

# COMPENSATION TO VICTIMS OF CRIME: A CRITICAL ANALYSIS OF ETHIOPIAN LEGISLATIVE FRAMEWORK

Written by *Godsend Konofa Korosha*

*LLB, 2nd year, LL.M. student in Punjabi University, Patiala*

## ABSTRACT

Ethiopia is one of the developing countries in Africa. Ethiopia does not have a comprehensive legislation dealing with compensation to the victims of crime. Nevertheless, the concept of compensation has place under Ethiopian Criminal Justice System tracing back to the introduction of to the '*Fetha Negest*' (Laws of Kings), 1540 A.D. However, in the current criminal laws, the victims of crime are overlooked and lost attention. Ethiopia did not recognize state fund to compensate the victims of crime. The existing Criminal laws of Ethiopia allowed the victims of crime to bring civil suit against the offender. However, if the offender's identity is unknown or if the law enforcement agencies are unable to detect the offender or the offender has not been charged and convicted, there is no compensation available to the victim of crime. Even if the victim is succeeded to receive a compensation order after going through all procedural hurdles placed in front of him, he may not be able obtain compensation if the offender does not have economic means to pay the compensation. In this paper, the author thoroughly explains the existing laws relating with compensation to the victims of crime and highlights the gaps and inbuilt weaknesses. The paper also offers proper measures to be taken to ensure effective protection of the rights' of the victims of crime.

## Introduction

Crime significantly affects mental, psychological, economic and physical wellbeing of a victim.<sup>1</sup>In serious cases it also cause the loss of limb and life of human being. Therefore, the victims of crime deserves compensation from the state, which failed its primary duty and

---

<sup>1</sup>. N.V. Pranjape, *Criminology, Penology and Victimology* 773 (Central Law Publications, Allahabad, 17<sup>th</sup> edn., 2017).

ultimate objective of protecting life, liberty and property of individuals.<sup>2</sup> A criminal who caused injury to the victim has also universally recognised responsibility to compensate the victim. The maxim '*Ubi jus, ibi remedium*' is the basic principle in the non-contractual liability, which refers that there is no wrong without a remedy and the rule of law requires that wrongs should not remain unredressed.<sup>3</sup> The same wrong may result both civil and criminal liability and in such cases the civil and criminal remedies are to be applied concurrently.<sup>4</sup>

In Ethiopia, the oldest well documented law administering both church and secular aspects of citizens known as '*Fetha Ngegest*' (Laws of kings) was formally introduced the rights of victim to get compensation around 1450 A.D.<sup>5</sup> The subsequent modern criminal laws of Ethiopia are criminal and crime oriented by overlooking the plights of the victim. The victim of crime is not given attention in the current criminal law of Ethiopia, instead they are marginalized and become forgotten party of the Criminal law.

The Constitution of Federal Democratic Republic of Ethiopia, 1995, recognized the people's right of access to justice and equality under article 37 and 25 respectively. When we look at the criminal legislations related with compensation to victims of crime, they fall short of satisfying the needs of victims and are far behind to match with international standards for protection of victims of crime which are provided under United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. Ethiopian legislature failed to recognize establishment of state fund to compensate the victims of crime. However, it recognized the victims' right to claim compensation order against the offender. Under Ethiopian Criminal Justice System, a victim of crime cannot receive compensation unless the offender is known, detected, convicted and has economic means to pay the compensation order. However, "the guilty man is lodged, fed, clothed, lighted, and entertained in a model cell at the expense of the state from taxes that the victim pays to the treasury."<sup>6</sup> And the victim, instead of being looked after, is contributing towards the care of prisoners during his/her stay in prison.<sup>7</sup>

---

2. K.I. Vibhute, "Compensating Victims of Crime in Ethiopia: A Reflective Analysis of Legislative Paradigm and Spirit" 17 *IRV* 327 (2010).

3. Guru Prasanna Singh (ed.), *Ratanlal and Dhirajlal's The Law of Torts* 20 (Wadhwa & Company, Nagpur, 23<sup>th</sup> edn., 1997).

4. R.F.V Heuston (ed.), *Salmond on the Law of Torts* 10 (Sweet & Maxwell, London, 1969).

5. Available at: [https://en.wikipedia.org/wiki/Fetha\\_Nagast](https://en.wikipedia.org/wiki/Fetha_Nagast) (last visited on March 30, 2018).

