protections. However, comparison between soft and hard international law on victims of crime reveals discriminatory facet of the international human rights law. In case of prosecution of a criminal case, interest of the

victim of crime and the affected persons of the crime shall also be taken care. No victim of crime should be deprived of their personal liberty and dignity because of the devastating impact of crime and protection available for the accused under human rights jurisprudence.

The compensatory jurisprudence articulates that the victim of crime should have the right to information as to the stages of the cases and the right to be allowed to present and express his views in punishing the accused. It also enunciates that necessary assistance in terms of material, medical and social assistance should be given to the victim of crime. Though these are all the core requirements of the victim of crime, it was gross mistake on the part of the criminal justice system that it was not considered for a long time.

**Victim Compensation:** Victim compensation in criminal justice system authorises the victim of crime to claim monetary benefit from either the offender or the government.<sup>5</sup> The scope of victim compensation has noble intention to compensate victim against the devastating and shocking consequences of the crime committed on victim. As the victim compensation movement gained momentum across the globe, countries which have ignored compensatory jurisprudence for considerable period, have come out with statutory protection of the compensation in order to proliferate status of victim of crimes under legal system. The plethora of all these legislations have made prompt attempt to streamline the victim compensation scheme by bringing certainty and clarity as to the 'Victim of Crime' and 'Victim Compensation' in the legal system. Absence of the statutory provisions as to the victim of crime and victim compensation could affect both the victim and the efficacy of the legal system. The ambiguity and chaos as to these phrases may result in deprivation of the legal right and genuine interest of the individual who is really affected due to the crime.

The intention of the victim compensation scheme is to assist victims who become victims of criminal acts and suffer physical, mental, emotional and psychological consequences of Crime. It is the further intention of the VCS that financial needs of the victim should be taken care by the State as it is a moral, social and legal obligation of the State. It is not only for the person affected by the criminal act of the criminals, a dependant or secondary victim who was fully and substantially dependent on the victim's income should also be compensated by the State. To this end, it is an endeavour of the State to rationalise the scheme and eliminate false and dishonest cases. Financial assistance given for victims by paying them for expenses incurred or reasonably likely to be incurred expenses

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<sup>5</sup>. Though the word 'compensation' is commonly used to indicate monetary form of assistance given to victim, in its popular sense, the compensation is used to signify the assistance given by State and the word 'Restitution' is used to refer assistance given by the accused.



could symbolise sympathy, condolence and recognition of adverse effects suffered by the victims. Therefore, there is a need of idyllic legal system to create more energetic way of functioning of the system in the country. Such system could give effect to statutory scheme of compensation to victim of crime and recover such compensation amount from the victims.

**Status in Karnataka:** Crime statistics of State of Karnataka shows that there is consistency in the rate since last 5 years and there are no decreasing trends of the crimes in the State. The Crimes committed against women, children and scheduled caste and scheduled tribes are moving towards decreasing trends. This shows the improvement of the State in effectively executing preventive strategies. Among various categories of crime, cruelty is significant part. All the cases are within the domestic relationship. The responsibility on the part of the State to pay compensation is less for this category of the crimes. However, the serious offences such as rape, murder, dowry death are serious concerns for women as these crimes have left victim of the crime in pathetic conditions. It is evident from the above statistics that not even 1% of the crimes in the State compensated by the VCS. It does not mean that the victims of all these crimes do not need compensation or they are compensated by the offenders. Due ignorance of the scheme and inability of the State to properly execute the scheme in the State resulted in such bad state of affairs.

**Poor Operation of Restitution:** There ought to be diverse ways to ensure restitution of the victim. The positive contribution of this sort of restitution strategy, as compared with compensation by the States, ensures ability of the State to effectively address the need of victim by paying adequate compensation. It may act as an implementation of a kind of implicit balancing interest between accused and victims. However, the Indian legal system is out of reach for this concept. The strong observation of justice *Krishan Iyer V.R* asserted the need of recognition of the restitution under Indian legal system.

“It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependents of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law! This is a deficiency in the system which must be rectified by the Legislature. We can only draw attention to this matter. Hopefully, the Welfare State will bestow better thought and action to traffic justice in the light of the observations we have made. We dismiss the special leave petition.”

