

A Critical Analysis of Victim Compensation Schemes: Evaluating Efficacy and Exploring Alternatives

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Abstract: The payment of compensation to victims has become an essential feature of the modern-day criminal justice system. The mere punishment of the offender does not undo the damage that the victim suffers. The development of compensation jurisprudence in India has gradually shifted from pure discretion of the courts to a wider statutory and constitutional realm. The Code of Criminal Procedure earlier included the provision of compensation by the Court and Section 357A stated a scheme of compensation for the victim at the cost of the State. The Bharatiya Nagarik Suraksha Sanhita, 2023 continues by retaining the duty of the State to create schemes for victims or their dependents who suffers loss or injury and it necessary to rehabilitate them. However, the practical reality remains lopsided. Victims are routinely delayed, lack knowledge and poor compensation, get stuck in procedural intricacies, face the weak coordination of authorities, and suffer from the ill rehabilitation process. This paper assesses the effectiveness of the victims' compensation schemes in India. It evaluates the constitutional, statutory and judicial framework. It also identifies implementation gaps. Further, it suggests alternatives to the scheme such as restorative justice, victim support services, trauma-informed care, offender-funded restitution, community-based rehabilitation, and a national victim assistance framework. This argues that compensation should not be viewed as charity or a mere token. It should be understood as a rights-based remedy linked to dignity, access to justice and effective rehabilitation.

Keywords: victim compensation, victimology, BNSS, restorative justice, rehabilitation, criminal justice, victim rights, legal services authorities.

1. Introduction

The traditional criminal justice system was primarily focused on the offender, the state. After a crime was committed, the State investigated, prosecuted and executed. Though the victim is the direct sufferer of the crime, they are often relegated to just being a witness. This method caused a significant disparity. Having a conviction can punish the offender but does not make the victim involved. Changes consider making a victimisation impact statement. Victim's impact statement highlights the impact on the

victim. Further, let's discuss what is a victim impact statement. The gap in this area led to the emergence of victims' compensation.

Compensation for the victim is based on the simple and yet powerful idea that a legal system cannot possibly deliver justice without taking into account the person who is harmed as a result of a crime. A crime is an act that causes physical harm to a person, mental anguish, social stigma, loss of earnings, disability and death. In many instances the injury persists long after trial ends. Thus the victim compensation is to provide monetary assistance and ideally rehabilitation to victims or dependents. Moreover, it signifies that the victim's suffering is not merely a private concern but one of public import.

The idea of compensation in India has evolved through constitutional interpretation, criminal procedure and judicial activism.

The fundamental rights guaranteed by the Constitution and the right to receive compensation from the State were legally recognized by the Supreme Court.¹ Subsequently, a modification of the Criminal Procedure Code imposed an obligation on States to frame victim compensation schemes.² Under the existing criminal procedure system, Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023 mandates every State Government, in collaboration with the Central Government, to create a scheme for establishment of funds for compensating victims or their dependents who sustain loss or injury or suffer damage due to crime and require rehabilitation.³

But the question remains whether these schemes work in practice or not. It is both yes and no. There has been significant normative progress in India, but not implementation. Compensation for victims varies from state to state, victims are often unaware of their rights, application procedures are difficult to navigate for the poor and vulnerable persons, and the compensation amount is often too low to meet the actual needs of victims. The issue involves more than money. Victims need access to counselling services, legal aid, shelter, medical care, and more. Any compensation scheme that merely provides money, and does not rehabilitate, is not a complete scheme.

2. Conceptual Foundation of Victim Compensation

Victimology, the science of victims, victimization and the legal institutions' response, is at the core of victim compensation. The modern-day victim of crime, in contrast to the idea of the offender-centred model of criminal justice, is to argue that victims are rights-bearing participants in the criminal justice process. Fixing the harm occurs through the compensation given by the legal system of this country. This compensation is a mechanism through which the system acknowledges a wrong and tries to repair it.

