

Legal Framework Regarding Victim Support and Compensation: Comparison between Bangladesh and US Laws

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Abstract:

This study paper begins with a Latin maxim about the citizen's right and remedy, reviewed the literature and followed the proper methods of the research. This research discussed about the origin and concept of victim and compensation, provisions mechanism available in Bangladesh and US for victim support and compensation including comparative studies between their laws. Also, as there is no direct law in Bangladesh regarding compensation, hence; some recent uprising cases are mentioned for better understanding of the application of vague provisions.

Keywords: Victim support and compensation, Legal framework, Comparison Bangladesh and US laws.

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I. Introduction:

The whole area of the civil law stands upon an ancient legal maxim of *Ubi jus ibi remedium*, which means, "Where there is a right, there is a remedy". Whenever the court is convinced that there is an unjustifiable interference with the rights of a person, it is the duty of the court to provide a remedy for the same. Though victim support and compensation is a recent phenomenon in Bangladesh, US has developed these rights long before. Recently, there has been a dramatic rise of both public and private tort law litigation in the courts of Bangladesh. However, there are manifest complexities of direct legislation, hence; express legislation become a public demands for the protection of their civil rights. Everyone has a duty to each other in a society but when there is a breach of legal duty, the obligation of the law of tort arises. Law of tort is also referred as "civil wrong" and it is a separate branch of civil law. This area of law is dependent on the concept of justice, equity and good conscience of the Judges. However, recent case studies in Bangladesh suggest that compensation can be obtained only from the death matters which are being gotten severe media attention.

II. Literature review:

Basically, victim support is an essential for the victim of civil wrongs or crimes to protect from psychological trauma. Simultaneously, compensation is the yardstick for the victim to save from the agony of financial sufferings due to the irreparable loss. However, several studies have been conducted so far to comprehend the issue in Bangladesh which is not clear enough to understand the compensation provisions. There is also limitation of free online materials of US for conducting this research paper.

Meanwhile, as a background study of this research; relevant articles, journals, internet reports, newspaper articles and respective states organizational websites are reviewed. This study is completely based on secondary sources, however; it has been articulated in a simple way to make the issue understandable.

III. Methodology:

This research is qualitative in nature and the entire study is conducted based on using secondary data and information. Secondary sources of information are relevant books, research journal articles, and research reports, analyzing legal instruments of Bangladesh and US; and their respective national websites for victim support and compensation. Here, data and information collected from different sources have been analyzed in descriptive methods.

Origin and meaning of victim:

The origin of the word “victim” has come from the Latin word “victima” which means animals sacrificed in religious ceremonies. By the late seventeenth century, the English language had incorporated the word “victim” suggesting the meaning that anyone suffering physical, emotional or financial harm as a direct result of a crime. Thus, victims are commonly referred to those individuals who suffer injuries, losses or hardships for any reason. People can become victims of accidents, natural disasters, diseases or social problems such as warfare, discrimination, political witch hunts and other injustices.

According to Article 1 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, “victim 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 members states, including those laws proscribing criminal abuse of power”.

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 for such victim.

Therefore, it is divided into two types such as primary and secondary victims. Primary victims are those who suffer physical injury or harm while the secondary or indirect victims experience emotional or financial harms.

Origin and meaning of compensation:

Generally, compensation is part and parcel to restore an injured party to his former position. In historical context compensation is considered as one of the most important rights of the crime victims. A victim of crime is a person who has sustained physical, moral, material or social damage on account of being direct or indirect object of depredation.

The idea of paying compensation to a crime victim is not an idea of recent time. In most of the ancient societies such system was recognized in different forms. In initial years of human civilization after Stone Age when there was an absence of rule of law and authoritative political institution, punishment was with the individual and the concept of compensation was in a crude sense (i.e. eye for an eye). In most of the ancient societies such system was recognized in different forms like confiscation of property or by imposition of a fine.

In 12th and 13th centuries a distinction was made between various kinds of wrongs, i.e. civil wrongs and public wrongs. In the case of civil wrongs the injury was specific to the individual; hence the perpetrator was necessitated to pay compensation but in public wrongs i.e. murder, manslaughter, theft, rape, dacoity etc. that affected the public at large then the State took responsibility upon itself to punish the accused.