6. K.D. Gaur, *Criminal law, Criminology and Administration of Criminal Justice* 737 (Lexis Nexis, 3<sup>rd</sup>edn., 2015).

7. *Ibid.*

In this article, the legislative effort to give justice for the victims of crime and the inbuilt weaknesses and gaps in the existing legislations of Ethiopia are thoroughly examined. The author also suggested measures to be taken to bring effective protection of the rights of victims.

### **1. Meaning and Definition of the Term “Victim of Crime” and “Compensation”**

The word victim is derived from ancient Latin term ‘victima’, which means living creature (animal or person) killed and offered as sacrifice to a deity or supernatural, in later times which is understood as a person who is hurt, tortured or killed by another.<sup>8</sup> The term victim in general parlance refers to any person who suffer injury, risk or hardship as a result to any cause and one of such cause may be crime.<sup>9</sup> Black’s Law Dictionary defines victim as a person harmed by a crime, tort, or other wrong.<sup>10</sup> J.H. Stark and H.W. Goldestein defined the term victim from crime point of view. According to them, victim is any person who suffered a loss or injury as a result of crime proscribed under local, state or federal laws.<sup>11</sup> Victim of crime generally refers to anyone, group or organization who has suffered injury as a result of criminal activity.<sup>12</sup>

According to Oxford Dictionary, compensation is something good to balance or minimize the bad results of harm, loss, injury etc.<sup>13</sup> Therefore, compensation means an award which is given to indemnify loss or injury, ultimate purpose of which is to counterbalance the losses suffered by the victims of crime or heirs of the deceased or who has suffered monetary or non-monetary loss.<sup>14</sup>

### **2. Concept of Victim Compensation under the Constitution of Federal Democratic Republic of Ethiopia, 1995**

Under Ethiopian Constitution there is no express provision directly dealing with victims’ right to receive compensation for criminal injuries. Aarticle 37 of Ethiopian Constitution, 1995 read with article 8 of Universal Declaration of Human Rights forms foundational rock of justice for

---

<sup>8</sup>. Online Etymology Dictionary, available at: <https://www.etymonline.com> (last visited on February 4, 2018).

<sup>9</sup>. *Supra* note 1 at 763.

<sup>10</sup>. Black’s Law Dictionary (8<sup>th</sup> edn., 2015).

<sup>11</sup>. James Stark and Howard W. Goldestien, *The Rights of Crime Victims* 11 (Bantam Books, 1985).

<sup>12</sup>. Gurpreet Singh Randhawa, *Victimology and Compensatory Jurisprudence* 51 (Central Law Publication, Allahabad, 2011).

<sup>13</sup>. Oxford Advanced Learner’s Dictionary 137 (2002).

<sup>14</sup>. *Supra* note 12 at 167.

victims of crime in Ethiopia. Article 8 of the Universal Declaration of Human Rights provides right to effective remedy for every human being.<sup>15</sup> On the other hand, article 37 of Ethiopian Constitution provides “right of access to justice”. In the same article, it is clearly provided that “everyone has the right to bring a justiciable matter to, and obtain a decision or judgement by a court of law or any other competent body with judicial authority”<sup>16</sup>. Victims of crime are also entitled equal protection of the law as human being enshrined under article 25 of the constitution. Being as one of fundamental rights and freedoms stated under chapter three of the Ethiopian Constitution, 1995, article 37 shall be interpreted in a manner conforming to the principles of Universal Declaration of Human Rights, 1948, International Covenants on Human rights and International instruments adopted by Ethiopia.<sup>17</sup> Therefore, “right of access to justice”, provided under article 37 is not right to mere appearance before judiciary rather it is right to receive effective and fair remedy.

## **2. Compensation to Victims of Crime under Substantive and procedural Criminal Codes of Ethiopia.**

Ethiopia does not have exclusive piece of legislation dealing with compensation to the victims of crime. Ethiopia also does not have state sponsored compensation to the victims of crime. The Criminal Code of Federal Democratic Republic of Ethiopia, 2004 and the Criminal Procedure Code Proclamation, 1961 are the only legislations contain provisions to address the plights of victims of crime. Under this section of discussion, both the Criminal Code of federal Democratic Republic of Ethiopia, 2004 and the Code of Criminal Procedure Proclamation, 1961 will be discussed briefly and critically analysed.