Several theories serve as the foundation of the effort. To begin with, according to the restorative justice theory, crime is harm to persons and relationships, not just law violation. According to this view, justice demands repair, accountability, and healing. Compensation is required to help the victim through the legal system and to make the legal system focus on crimes.⁴ Next, the welfare theory sees the compensation of the State as a part of a welfare State's duty. The State must not turn its back on its citizens who become victims of serious crime since it has promised order and security. Third, the

¹ INDIA CONST. art. 21; Nilabati Behera v. State of Orissa, (1993) 2 S.C.C. 746 (India).

² Code of Criminal Procedure, No. 2 of 1974, § 357A, India Code (1973), inserted by Code of Criminal Procedure (Amendment) Act, No. 5 of 2009.

³ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 396(1), India Code (2023).

⁴ JOHN BRAITHWAITE, RESTORATIVE JUSTICE AND RESPONSIVE REGULATION 11-18 (Oxford Univ. Press 2002).

human rights theory treats compensation as part of the right to an effective remedy. Global standards state that victims shall be provided restitution, compensation and assistance.⁵

Compensation should thus not be seen as a question of pity. It is associated with dignity, equality and access to justice. If a victim is unable to get a medical treatment or livelihood after a crime, he gets victimized again. It is especially pertinent for cases of sexual violence, acid attack, caste atrocity, domestic violence, human trafficking, child abuse and custodial violence. The damage is not confined to the offence in such circumstances. These findings may constrain one's education, marriage and employment, mental health, family relations, and social standing.

3. Legal Framework in India

Three major founding pillars of the Indian Legal Framework for Victim Compensation are Constitutional remedies, Statutory compensation and Special legislation. The constitutional structure got shaped through the Juridical thinking evolved through interpretations of Articles 21, 32 and 226. In *Rudul Sah v. State of Bihar*, compensation was awarded by the Supreme Court in case of an illegal detention after acquittal.⁶ In the case of *Nilabati Behera v. State of Orissa*, the court held that compensation can be granted as a public law remedy for violation of Article 21 in custodial death cases.⁷ In the case of *D.K. Basu v. State of West Bengal*, the Court allowed the compensation for custodial torture and abuse of power.⁸ These cases shifted compensation from regular civil damages to constitutional accountability of the State.

Previously, courts were equipped with the power to award compensation out of fines under Section 357 of the Code of Criminal Procedure. The mechanism was limited because it was dependent on conviction and the offender's ability to pay. In *Hari Singh v. Sukhbir Singh*, the Supreme Court advised the courts to interpret those provisions of compensation liberally.⁹ The Court in the matter of *Ankush Shivaji Gaikwad v. State of Maharashtra* observed that the question of compensation to the victims must be considered by the criminal courts in each case and reasons have to be recorded if not awarded.¹⁰

An important development came through the insertion of Section 357A of the Code of Criminal Procedure by the 2008 amendment. Every State Government must prepare a Victim Compensation Scheme in coordination with the Central Government. Due to this provision even though if offender was not traced or not identified and no trial took place, one can get compensation. The prevailing equivalent under the BNSS Section 396 extends this framework. It enables the District Legal Services Authority, and the State Legal Services Authority to fix the amount of compensation if a recommendation is made by a court. It permits cases where identifying the offender is not possible, subject to the completion of inquiry within a period of two months.¹¹

Legislation expanded compensation and victim support further! The Protection of Children from Sexual Offences Act, 2012 will include child-sensitive protocols and has been read with child victims compensation schemes.¹² The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and its rules aim to assure relief and rehabilitation of victims of atrocities.¹³ The Act of Protection

⁵ G.A. Res. 40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, ¶¶ 8-13 (Nov. 29, 1985).

⁶ *Rudul Sah v. State of Bihar*, (1983) 4 S.C.C. 141 (India).

⁷ *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746 (India).

⁸ *D.K. Basu v. State of W. Bengal*, (1997) 1 S.C.C. 416 (India).

⁹ *Hari Singh v. Sukhbir Singh*, (1988) 4 S.C.C. 551 (India).

