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**CAN CRIMINAL COURTS BECOME MERE RECOVERY
AGENTS FOR THE COMPLAINANTS**

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ABSTRACT: -

Evil can be tamed by the fear of punishment. Punishment is effectual in setting up deterrence concerning violation of the law. The foundation of the criminal justice system in India is wobbling in the recent past. The approach to combating crimes is shifting from the combined mechanism of retributive, reformative, and restorative justice to just compromising on compensation which is leading to flawed justice impartation. Can compensation be equalized to the anguish and agony suffered by the victim and should the criminal be allowed to walk away scot-free?

INTRODUCTION

The creation of the criminal justice system did not happen in one of those spurs of the moment rather it imbibed circumspection of the intricacies of the dynamic society. It has gone through various phases and has developed over time. The erstwhile criminal justice system was introduced to provide justice to the victim, protecting society from wrongdoers through rigorous punishments, rehabilitation of the offenders, and incapacitating them from committing the crime. However, with the protean nature of society, the criminal courts have also modified their ways of providing relief to the complainants. Now, the criminal justice system is transforming itself as a recovery agent for the complainants.

In the past, criminal courts punished offenders to establish consequences but now are shifting their focus to either compromising the case or providing compensation to the victims. Consequently, this is detrimental since one of the major purposes of the criminal court is to punish offenders for their crimes and establish deterrence. It thus compromises on justice which must be getatable to victims and society as a whole. It is illustrating an erroneous example by

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merely providing compensation as a relief, thus becoming a recovery agent not only in compoundable but also in non-compoundable offences leading to an enormous acceleration of crime rates.

Complete justice is often equated with punishing the offender and providing some relief through compensation. But merely compensating the victim and settling the case reduces deterrence in society as punishments no longer intimidate people. The concept of retributive justice which talks about appropriate and just punishment for a crime and that of restorative justice to compensate the victim together leads to rendering effective and fair justice. Undoubtedly Compensation for grave offences is an efficacious step by the criminal courts to help the victim return to his/her original position that existed before the injury. But not applying any of them may lead to partial justice. Although compensation varies from case by case but when it's a criminal matter, the gravity of the harm caused is significantly high, which is why it needs more than compensation to set up deterrence.

Nowadays compensation is provided in both compoundable as well as non-compoundable offences. Compoundable offences are less serious in nature and can be compromised by the victim with or without the permission of the court under ⁴Section 320 CrPC whereas non-compoundable offences are of such gravity that no compromise is allowed by the law. But in ⁵**Mahesh Chand V State of Rajasthan (1998)** Supreme Court invoked Article 142 and permitted compounding a non-compoundable offence.

Non-compoundable offences involve serious offences like rape, murder, medical negligence, attempt to murder, etc which are of a higher degree and often results in death or irreparable injury to the victim hence, they shouldn't be just compromised for the consideration of compensation instead there should be rigorous punishment imposed on the wrongdoer to assure justice and instill fear in them.

Justice as relief may be something for one and different for another. Besides society, the injured is the direct victim of trauma. Victimology is a concept brought for the rehabilitation of the victim from that trauma via providing compensation so that monetary harm is at least indemnified. This concept implies that you cannot commit the crime and walk away rather you will be compelled to compensate for the same.

There are sections and boards which function towards achieving it.

For Example: - The criminal injuries compensation board under article 38(1) functions toward

⁴Criminal Procedure Code, 1973 § 320.

⁵Mahesh Chand and Another v State Of Rajasthan, A.I.R. 1998 S.C. 2111

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compensating rape victims. ⁶Section 357(3) and ⁷Section 357a of CrPC talk about providing compensation and victim compensation scheme respectively. There are cases like ⁸Rudal Shah v. State of Bihar wherein huge compensation was provided keeping in mind the gravity of the harm caused.

Compensation is a brilliant thought which should be accompanied with the proper delivery of justice which includes deterrence and reformation of the offender so that justice triumphs over injustice. Both should be at par for attaining complete justice.

Courts are becoming more of recovery agent and less of crime-reducing agents. There are cases that are adducer of this argument wherein just compensation is granted to the victim and the case is settled.

In the case of 27 **Smt. Nilabati Behera Alias Lalit and Another v State of Orissa** the petitioner's son was arrested by the police and the very next day was found lying on the railway track inflicted with several injuries. The court awarded compensation of Rs 1,50,000. In this case, no criminal punishment was given to the defendant. Similarly in the case of 28 **SAHELI v. Commissioner of Police** wherein the son of Kamlesh Kumar died due to ill-treatment by the S.I of Delhi Police which was a heinous act and the court again settled the case by granting compensation for the same.