### **The Criminal Code of Federal Democratic Republic of Ethiopia, 2004**

The Criminal Code of Federal Democratic Republic of Ethiopia, 2004, failed to define either victim or type of injuries or damages which constitute criminal injury. Article 101 of Criminal code of Federal Democratic Republic of Ethiopia, 2004 is a key provision which recognises the right of injured person or persons having right from him to claim restitution or compensation against offender where a crime has caused considerable damage to the injured

---

<sup>15</sup>. The Universal Declaration of Human Rights, 1948, art. 8

<sup>16</sup>. The Constitution of Federal Democratic Republic of Ethiopia Proclamation No. 1/1995, art.37(1)

<sup>17</sup>. *Id.* art.13.

person or those having right from him.<sup>18</sup> The same provision requires the victim to bring civil claim to join with criminal suit. Accordingly, a victim of crime will get compensation only if there is “considerable damage”. The term “considerable damage” used in the legislation has not been explained. Therefore, it is not easy to determine what amounts to considerable damage and, which may lead to arbitrary determination of what constitutes considerable damage by individual judge. The provision recognised right to claim compensation against the criminal. In other words, the victim cannot receive compensation, no matter how grave his damage is if the criminal has not been detected, charged, convicted and means to pay the compensation order.

Article 102 of Criminal Code of Federal Democratic Republic of Ethiopia, 2004, is another basic provision dealing with compensation to victims of crime. Accordingly, where there is reason to believe that compensation not possible by the offender or those responsible on his behalf due to the circumstances of the case or their condition, the judiciary may direct that “the proceeds or part of the proceeds of the sale of the articles distrained, or the sum guaranteed as surety, or a part of the fine or of the yield of the conversion into work, or confiscated property be paid to the injured party”<sup>19</sup>. It is worthy to mention here that even articles distrained, sum of surety, part of the fine or confiscated property may not come close to satisfy the need of victim. In the absence state fund established to compensate the victims of crime, it is irrational to expect the criminals to afford to compensate relatively significant amount of criminal damages where in a country having highest number poverty rate in the world.

Article 102(2) of the Code speaks about enforcement of the order of compensation against the offender. When the court orders compensation to the victims of crime from the offender, the enforcement of such order would be delegated to the state.<sup>20</sup> In other words, even though the court has ordered compensation to the victim of crime, the power of enforcement is in the hand of the government. This becomes problematic when the government agencies are reluctant to enforce the order of the court for any reason. The provision is completely silent on the issue that what steps the victims of crime can take if the state fails to enforce the decision or delays the enforcement of the same for any reason.

---

<sup>18</sup>. The Criminal Code of Federal Democratic Republic of Ethiopia ,2004, art.101

<sup>19</sup>. *Id.* art. 102 (1).

<sup>20</sup>. *Id.* art. 102 (2).

Ethiopian criminal Code made it clear that one of the objective of the code is to rehabilitate the criminals.<sup>21</sup> For that purpose, under article 197 of the Criminal Code of Federal Democratic Republic of Ethiopia, 2004, probation is allowed for criminals who have committed minor offences subject to certain conditions provided in the code. Accordingly, a criminal can be released by a court before serving any part of the sentence if the requirements of the law and conditions are fulfilled by the criminal. Under article 197(1) of the Code, in addition to other conditions, as far as possible fullest reparation for damage caused or paying indemnity to the victim is basic condition for conditional suspension of penalty. Therefore, the offender is required to compensate the victim to enjoy time of probation. By setting this condition, the legislature is facilitating rehabilitation of the offender by creating sense of responsibility for his act/omission and results caused due to such act/omission. The Central point here is that the court cannot allow probation if the offender fails to compensate the victims of crime for the fullest extent as far as possible.

Article 202 of the Criminal Code of Federal Democratic Republic of Ethiopia, 2004, provides Conditions for Release. Conditional release is also one way of rehabilitating criminal by giving him chance to reintegrate into society before he finishes his entire sentence subject to certain legal conditions.