The effective scale was used to examine opinion of the respondents on the issue. When we look at the responses given by other stakeholders, liability of the offender to pay

compensation is seriously regarded by the respondents. The practices of some of the developed countries as to legalisation of various methods to recover compensation from victims also necessitated us to examine the issue at length. The liability to be imposed on the offender for compensating victim is immensely supported by the respondents

The research findings always indicated that the restitution by the offender should also be given priority in the administration of the criminal justice system. In the context of limited resources of the State to compensate all the cases, the restitution by the offender would be the viable way for the State to rejuvenate compensatory jurisprudence of the State. The research also depicted that the pathetic conditions are further flavoured by inefficient performance of the lower Criminal Courts State. While apex courts extremely vibrant in empathising compensatory jurisprudence,<sup>6</sup> lower courts are reckless in executing compensatory jurisprudence.

This is the most fundamental difficulty for the enforcement of compensatory jurisprudence in the State. This formidable obstacle has attacked by the higher judiciary in many instances and cautioned the lower courts and government to do the needful for the betterment of the system.

## **RECOMMENDATIONS**

The study undertaken across the State to assess efficacy of the victim compensation scheme has exhibited myriad drawbacks in enforcement of the scheme in Karnataka. The research data collected through the questionnaire in different administrative divisions of Karnataka substantiated these downsides of scheme. The combined data of governmental functionaries and relevant stakeholders of the society necessitated some concrete and material recommendations to rejuvenate compensation scheme in Karnataka. These advantageous directions can revive the efforts of the State to achieve her noble goals.

**Planning:** The weak component of the VCS of the State is 'planning process.' All the drawbacks of the VCS of the State are due to lack of planning process of the legal services authorities. Either Karnataka State Legal Authority being a head of the all District Legal Services Authorities of the State or District Legal Service Authority of the respective districts are failed to devise their own plan to execute scheme in a planned manner. The needs of

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<sup>6</sup>. See *Rudal Sha v. State of Bihar* 1983 AIR 1086, 1983 SCR (3) 508; *Sebastian M. Hongray v. Union of India*, AIR 1984 SC 1026, (1984 Cri LJ 830); *Mrs. Meera Nireshwalia v. The State of Tamil Nadu*, (1990) 2 LW 621, (1991 Cri LJ 2395); *Women's Resources Centre v. Commr. Of Police, Delhi*, 1990 AIR 513, 19SCR 488; *Padmini v. State of Tamil Nadu* 1993 Cri.LJ 2964.

victims of a District and implementation of the scheme according to the requirement need proper planning of the authorities. In majority of the district legal services authorities, including State Legal Services Authority, it is widely exposed that there is no structured, organised and pre-planned programme to assess and avail financial assistance required for the victim compensation scheme. It is true that assessing actual requirement for victim compensation may fluctuate due to inconsistency of the occurrence of the crime in the respective State. But, the District Legal Services Authorities with the help of the current crime records of the police agencies and number of cases prosecuted within the jurisdiction of the respective district court can have appropriate picture of the requirements. By conducting pre-discussions with senior advocates, police officers, prosecuting authorities and non-governmental organisations, DLSA can devise better plan to VCS. It is evident from the research that none of the districts have thought over this crucial means of VCS. Therefore, the researcher is of the strong opinion that there is a need of proper planning and time bound strategic plans to accomplish goals of the scheme.

Apart from planning process for the execution of the existing scheme in a better manner, strategic plans are also significantly important to strengthen ability of the authorities to perform their role in a better manner. The escalating complexities of crime and conditions of the victim of crime strongly suggested for such strategic plans. Using of strategic techniques such internal and external orientation, functional integration, key personnel involvement in planning, use of divergent planning techniques, creativities in planning and focus on control of institutional affairs<sup>7</sup> could be a clamorous way for the district legal services authorities.

**Funding:** It is extensively recognised under every legal system that appropriate funding is exceedingly important for the compensation programme. The exceptional increase in the crime rates, poor performance of the scheme in the State and number of the cases denied by the Courts, explains to which extent funding is relevant for success of the scheme in the State. Inadequate earmarking of funds and irregularities in realising earmarked funds has become one major concern for VCS in Karnataka. It could be seen from the scheme of the Act that varied sources are recognised under the scheme to accumulate and enrich financial sources for victim compensation fund. No single source, except grants from the government is realised in the State to accelerate the status of VCS in the State.

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<sup>7</sup>. See, Zachary Bolo Awino et al. "Strategic Planning, Planning Outcomes and Organizational Performance – An Empirical Study of Commercial Banks in Kenya ." *DBA Africa Management Review* (2012, Vol. 2 No. 3): 134-149.