Criminal courts have increasingly served as recovery agents under the following: -

Negotiable Instrument Act, 1881 is one such law which deals with offences that are criminal in nature and impose criminal liability for the same. ⁹Section 138 of this act talks about dishonor of cheque for insufficiency of fund in account and imposes punishment which may extend to two years or with fine which may extend to twice the amount of the cheque or with both. In case ¹⁰Naimesh P. Pandya v. the State of Gujarat the Sessions court held the petitioner guilty of the offence under Section 138 of Negotiable Instrument Act 1881 and was sentenced to 6 months simple imprisonment and compensation of Rs 4000. Unsatisfied with the judgment, the petitioner challenged the legality of the order and filed an appeal which was later dismissed. Furthermore, the revision petition was filed by him. During the hearing of the revision petition, the petitioner and the respondent settled the dispute out of court and entered into a compromise. In this case, the court granted permission to compound the offence on the ground that if peace

⁶Id. § 357(3).

⁷Id. § 357A.

⁸RudalSah v State of Bihar And Another, A.I.R. 1983 S.C. 1086

⁹Negotiable Instrument Act, 1881 § 138

¹⁰NaimeshP.Pandya v State of Gujrat And Another, 1998 Cri.L.J 4424.

and harmony are brought between the parties then there is no harm in accepting such a compromise.

Medical negligence is a criminal offence covered under various sections of the Indian penal code like ¹¹Section 304-A, ¹²Section 337, ¹³Section 338 and is considered professional negligence. A medical practitioner's service cannot be compared with that of any other business, so they must be very careful in performing their skill since even a single mistake can lead to death. In the case ¹⁴PoonamVerma v. Ashwin Patel, the doctor was registered as a medical practitioner to provide homoeopathy treatment but he prescribed allopathic medicine to his patient. His negligence resulted in the death of his patient. Court held that he should compensate the wife of the deceased which was Rs 3,00,000. In this very case, there was gross negligence on the part of the doctor. Even though he had no knowledge of allopathy nor was he qualified for prescribing it, he did so anyway, which resulted in the patient's death. Herein he had knowledge of the consequences of his act but still, the court did not punish him and directed the state medical council under Maharashtra Medical Council act 1965 to initiate action.

Voluntarily causing grievous hurt by dangerous weapons is a criminal offence defined under ¹⁵Section 326 of the Indian Penal Code, 1860. Offenders under this section shall be punished with imprisonment for life or with imprisonment for a term which may extend to 10 years and shall be liable for a fine too. In the case ¹⁶Y. Suresh Babu v. State of A.P The appellant stabbed the respondent after an altercation near a pan shop owned by him. The appellant was convicted under Section 326 of the Indian Penal Code, 1860, and was sentenced to undergo rigorous imprisonment for a period of one year. In this very case, it was asked to compound the offence on the ground that the parties have reconciled their differences and the appellant will pay Rs 10,000 to the respondent by the way of compensation.

Herein Section 326 is a non-compoundable offence but in this case, it was compounded as a compromise for compensation was reached between the parties. Though this case was treated as a special case and was told not to be taken as a precedent. But the following year, in the case ¹⁷Mahesh Chand and Anr.v. State of Rajasthan Supreme Court took the above-mentioned case as precedent, agreed upon the compromise done by the parties, and again asked the trial court to

¹¹Indian Penal Code, 1860 § 304A.

¹²Id. § 337.

¹³PoonamVerma v Ashwin Patel, (1996) 4 S.C.C 332.

¹⁴PoonamVerma v Ashwin Patel, (1996) 4 S.C.C 332.

¹⁵Indian Penal Code, 1860 § 326.

¹⁶Y. Suresh Babu v State of A.P.And Another, (2005) 1 S.C.C 347.

¹⁷Mahesh Chand and Another v State Of Rajasthan, A.I.R. 1998 S.C. 2111.

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compounded ¹⁸Section 307 of the Indian Penal Code attempt to murder which is a non-compoundable offence.¹⁹ Section 498A is a non-compoundable offence covered under the Indian Penal Code. It defines cruelty as an offence whereby if the husband or the relatives of the husband are subjecting the wife to cruelty then they shall be punished with imprisonment of a term which may be extended to 3 years. Being a non-compoundable offence, courts are allowing the parties to withdraw the case when they agree upon a compromise. Paying the compensation will effectively end the case; if you do not, you will be charged with a crime in a case that will last for years. The same had happened in the case of ²⁰ Sheenu and Another v. Man Singh and Others. Wherein the petitioner was prosecuted for committing the offence under Section 498A and ²¹Section 34 of the Indian Penal Code for causing torture and subjecting the wife to cruelty. This case has been settled on the grounds that the offenders had no criminal records hence the compensation of Rs. 1000 each had been charged upon them. Despite being a grave offence, no punishment was imposed. Even the fact that it could not be compounded was compromised.

Defamation as a criminal offence is defined under ²²Section 500 of the Indian Penal Code wherein whoever will defame another person shall be punished with simple imprisonment for a term which may extend to two years or with fine or both. In the case ²³Mukul Kumar Chaturvedi v. Neelam Chaturvedi, the trial court awarded a sentence for 2 months and compensation to the respondent of Rs 1,00,000 by the accused Mr. Mukul Kumar Chaturvedi. The decision was challenged and the Delhi district court held to increase the amount of compensation from Rs. 1,00,000 to Rs. 1,50,000 and the sentence of imprisonment was set aside. In this case, even though he was found guilty he was not punished and compensation was increased to duly compensate the complainant.