¹⁰ *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 S.C.C. 770 (India).

¹¹ *Bharatiya Nagarik Suraksha Sanhita*, No. 46 of 2023, § 396(2)-(6), India Code (2023).

¹² *Protection of Children from Sexual Offences Act*, No. 32 of 2012, India Code (2012).

¹³ *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*, No. 33 of 1989, India Code (1989); *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules*, 1995.

of Women from Domestic Violence, 2005 provides for compensation and monetary relief to victims.¹⁴ The 2018 Act attempts uniformity for victims of serious crimes against women.¹⁵

4. Judicial Approach to Victim Compensation

The compensation for victims have been enhanced by Indian courts. Judiciary [has] ruled repeatedly that compensation is not merely an ancillary matter. It ensures substantive justice is delivered. In the case of *Bodhisattwa Gautam v. Subhra Chakraborty*, the Supreme Court directed interim compensation to be paid to a rape victim and stated that rape is violation of fundamental right to life and dignity.¹⁶ In the case of *Delhi Domestic Working Women's Forum v. Union of India*, the Court emphasized on compensation, anonymity, counselling and legal assistance for victims of sexual assault.¹⁷

The Supreme Court intervened to impose minimum compensation and regulate acid sale in acid attack cases. In the case of *Laxmi v. Union of India* the Court directed all States and Union Territories to ensure a minimum compensation of Rs 3 lakhs is paid to acid attack victim.¹⁸ In *Parivartan Kendra v. Union of India*, the court noted that compensation must be realistic and the court must regard the severity of physical and mental injury.¹⁹ These decisions indicate a significant shift in judicial attitude to rehabilitative justice from punishment.

The Court has also acknowledged the participatory role of the victim. In *Mallikarjun Kodagali v. State of Karnataka*, the right to appeal claimed by the victim(s) of the criminal offence was interpreted by the Supreme Court of India, which also highlighted the need of these victims to be treated as stakeholders.²⁰ In *Jagjeet Singh v. Ashish Mishra*, the Court remarked the victims have legally enforceable rights at all stages in a criminal proceeding.²¹ These judgments reinforce the notion that reparation cannot be disassociated from the general rights to participation, dignity and access to justice. Judicial intervention has limits, at the same time.

Court orders are ad hoc, but the executive machinery, funds, awareness and trained staff are required for systemic implementation. Many victims still do not take the court route, don't know about compensation or do not have the legal help to file claims. In this sense, judicial activism is necessary but not sufficient as fought in the courts.

5. Critical Evaluation of Existing Schemes

The most important achievement of victim compensation schemes is the recognition of State responsibility. In the past, victims relied mainly on the wrongdoer's ability to pay. The State-funded model recognizes that a victim should not remain without recourse if the offender is absconding, unidentified. This is quite a change in India's criminal laws.

Despite their presence, the schemes face various problems which weaken their effectiveness. One of the major problems is lack of uniformity. Since states create their own plans, claims and benefits vary greatly in amounts, eligibility and procedure. A person harmed by the same same crime could receive different compensation in different states where the crime was committed. The above raises an issue under Article 14 as equal harm cannot receive unequal treatment without a reasonable nexus.

¹⁴ Protection of Women from Domestic Violence Act, No. 43 of 2005, §§ 20, 22, India Code (2005).

¹⁵ Nat'l Legal Servs. Auth., Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018 (India).

¹⁶ *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 S.C.C. 490 (India).

¹⁷ *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 S.C.C. 14 (India).

¹⁸ *Laxmi v. Union of India*, (2014) 4 S.C.C. 427 (India).

¹⁹ *Parivartan Kendra v. Union of India*, (2016) 3 S.C.C. 571 (India).

²⁰ *Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 S.C.C. 752 (India).

²¹ *Jagjeet Singh v. Ashish Mishra*, (2022) 9 S.C.C. 321 (India).