The allotment of the fund for victim compensation scheme in Karnataka clearly indicates disproportionality. The rate of crimes unearthed through the victim survey, police statistics and its comparison with total number of the victims benefited under the scheme is grossly disproportionate and inconsistent. The government may assert itself as reasonable, by merely putting forward the fact that the total number of crime and victims approaching the authorities for the compensation is unreliable. This slim rate of compensation is merely because of the inability of the government to properly publicise and implement the enforcement scheme, not because of uninviting tendency of the victims. The mind-set of the victims to keep silence instead of approaching compensatory mechanism for compensation is strongly dependent upon the environment of the implementation of compensation scheme and the absence of a matured mechanism to administer it. The research reveals this need of enhancement of the fund for another core reason that the benefited victims have expressed positive impressions on the scheme and heightening of the same could further boost the fate of the victims.

**Administration of the Scheme:** The extent of failure of the scheme in the State has led to numerous proposals for improvement of the administration of the scheme in the State. Very often it is common that the schemes which are extensively planned and rationally devised would be inherently good. However, translating these visions into actions is strongly subjected to the administration of it. The current mechanism designed to administer victim compensation scheme is exceptionally defective. Solid way of administration of the victim compensation scheme lies with well-conceived planning, assessment of the needs, calculated training, attentive monitoring and strategic co-ordinations of the administrative wing. The present system which is in place absolutely lacks above traits in running the victim compensation scheme. The establishment of an independent organ with adequate infrastructure and human resources would accelerate the effort of the government to accomplish this gallant purpose. It is noted during the research that majority of the countries which accomplished intended objectives of the compensatory jurisprudence have either tribunals or independent organs to administer victim compensation scheme. Therefore, there is a need of immediate separation of the administration of the scheme from the courts and legal services authorities in Karnataka.



**Evaluation and Monitoring:** Evaluation and assessment of the schemes of the governments is the bedrock of the success of such schemes.<sup>8</sup> One of the major drawbacks of the VCS of the nation is lack of evaluation and assessment mechanism of the scheme. The task of the legal services authorities as authorized under the Code of the Criminal Procedure and schemes of the various States is confined only to accepting the application and disposing of such application by either awarding or rejecting it. Unless system is blended with evaluation and assessment of the administered scheme, the vision of the scheme would be the distorted. In this backdrop, the officers were asked to express their opinions on the effectiveness of evaluation and assessment of the VCS. Monitoring is a pioneering way of assessing efficacy of the scheme. It could ensure that funds are used in a proper track and intended objectives are used in a better manner. It could further the funding process and create a sense of satisfaction for the authorities. Many of the western States have actively undertaken monitor beneficiaries of the VCS. For country like India, there is a need of such monitoring process to revive VCS.

**Co-ordination:** In a system wherein multiple agencies and actors are in place to execute a particular purpose, the co-ordination between these actors is a decisive factor to achieve greater success of such purpose. The increasing importance of the co-ordination is felt for VCS for the reason that in the backdrop of the social justice divergent agencies are serving victim of crime in India. For example, if the crime victim is women and children, they are taken care by the Child and Women Development Department. If the victim belongs to Scheduled Caste or Scheduled Tribes their grievances are addressed by the Social Welfare Department. Therefore, different actors and activities are to be coordinated to maintain sanctity and rationality of the VCS. In addition to inter organizational co-ordination, the intra-organizational co-operation was tested through the questionnaire. This pattern of intra-organizational co-operation may useful direction for the administrators of the VCS to enhance quality of the services.

**Outreaching Programs:** Literature relating to VCS could produces considerable benefit for the victim of crime to understand the scheme and avail the benefit. It could also significantly benefits the legal services authorities to disseminate information and concretize the scheme. As it has tested from the opinions of the law teachers, officers of the legal

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<sup>8</sup>. See generally, Paul J. Gertler et al. *Impact Evaluation in Practice*. Washington DC : World Bank, 2011 ( explains the importance and means of evaluation process); United Nations Development Programme. *Handbook on Planning, Monitoring and Evaluation for Development Results*. New York: UNDP , 2009 ( empahsises requirments and basic principels of evaluation process)

services authorities and victims of crime, it provides unique dimension for the protection of the rights of victim of crime. Ironically, there are no such practices of legal services authorities in printing and disseminating information through such literature. Therefore, apart from planning and evaluation dimensions, outreaching programs very will be influential way to achieve the success. The consequences of such programs, as evident in other social welfare schemes and program, is that it can afford and reach who cannot reach such programs otherwise. Greater access to scheme and programs is difficult in the absence of such innovative practices.

  
IQAC COORDINATOR  
Karnataka State Law University  
Hubballi-25.