Criminal intimidation is defined under ²⁴Section 506 of the Indian Penal Code wherein whoever will commit an offence of criminal intimidation shall be punished with imprisonment of either for a term which may extend to two years or with fine, or both. In the case of ²⁵Sau.Anuradha R. Kshrisgar and Others v. State of Maharashtra the trial court held the accused guilty under

¹⁸Indian Penal Code, 1860 § 307.

¹⁹Id. § 498A

²⁰Criminal Appeal No. 440171 of 2016.

²¹Indian Penal Code, 1860 § 34.

²²Id. § 500.

²³Criminal Appeal No. 54806 of 2016.

²⁴Indian Penal Code, 1860 § 506.

²⁵Sau.Anuradha R. Kshirsagar v State Of Maharashtra And Others, 1991 Cri.L.J 410.

section 509 of IPC and sentenced to suffer simple imprisonment of 2 months and fine of Rs 200. It was later challenged by the accused in the criminal appeal wherein he was found guilty of committing criminal intimidation but was not punished for the same and was told to compensate the appellants by Rs.100 each.

After analyzing each case it can be inferred that: -

- 1) An ineffective form of justice is rendered as no deterrence is set up.
- 2) Non-compoundable offences are compounded on the settlement done by the parties for compensation.
- (3) Criminal courts are more focused on settling the case through compensation for the victim.

In this case, a detrimental consequence emerges in the increase in crimes, since there is nothing left to stop offenders from committing their evil deeds and by paying compensation, the criminal court provides them with a way to escape punishment. Non-compoundable offences are of such grave nature that not only affect the victim but the entire society gets troubled hence it's imperative to take stringent measures to deter them from occurring. The conversion of non-compoundable offences into compoundable offences upon settlement by parties is another important point that can be derived after analyzing. As these offences are against the entire society these cases should not be left to the parties to go for a compromise and settle the case.

The consent of the victim in compromise for compensation is also an ambit which should be minutely observed. There are chances that the consent of the victim is not free consent or that she may have been chasing justice for years, undergone huge trials and ultimately opted for a compromise through compensation.

There is a key concept called justice delayed is justice denied where if you are solving a case and granting relief takes years, then the essence of it erodes and it loses its effectiveness, especially in grave crimes. In the case of ²⁶V.S Achuthanandan v. R. Balakrishna wherein there was a hydroelectric power project and, on its completion, several leaks and cracks were identified in the tunnel during an inspection. The matter was taken to the court in June 1985. An inquiry was set up in 1988 in which the accused was found guilty under ²⁷Section 120B and ²⁴Section 409 of IPC and ²⁸Section 5(1)(c) and ²⁹Section 5(2) of the Prevention of Corruption Act for which they were sentenced to serve the rigorous imprisonment for 5 years along with

²⁶Criminal Appeal No. 350 of 2006.

²⁷Indian Penal Code, 1860 § 120B.

²⁸Id. § 409.

²⁹ Prevention Of Corruption Act, 1988 § 5(1)(c).

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the fine of Rs. 10,000 in the year 1999. The matter went for an appeal and the decision came in the year 2003 whereby the accused was acquitted. It was again challenged and the Supreme Court in the year 2011 imposed rigorous punishment of 1 year with a fine of Rs.10,000. Herein it was a corruption case which took 23 years to resolve, and the punishment was very nominal for the offenders as Rs 10,000 was not a lot to pay for them. Hence the essence of justice faded away.

All of these above-mentioned cases contain gross negligence, attempt to murder, subjecting of women to cruelty etc which are heinous offences and involve the risk of losing a person's life or inflicting irreparable injury. It thus becomes important that punishment be given. Punishment is an effective means of prohibiting antisocial behavior and acts as a threatening and deterring instrument. It is an output-generating technique for reducing crimes and must be incorporated to provide complete justice when heinous offences are committed.

RECOMMENDATION: -

For achieving such effective justice following should be taken into consideration before delivering judgment:

- 1) It is fundamental to alleviate the victim's physical and mental suffering by redressing the wrong done.
- 2) The criminal court must impose punishment for the serious offense committed which will effectively suppress the idea of paying for the crime and escaping punishment from the human brain.
- 3) The concept of deterrence should be made rock-hard so that just the thought to serve the sentence fills the person with dread. Redressal of grievances of victims ought to be achieved which is only attainable when the justice impartation is not flawed. The application of justice will not only compensate the victim, but will also achieve its twin objectives of deterrence and reformation of the offenders, which will maintain law and order.

CONCLUSION: -

“If he who breaks the law is not punished, he who obeys it is cheated”. Is justice served?

Rendering justice involves the discretionary perspective of the judges and the provision of relief for every victim varies, some may plead for monetary relief and others may ask for punishment but being the supreme and final authority of delivering justice it's imperative to see that Criminal Courts provide unbiased and absolute justice. There should be a striking balance of

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justice between the interest of the victim and the concern of society. if not then the state of social unrest in society develops from strikes, candle marches, and non-violent resistances when an offender is acquitted of committing heinous crimes. Another consequence includes skepticism and disbelief in the judgments delivered by the court.



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