In ancient criminal legal system of India “the right to claim compensation was very much recognized. The right to claim compensation from the wrong doer was generally accepted. In certain cases, the court was empowered to grant compensation to the aggrieved party in addition to the punishment given to the offender.”

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.

In legal sense, an act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person indemnified may receive equal value for his loss, or be made whole in respect of his injury.

Article 8 of the Universal Declaration of Human Rights states that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Also, Article 9 (5) of the International Covenant on Civil and Political Rights states that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

From the above discussion, it can be said that compensation is available for both civil wrongs and criminal acts done to the victim.

Legal framework regarding victim support and compensation in Bangladesh:

Currently, the wrongfully accused individual has indirect remedies under the current legal structure in Bangladesh. For instance, filing tort lawsuits under Articles of 44 and 102 of the Constitution of Bangladesh where there is no efficacious remedy available. Indeed, there is no direct law to provide compensation to the victims of civil wrongs in Bangladesh. On the other hand; some legal provisions do exist regarding compensation to crime victims in the Code of Criminal Procedure, 1898 as well as in some special laws. They are discussed in below.

❖ **Constitutional framework regarding compensation: Bangladesh**

The fundamental rights of the people of Bangladesh have been guaranteed in Part III (Articles 26 to 47) of the constitution of Bangladesh. All past laws inconsistent with these rights are made void by the Constitution, and it directs the State not to make any law inconsistent with these rights. Article 44 of the constitution guarantees the right of every citizen to move the High Court Division in accordance with clause (1) of Article 102 for the enforcement of any of the fundamental rights conferred by Part III of the Constitution. The jurisdiction of the High Court Division of the Supreme Court to enforce the fundamental rights is defined in Article 102 of the Constitution.

Article 102 of the Bangladesh constitution gives discretionary powers to the High Court Division to issue orders. These include court orders (i.e. stay orders, quashing orders, and mandatory orders, prohibiting orders), injunctions, declarations and damages.

For example, the case of *CCB Foundation v Government of Bangladesh*, popularly known as the Jihad case, stands out as the first-ever public law compensation case in the history of Bangladesh. Its judgment paved the way for imposing vicarious liability upon the state machinery through the interpretation of Article 102 of the Constitution of Bangladesh for violation of fundamental rights of the citizens by public officials. While a progressive verdict in itself, the High Court Division failed to provide sufficient reasoning behind the determination of the quantum of compensation awarded to Jihad's family.

However, Appellate Division of the Supreme Court confirms that damages for pain, agony, suffering and loss of expectation of life are tortuous. These emotional sufferings are incalculable and if the Court is satisfied that the plaintiff is entitled to any compensation that can only be awarded in lump sum. There is no subjective standard to follow in awarding compensation and it is the Court which has to decide on the amount in question. The standard for estimating the amount of damages in case of actionable negligence resulting in death must not be a subjective standard but an objective one and regard is to be had to the earnings of the deceased at the time of his death, his future prospects, his life expectancy etc.

Therefore, anybody has his fundamental rights infringed can file an application or any person aggrieved can file an application on behalf of anyone to the High Court Division for the compensation, though this is not directly mentioned in the Constitution. This is the original jurisdiction of the High Court Division of the Supreme Court.

❖ **Case studies: Bangladesh**

As stated earlier though there is no direct law for compensation, we find several cases where the Supreme Court of Bangladesh verdict that the government or relevant person or authority must compensate for the civil wrongs and the miscarriage of justice.

1. **Abdul Jalil's case:** In 2016, the High Court directed a man's restitution and unconditional release on the basis that fifteen years ago, he had been "wrongly convicted". This reversed the life imprisonment passed down to Abdul Jalil and directed his early release as long as no further cases were filed against him. Abdul Jalil was fifteen when he was jailed for life in 2001. He had lodged an appeal against the Court ruling. After hearing his appeal, The High Court said: "This Court believes that it is reasonable for the state to pay compensation to the accused. Therefore, this Court orders that the state to pay Tk. 5 million as damages.

2. **Catherine Masud's case:** In 2017, The High Court has announced the verdict in a compensation case ordering a payment of Tk. 4.62 crore to the family of eminent filmmaker Tareque Masud, killed in a road accident in 2011. The Court applied and developed tort law principles in this case which would undoubtedly be extremely helpful for reference in other tort cases. One of the major issues in the case has been the assessment of compensation in tortuous claims.