Under Ethiopian Criminal Justice System, after a prisoner serves two third of the sentence, a court may order conditional release of the criminal either through recommendation of management of the institution (prison administration) or by petition of the criminal.<sup>22</sup> There are conditions provided to realize such quasi-right of conditional release. One of the conditions is directly related with compensation to the victims of Crime. Article 202 (1) (b) of the Criminal Code of Federal Democratic Republic of Ethiopia, 2004, provides that the criminal is required to pay damage caused to the victim to get conditional release. For the amount of damage to be paid, the offender have two alternative ways. The offender can pay either the amount of damages assessed and weighed by the court or amount of damages agreed with the victim. In either way, he has to pay the compensation or could reasonably expected to do so to get his conditional release.

### **The Criminal Procedure Code Proclamation, 1961**

---

<sup>21</sup>. *Id.* art. 1.

<sup>22</sup>. *Id.* art. 202(1).

The Criminal Procedure Code Proclamation of 1961, commonly referred as Ethiopian Criminal Procedure Code is major law the country has in relation to the compensation for a victim of crime. This Code was initially enacted to enforce the Penal Code of Empire of Ethiopia, 1957. However, it is continued in operation even after the repeal of the Penal code of Empire of Ethiopia. Though it is procedural law, it contains very important provisions which will determine the chance of victims of crime to receive compensation under Criminal Justice System. Under chapter VI of the Code of Criminal Procedure Proclamation, 1961, there are six articles directly dealing with the Compensation to the victims of crime. Each of the provisions are briefly examined in this section of discussion.

Article 154 of the Code of Criminal Procedure Proclamation, 1961 speaks about time of application for compensation in a criminal proceeding. It provides that an injured party (victim) or his representative may apply to a court trying the case at its opening of the hearing. Opening of hearing a case will take place at the time fixed by the court after receiving the charge of Public Prosecutor.<sup>23</sup> Therefore, the victim or his representative is required to bring application of claim of compensation against the offender. The applicant is also required to make his claim in writing by specifying the nature and quantum of compensation he seeks. It is also provided that the applicant will not be required to pay judicial fee in relation to such claim.

It is also provided that a victim applying for the compensation shall be able to see the list of witnesses of prosecution and defendant and he is also allowed to call any other witness if he so wishes.<sup>24</sup> When a victim wishes to call additional witness, he is required to pay prescribed fee for issuing of summoning the witness the same to that of required in civil case.

Further it provides that the rules stated under chapter VI of the Code of Criminal Procedure proclamation, 1961 will apply similarly whether prosecution is of the crime is initiated by public prosecutor or private individual.<sup>25</sup> That means, if a private person brings charge against an offender in exceptional cases where he is legally allowed to do so, he has to wait until the opening date of the hearing to bring his claim of compensation against the accused. However, it is not clear why the private prosecutor cannot bring his compensation claim together with that of criminal charge. It is also stated that in case of private prosecution, the victim is required

---

<sup>23</sup>. The Code of Criminal Procedure Proclamation, 1961, art. 123, 126.

<sup>24</sup>. *Id.* art. 154(2).

<sup>25</sup>. *Id.* art. 154 (3).

to identify which witness he calls to prove the criminal charge and which witness for his civil claim.<sup>26</sup>

Article 155 of the Code of Criminal Procedure proclamation, 1961 provides ground for dismissal of application under article 154 of the same. It is the most significant provision of the entire chapter. The court is given uncontrolled discretionary power regarding dismissal of the claim lodged where it is satisfied with the existence of certain conditions.<sup>27</sup> The court is also allowed to consider dismissal of the claim on its own motion or on request of prosecution or defence. The court can dismiss a claim when one or more of the following grounds are found:<sup>28</sup>

- When accused is a young person (minor).
- When the accused is being tried in his absence.
- If the injured party has instituted proceedings in a civil court having jurisdiction.
- The person making the application is not qualified for suing.
- If the claim for compensation cannot be determined without calling numerous witnesses in addition to those to be called by the prosecution and defence.
- The court is of opinion that the hearing of the injured party's claim for compensation is likely to confuse, complicate or delay the hearing of the criminal case.
- The application shall be dismissed where the amount of compensation claimed exceeds the pecuniary jurisdiction of the court.