Innocent delay is the second problem. Timely compensation is most helpful of all. A victim requiring surgery, shelter or counselling cannot be made to wait months or years. The delays in actionables are attributed to incomplete documentation, police verification, lack of proper coordination and management overload. Although, the BNSS (Section 396) require the inquiry to be completed within two months.²² The law allows interim relief but it is not always granted in practice.

The third issue is the lack of awareness. Most victims, especially from rural, poor and marginalized communities, are not aware of the compensation schemes. Police stations, hospitals and courts are almost always the first contact points for victims, but they generally do not have clear information or may not communicate effectively.

Unless there is active assistance, a right on paper is useless. Inadequate compensation is the fourth issue. Often, the true victimization cost is higher than the amount awarded in compensation. Families can be drained by medical treatment, reconstructive surgery, counselling, loss of wages, relocation, education, litigation costs, and long-term dependency. Compensating victims of serious offences may not provide them full rehabilitative support.

The narrow understanding of rehabilitation is the fifth problem. The majority of the schemes are meant for payment. However, compensation alone cannot heal trauma. People who have been wronged may require psychological support, witness protection, safe housing, and so on. The lack of integrated services limits the transformative value of compensation schemes. The sixth problem has to do with institutional capacity.

Legal Services Authorities have significant role; however, the magnitude of their workload is high. It is essential to train people as victim assistance officers, counsellors, social workers and use digital tracking. Without professional support, compensation administration is a bureaucratic process and not victim-centred.

6. Comparative Perspective

Evidence from other countries suggests that victim compensation is most effective when it is linked to broader victim support services. In the United Kingdom, a criminal injuries compensation model exists which relates to ‘victims’ of violent crime.²³ Despite that of the U.K. facing criticism for its complexity and eligibility restrictions, the model nonetheless provides a more institutionalized structure than ad hoc compensation.

The Crime Victims Fund is primarily financed through criminal fines and penalties rather than ordinary tax payer revenue.²⁴ The Act, passed in 1984 in the United States. This model is significant as it connects offender-generated funds with victim services. Assistance services offered by various state and territory governments cover things like medical fees, counseling services, and more. India can benefit from the idea of a fund specific to victims, and sustainable. Canada and Australia are also indicative. Victims are offered monetary compensation along with counselling and supporting services. There has, in some jurisdictions, been a shift from compensation to financial assistance and service delivery models as victims require more than a payment. The lesson from comparison is clear. Compensation works best in combination with legal aid, counselling, advocacy, rehabilitation and accessible procedures.

7. Exploring Alternatives and Reform Options: The initial option is restorative justice. Restorative justice provides a space for victims to express the harm done to them, obtain acknowledgment and

²² Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 396(5), India Code (2023).

²³ Criminal Injuries Compensation Scheme 2012 (U.K.).

²⁴ Victims of Crime Act of 1984, 34 U.S.C. §§ 20101-20111 (U.S.).

participate in repair. Victim-offender mediation, conferencing, and community reparations are included. Use of ADR by the police should not be forced on the victims and it should also not be used in a manner that pressurises the victims of grave crimes into compromise. Yet, where appropriate and non-obligatory, restorative justice can add to compensation by countering emotional and relational injury.²⁵

The second option is a national victim assistance authority or a stronger national framework. India must think of having one minimum standard for compensation, eligibility, interim relief and timelines. While states can raise compensation rates, minimum national standards can curb arbitrary discrepancies. A national dashboard will facilitate the monitoring of these applications and various other parameters.

Integrated victim support centres form the third reform. The centre should provide legal aid, counselling, medical referral, shelter assistance, police liaison and guidance for compensation. Support that is provided all in one place is crucial for women and children, disabled persons, the elderly victim, and victims from marginalised groups.

The offender would be responsible for paying this. When possible, courts should continue to order offenders to compensate. However, no delay should be permitted in payment to the victim pending recovery from the offender. The State may initially pay and later recover from the offender through fines, attachment of property or any lawful means.