In Catherine Masud case, the High Court Division awarded compensation considering the particular Claimants in question who proved to be dependent on the deceased. In calculating the deceased's professional prospect, the Division thoughtfully considered the income tax returns of the deceased victim. While calculating the damages, the retirement age of the deceased victim was also considered. This is how an amount can be reached at by subtracting the retirement age from the age on which the victim died due to the defendant's negligence and then by converting the same into months and by multiplying that figure with the monthly income of the deceased victim as per his income tax return.

While quantifying the compensation on account of loss of love and affection, the Court laid down the basic criteria to be the relationship between the victim and the claimants. In determining the relationship the closeness and proximity of and/or blood relations can be looked into along with any evidence of continuous and visible manifestation of love and affection between and among them.

3. **Jihad's case:** A four-year old boy named Jihad fell inside a 16 inches uncovered shaft that was left abandoned by the Bangladesh Railway and the WASA authorities while playing in the Shahjahanpur Railway

Colony on the afternoon of 26 December 2014. During the rescue mission, the Bangladesh Railway and the WASA authorities sent down cameras through that shaft to locate the boy and evaluate his condition. However, the camera malfunctioned and they brought another camera for this task. This went on for about 10-12 hours without any result. It prompted the concerned authorities to abandon their efforts, declare that there was nobody inside the shaft and leave the scene. Shortly after the authorities left, a group of five young volunteers pulled up the dead body of Jihad from the shaft by using a hand-made device.

In this case, the High Court Division imposed vicarious liability upon the state due to the violation of the fundamental right to life of a citizen guaranteed in Article 32 of our Constitution by public officials, through a harmonious interpretation of Article 102 (1). In the full verdict released on 7 October 2017, the court held the Bangladesh Railway and the Fire Service and Civil Defense negligent of their public duties and liabilities, applying the tort law maxim of *res ipsa loquitur* (the thing speaks for itself). It then imposed a fine of Tk. 20 lac to be paid to the parents of Jihad for his wrongful death.

Jihad's family received the full compensation from the respondents on 14 August 2018. The Appellate Division (AD) later upheld the verdict of the HCD in a non-speaking judgment on 25 October 2018.

❖ **Statutory frameworks regarding compensation: Bangladesh**

In Bangladesh, several statutory frameworks deal with the victim needs and compensation. They are as follows:

- ✚ The Code of Criminal Procedure, 1898
- ✚ The Nari O Shishu Nirjatan Daman Ain, 2000
- ✚ The Acid Niyontran Ain, 2002
- ✚ The Acid Aparadh Daman Ain, 2002
- ✚ The Penal Code, 1860
- ✚ The Motor Vehicles Ordinance 1983
- ✚ The Employer's Liability (Compulsory Insurance) Act 1969
- ✚ The Road Traffic Act 1988
- ✚ The Consumer Rights Protection Act, 2009
- ✚ The Fatal Accidents Act, 1855

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.

Furthermore, Section 15 of Nari O Shishu Nirjatan 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. The same view has been 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 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.

Moreover, 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.

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 victim's right to compensation.

❖ **Institutional framework for victim support and compensation: Bangladesh**

Under the control of the government of Bangladesh, the One Stop Crisis Centre (OCC) and the Victim Support Centre (VSC) are providing support for the protection of the victims of crime. The Ministry of Women and Children Affairs in joint collaboration of other four ministries has established OCC for victims of violence that provide medical, legal and social services to victims in six divisional governmental hospitals. The functions of most of police stations and investigating agency in providing immediate support to the victim of crimes appear to be meager due to plethora of reasons. The role of District Legal Aid Office in providing legal aid service to the victims of crime is praiseworthy. In addition, many NGOs are actively working in safeguarding the victims of serious crimes. The Ain Salish Kendra (ASK), the Bangladesh Legal Aid Services Trust (BLAST), the Bangladesh National Women Lawyer's Association (BNWLA), and the Acid Survivor's Foundation (ASF) are popular NGOs working towards victim justice within their own terms and references.

Legal framework regarding victim support and compensation in USA:

In USA, the provision of compensation 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. This Act provides for a federal victim's compensation program and for supporting the state victim compensation and local victim service program and in pursuance of this in 1986, state compensation programs received their first funding from VOCA. A significant development affecting international crime victim compensation was the passage of 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.