Where one or more of the above listed grounds are available, the court is free to dismiss the claim of the victim of crime under criminal proceeding. The dismissal of claim is final and no appeal can be taken from such decision.<sup>29</sup> However, the dismissal of the claim of compensation by the criminal court cannot bar the victim to take the same claim to the civil court having jurisdiction.<sup>30</sup>

The effect of dismissal of application has devastating impact on the victim. First, the decision of dismissal is not reviewable through appeal since appeal against the dismissal is expressly prohibited.<sup>31</sup> Second, if the claim of victim is dismissed by the criminal court, he will be

---

<sup>26</sup>. *Id.* art. 154(4).

<sup>27</sup>. *Id.* art. 155 (3).

<sup>28</sup>. *Id.* art. 155 (1).

<sup>29</sup>. *Supra* note 27.

<sup>30</sup>. *Ibid.*

<sup>31</sup>. *Supra* note 27.



required to pay court fee if he wishes to file his claim in a civil court.<sup>32</sup> This clearly affects a victim of crime who does not have enough means to pay all the costs of civil suit which is expensive in many cases. Therefore, civil court is not the best option to effectively protect the interest of the unfortunate victim of crime. However, Ethiopian Criminal Justice system pushes the victim to go to civil court by making it difficult to get compensation order under Criminal Justice System.

Article 156 of the Code of Criminal Procedure Proclamation, 1961, provides procedures in case where application for compensation order is allowed by the criminal court. When application is allowed, the applicant (victim) has right to take part in the criminal proceeding and shall have with regard to evidences, all rights of ordinary party. That means, the victim can produce evidence, examine the evidence of defence or prosecutor and etc. Under sub-article 2 of the same provision, at the end of the defence the court is required to permit the victim or his representative to address the court about the amount of compensation to be awarded.

Article 157 of the Code of Criminal Procedure Proclamation, 1961, speaks about right to withdraw the application of compensation from the criminal court. A victim of crime is allowed to withdraw his claim at any time before the close of the defence. Though it is not clear whether the victim can withdraw even after close of defence or not, there is still no good reason why a victim cannot withdraw at any stage and therefore it seems permissible. He is also allowed to file his claim in a civil court.

Article 158 of the Code of Criminal Procedure Proclamation, 1961, provides that if the criminal proceeding ends up in acquittal or discharge of the accused, the criminal court is not allowed to continue adjudication of question of compensation and shall inform the victim that he may file a claim of compensation against the offender in a civil court having jurisdiction. Article 159 of the same deals with order of compensation by a criminal court. When passing a judgement on awarding compensation, the criminal court is required to give the following three orders:<sup>33</sup>

(a) The amount of compensation so awarded be paid to the injured party or his representative.

---

<sup>32</sup>. The Civil Procedure Code Decree, 1965, article 215 provides that without prejudice to the provisions of article 467-479 (suit by paupers), no statement of claim shall be admitted under Art. 230 except after payment of the prescribed court fee.

<sup>33</sup>. *Supra* note 23, art.159 (1).

- (b) Costs as provided for civil cases be paid to the injured party or his representative.
- (c) The accused pay the court fees as if it were a civil case.

Once the compensation is ordered, the payment of such is governed under article 210<sup>34</sup> of the Code of Criminal Procedure Proclamation, 1961, which provides that when a criminal court passed a judgement containing order for the payment of legal costs or compensation, shall be executed in the same manner as a civil judgment.

### **Conclusion and Suggestions**

Crime causes mental, psychological, economic and physical damage including loss of limb and life of the victim. The plights of unfortunate victims are overlooked by the legislature of Ethiopia. Ethiopia neither have state fund for victims of crime nor have the scheme of compensation for criminal injuries which are often difficult to measure in monetary value. The Constitution of Federal Democratic Republic of Ethiopia, 1995, recognized right of access to justice under article 37. However, under criminal legislations, there is no effective remedy to address for the cry of victims.

Though the Criminal Code and Criminal Procedure Code of Ethiopia have few provisions dealing with compensation to victims of crime, they are inadequate to effectively protect the rights and interests of the victims of crime. Under Ethiopian Criminal Justice System, the victim of crime can claim compensation only from the offender.<sup>35</sup> The victim cannot get any compensation if the identity of the offender is unknown. Under the Criminal Justice System of Ethiopia, a victim of crime cannot be compensated unless the offender is charged, convicted and has economic means to pay the order of compensation.