Administrators must be informed about trauma. Those dealing with victims should be trained to avoid insensitivity in questioning, repeated narration of trauma and unnecessary documentation. It should be straightforward, multilingual, and available online and offline. Hospitals and police stations should have a legal duty to inform victims of their compensation rights and refer them to the Legal Services Authority.

Expansion of non-monetary rehabilitation is sixth reform Assessment of needs should accompany compensation order. Rehabilitation can take the form of a range of measures, including medical treatment, counselling, vocational training, education support, relocation, prosthetics and disability support.

Making policies based on actual data. India requires trustworthy empirical information on the quantity of applications, grants, disapprovals, timeframe utilized, sums doled out, classification of transgression and casualty satisfaction. Policy Reform is Speculative without Data Frequent reports published in public domain by State Legal Service Authorities and NALSA would visible accountability.

8. Recommendations

A compensation model that is potent needs lawyer and admin redesign. India should establish minimum standards for compensation by following a national framework. States can still preserve flexibility to provide higher amounts, however, minimum floor for any serious offence should be consistent so that value of relief does not depend on geography. In addition, cases with serious injuries and deceased victims must make interim compensation the default in case of acid attacks, sexual violence, or disability as well. The law allows for interim relief already but authorities must be obliged to record reasons where such relief is denied.

The compensation process ought to be simplified. Applications shouldn't make victims gather documents again and again from other offices. Essential case information should be electronically sent from police stations, hospitals and the courts to the DLSA. Victims should be able to file applications via online portals, legal aid clinics, police help desks and one-stop centres. Fourthly, every order of

²⁵ U.N. Office on Drugs & Crime, Handbook on Restorative Justice Programmes 7-13 (2d ed. 2020).

compensation should be linked with a rehabilitation plan. The plan ought to specify the needs of the victim, which are immediate and long term, for treatment, counselling, shelter, education, income support, disability support and safety. The Compensation would change the role of compensation from a one-time payment to a structured recovery mechanism.

Fifth, the State must create a designated fund for Victim Assistance supported by budgetary allocation, fines, penalties, confiscated proceeds of crime and ordered contributions of the courts in suitable cases. Financial stability and uncertainty free from annual administration disputes Legal Services Authorities must be strengthened with trained victim assistance officers, social workers and psychologists. The component in charge of the evaluation will not only measure the compensation but will also lead the victim through the judicial process.

Compensation administration must be open. The SLISA should make data public every year regarding applications received, interim relief granted, final compensation awarded, average time taken, grounds of rejection and pendency. Making it public will allow people to critic the policies. In the end, restorative justice must be used in suitable cases as an extra option. It should never dilute prosecution for serious crimes, but it can offer acknowledgement, apology, restitution and community repair if the victim freely agrees and there are sufficient safeguards in place. These changes will help make the victim compensation process more humane and effective.

9. Conclusion

Victim compensation programs are essential to making up for wrongful acts and crimes. India has created a necessary legal infrastructure through constitutional rulings, statutory provisions, special legislation, and judicial activism. The State's obligation to victims is a major recognition made by section 357A of the CrPC and section 396 of the BNSS. The compassionate approach of the Courts in relation of justice has expanded the meaning of justice. The compensation is linked with dignity, rehabilitation and effective remedy. However the current system is not complete.

Compensation is frequently delayed, inconsistent, inadequate and badly integrated with rehabilitation. Victims still struggle with obliviousness, burdens of documentation, and institutional indifference. There is no problem of law They are also not unaware but why this gap between law and delivery and law is impacting the state. Money payment matters, but it can't be entire answer. A system centred on the victim must have compensation with counselling, medical support, legal aid, protection, livelihood assistance and restorative options.

Compensating victims must be seen as a public justice obligation grounded in rights. India requires uniform minimum standards, speedy interim relief, a dedicated victim assistance fund, stronger legal services authorities, trained personnel, digital monitoring and integrated rehabilitation services for victims. State responsibility ought to be complemented by options like restorative justice and offender-funded restitution. The ultimate goal of a criminal justice system must be to punish offenders, protect society and restore dignity to victims.

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