The most recent initiative in this regard is enactment of the Crime Victim's Rights Act (CVRA) which is part of the United States Justice for All Act of 2004. This Act has noticeably changed the scenery of victim's right. The CVRA enumerates the rights afforded to victims in federal criminal cases and provides mechanisms for victims to enforce those rights. Section 3771 (a) of the CVRA provides crime victims with the right to full and timely restitution as provided by law.

In addition to statutory provisions, most of the states have increased the strength, permanence, and enforceability of victim's rights by adopting amendments to their state constitutions guaranteeing rights to victims of crime. Moreover, provision regarding Victim's Rights Amendment has been proposed for other states as well as for the Constitution of United States.

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.

❖ Institutional framework for victim support and compensation: USA

Each state in the United States, as well as the District of Columbia, the US Virgin Islands, Guam, and Puerto Rico, operates a crime victim compensation program to provide financial assistance for victims of violent or personal crime. Each state administers its own program in accordance with its state statute. The US Department of Justice provides supplemental Victims of Crime Act (VOCA) funding and technical support to the states. The following information is generally applicable to all state compensation programs. For information regarding specific programs, contact the programs directly.

The claimant must file an application with the compensation agency in the state where the crime occurred. Based on information submitted by the victim, the agency determines if the claimant is eligible and has suffered a financial loss. In most states, the victim can appeal the agency's decision to deny or reduce the amount of compensation.

Victim support and compensation comparison between Bangladesh and US laws:

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. However, United States adopted their crime victim's compensation programs long ago. For example, In 1965 California was the first state of US to develop a victim compensation program, even though the Federal legislation was proposed in 1964 by Senator Ralph.

In American prospective victim compensation programs have been developed for variety of reasons including if the state fails to protect citizens from the criminal activities then they have the right to be compensated. Even at the time of passing the Bills there are various issues which were debated caused the rationale behind such schemes became obsolete. The limitations were imposed upon such programs for various reasons those are including detailed restrictions on victim eligibility depending upon the nature of the crime, relationship to the offender, financial means, filling deadlines, contributory misconduct and the limitations on the types and amounts of benefits payable to victims.

In 1982, the President's Task Force established for recognizing victims of crime and providing a range of legal and social supports. In 1984, the Victims of Crime Act (VOCA) was enacted in accordance with the President's Task Force guidelines. It was intended to increase victim assistance services and criminal injuries compensation. Another recommendation from the President's Task Force was created the Violence Against Women Act (VAWA) which was enacted in 1994. It was reauthorized in 2000 and 2005.

In the United States, every state has passed legislation to get criminal courts to order compensation from the offender. The most recent is the 2004 Justice for All Act. Nonetheless, in 1998; a report confirmed that "despite the passage of federal and state legislation, restitution remains one of the most under enforced victim rights within the criminal and juvenile justice systems".

In some cases, compensation from the government is made if the offender will not be able to pay full or even partial restitution. Hence, governments have set up compensation programs for that end and normally it is limited to physical injury.

Civil suit is another source of funds to pay for victim services and compensation, where compensation can be ordered as well as punitive damages. For Example, O.J. Simpson was charged with the murder of his wife and a friend in 1997. The two families of the murder victims then sued Simpson for wrongful death in a civil court. Jury decided that the evidence proved that Simpson had caused the wrongful deaths. The court then ordered Simpson to pay civil damages for the loss of life and punitive damages.

Moreover, the victim can file third party suits to recover the damages and costs of pain and suffering from a company or agency that has the means to pay. These suits focus on negligence by the party, as in the case of the hotel chain in the Connie Francis case where Francis brought a tort action against the hotel for not taking sufficient safety precautions in 1974.

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 Article 35 of the constitution, hence victim's 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.

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 CrPC providing compensation to crime victims as freely and liberally as they could be desired. However, if the judges continue not to exercise their discretion and invoke these provisions, these provisions will remain disused.

Though there are some special laws (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) which 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 inadequate amount of compensation only for some specific offences.

IV. Conclusion:

From the above discussion, it is very much evident that US provisions are well-established, organized and open for its citizen in comparison to Bangladesh as it provides direct legislative mandate for victim's rights. In respect of statutory recognition and application of this right USA deserve much better position than Bangladesh. In Bangladesh, application of compensation is still discretionary to the court; whereas US statute makes it a right for the victim. Unlike USA, 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 accused and paying it to the victim. However, it is apparent that crime victim compensation is an established right in USA 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.

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