Ethiopian legislature did not provide any guidelines to the judiciary about how it can determine the amount of compensation for a criminal injury. Therefore, the courts are doomed to arbitrarily put tariff on mental and psychological damage as well as loss of human limb and life as a result of crime. Even after order of compensation by court, the victim does not get automatic compensation. He has to wait until state enforces the order of court. If state fails to

---

33. *Id.* Art. 210 provides Payment Of costs and compensation. Where a judgment given by a criminal court contains provisions for the payment of legal costs or compensation, such part of the judgment as contains such provisions shall be executed in the same manner as a civil judgment.

35. *Supra* note 18.

enforce the compensation order, the victims chance of receiving compensation is at stake since the law does not provide what steps can be taken by the victims of crime to ensure the enforcement of compensation order.

On the other hand, if the criminal court dismisses a compensation claim of the victim under article 155 of the Code of Criminal Procedure Proclamation, 1961, the victim may not be able to get justice at all because of the cost he is required to pay if he wishes to file claim in a civil court at later time. It is obvious that the litigation cost of civil claim is up on the party and it is often unaffordable for economically weak sections society when they end up being a prey. Therefore, victims of crime are losers both in the hands of criminal and justice system. Some of victims of violent crimes may not have chance to endure under until the final determination of the case. Seriously injured victim does need urgent medication and treatment. His pain will never wait until the final decision of lengthy court proceeding. In absence of state fund, poor victims of crime who have no means to pay for relatively expensive medical cost are forced to die.

To address the problems of victims of crime effectively, currently existing legislations of Ethiopia are not adequate and comprehensive. Therefore, Ethiopia should legislate an exclusive law clearly defining the victims of crime and establishing state fund to compensate the victims of crime particularly, giving priority to victims of violent and serious crimes. Irrespective of the apprehension, charge or conviction of the criminal, the victim of crime should be able to receive compensation without need to go through lengthy criminal or civil suit. Ethiopia should also enact on scheme of compensation for the criminal injuries so that the court can see and determine the amount of compensation accordingly.

In addition to public fund for the victims of crime the state should encourage participation of private sectors and charity organizations to help the victims of crime. Non-governmental organizations can be helpful to fill the gap of country's limited economic capacity. Victims of crime have wide range of needs such as mental health care, psychotherapy, legal aid, medical treatment and etc. promoting participation of voluntary organization will be fruitful to meet various needs of the victims of crime.

## **REFERENCES**

### I. Acts/Statutes

- The Constitution of Federal Democratic Republic of Ethiopia Proclamation No. 1/1995
- The Civil Procedure Code Decree, 1965
- The Code of Criminal Procedure Proclamation, 1961
- The Criminal Code of Federal Democratic Republic of Ethiopia, 2004

### II. Articles and Books

- Gurpreet Singh Randhawa, *Victimology and Compensatory Jurisprudence* (Central Law Publication, Allahabad, 2011).
- Guru Prasanna Singh (ed.), *Ratanlal and Dhirajlal's The Law of Torts* (Wadhwa & Company, Nagpur, 23<sup>th</sup> edn., 1997).
- N.V. Pranjape, *Criminology, Penology and Victimology* 773 (Central Law Publications, Allahabad, 17<sup>th</sup> edn., 2017).
- James Stark and Howard W. Goldestien, *The Rights of Crime Victims* (Bantam Books, 1985).
- K.D. Gaur, *Criminal law, Criminology and Administration of Criminal Justice* (Lexis Nexis, 3<sup>rd</sup>edn., 2015).
- K.I. Vibhute, "Compensating Victims of Crime in Ethiopia: A Reflective Analysis of Legislative Paradigm and Spirit" *17 International Review Victimology* (2010).
- R.F.V Heuston (ed.), *Salmond on the Law of Torts* (Sweet & Maxwell, London, 1969).

### III. Dictionaries

- Black's Law Dictionary
- Oxford Advanced Learner's Dictionary

### IV. International Instruments

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985
- The Universal Declaration of Human Rights, 1948