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## Victim Compensation Under Various Indian Laws: A Critical Study

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### Abstract

*The victim compensation Scheme is a Government-funded program designed to provide financial assistance to victims of crime, helping them recover from the physical, emotional, and financial trauma inflicted upon them. This scheme aims to promote justice, rehabilitation, and reparation for victims, while also acknowledging the state's responsibility towards its citizens. The scheme typically covers expenses such as medical treatment, counseling, and loss of income, among others. By providing timely and adequate compensation, the scheme seeks to alleviate the suffering of victims and their families, facilitating their reintegration into society. This abstract provides an overview of the Victim Compensation Scheme, highlighting its objectives, eligibility criteria, benefits, and implementation mechanisms. This paper highlights the various laws on Victim compensation scheme.*

### Key Words

*Victim, Compensation, Laws, Rehabilitation.*

### Introduction

Indian Judiciary pioneered the concept of victim compensation to ensure justice. Modern justice emphasises providing relief to victims through compensation mechanisms. Since India's Constitution was formulated, laws and provisions for victim compensation have evolved. The rights of victims gained momentum in the 1980s, following the UN's Declaration of Basic Principles of Crime and Abuse of Power (1985). This led to recognising victims as central to the criminal justice system, prompting efforts to improve their treatment<sup>1</sup>.

Compensating victims for damages is crucial for their reassurance and assistance, and is considered an essential part of the 'Right to Life' under Article 21 of the Indian Constitution.<sup>2</sup> To enforce this, Section 357A of the Code of Criminal Procedure (1973), now Section 396 of the Bharatiya Nyaya Suraksha Sanhita (BNSS), mandates state-provided compensation for victims and their dependents injured due to crime. Consequently, all Indian states have established Victim Compensation Schemes to provide fair compensation.<sup>3</sup>

The concept of restitution in Indian law originated during the British colonial era. The Code of Criminal Procedure (1898), specifically Section 545(1)(b), empowered courts to order compensation to individuals for losses or injuries caused by an offence, if the court deemed it substantial and recoverable through civil courts.<sup>4</sup>

The 41st Report of the Law Commission of India (1969) highlighted the importance of compensation, initially using the term "substantial" to distinguish it from nominal claims. Based on these recommendations, the Government of India introduced the Code of Criminal Procedure Bill (1970), revising Section 545 into Section

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India's legislative framework for providing compensatory relief to crime victims is primarily rooted in the Code of Criminal Procedure. Additionally, various laws such as the Probation of Offenders Act, Motor Vehicles Act, Consumer Protection Act, and others contain provisions for awarding compensation to victims. Furthermore, the Supreme Court's interpretations of fundamental rights, directive principles, and constitutional provisions (Articles 32, 136, and 142) have established a constitutional framework for compensating victims, enabling the court to direct payment of compensation in relevant cases.<sup>6</sup>

Section 396 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (BNSS) is Victim compensation scheme:

- The Central and State Government work jointly to craft a scheme to compensate the victims who were injured or lost something and need rehabilitation.
- If victim is identified but the offender is not identified, the victim or any of their dependents will be able to apply to the legal services authority of District or State for the compensation.
- The legal services authority of state or district will award compensation after an inquiry been conducted and that too within two months.
- The compensation given by the State Government is in addition to any fine been paid to the victim under any other sections of the Bharatiya Nyaya Suraksha Sanhita (BNSS).
- The legal services authority of state or district can also order immediate medical reliefs or first aid to the victim.
- The court can recommend additional compensation if it finds out that the compensation to the victim under Section 395 is insufficient.

## Victim's Definition

"Victims" refers to individuals or groups who have experienced harm, including physical or mental injury, emotional distress, financial loss, or significant violations of their fundamental rights, resulting from acts or omissions that breach criminal laws, including those related to abuse of power.

Any other person specified below can exercise victim's rights if the victim is not alive or unable to act on his or her own behalf:

1. spouse of Victim.
2. A partner by law who has lived with victim for at least one year before the victim's death.
3. Victim's relative or dependent.
4. Anyone who is having the custody of victim or of the victim's dependent.

A person accused, convicted, or deemed not criminally responsible due to mental disorder for the offence causing victimization is excluded from the definition of a victim. For instance, a parent charged with child abuse cannot exercise the child's victim rights or their own parental rights.<sup>7</sup>

In India, the term "victim" is defined under Section 2(wa) of the CrPC (1973) as someone who has suffered loss or injury due to an act/omission for which the accused is charged. This definition includes the victim's guardian or legal heir.

## Scheme of Victim Compensation

Main goal of criminal justice system is to protect individuals, society, and the state from criminals by punishing those who break the law. When someone is found guilty, they are sent to prison to reform and

become a better person.

However, while the justice system focuses on the criminal's rights and rehabilitation, a victim is often left to deal with their own problems and losses. The victim's rights, dignity, and losses are not prioritised, and they are usually restrained to reporting the crime and testifying in court.

Unfortunately, the justice system often fails to help the victim and instead focuses only on punishing the criminal. This can make the victim feel ignored and unjustly treated. Victims have right to receive justice and any compensation for the harm or injury they suffered. If the state unable to provide this, then it must find another way to ensure the victim's rights are respected.

## **History: Victim Compensation In India**

Indian history since ancient times shows that victim of crimes had provisions for restitution through compensation for injuries. In Hindu jurisprudence, the king was made responsible for protecting his people's property and paying compensation if he failed to recover stolen items or apprehend the thief.

In Hindu laws of ancient times, the compensation was a recognised form of punishment. The Manu law required offenders to provide compensation for injuries and damages. This shows that victim compensation was always a part of India's justice system.

Today, Bharatiya Nyaya Suraksha Sanhita, 2023 (BNSS) and the CrPC (Criminal Procedure Code 1973) and Supreme Court judgments provide the legal framework for victim compensation. However, despite these laws, victim compensation is rarely used.

## **Reasons for this Include**

The distinction between civil and criminal wrongs, which leads to the misconception that compensation is only a civil law issue.

Ignorance among those person responsible for implementing the laws.

The present criminal justice system prioritises convicting the perpetrator over supporting the victims. In the adversarial system, the role of victims is limited to reporting the offence and testifying in court. The Malimath Committee noted that victims' rights to compensation and participation in criminal proceedings are often ignored.

## **The Report : Justice V. S. Malimath Committee**

In 2003, the Indian Government formed a committee, led by Justice V.S. Malimath, to review the country's criminal justice system. The committee's report highlighted how the system often prioritised the interests of the powerful and privileged over those of ordinary citizens.

The report noted that when a crime is committed, the state sees itself as the primary victim, rather than the actual person harmed. This focus on the state's interests can lead to the genuine victim are being overlooked.

The committee also discussed that how the present criminal justice system has evolved over a period of time to prioritize punishing offenders over supporting victims. While civil laws provided few remedies for victims, which are compensation for monetary losses, the present criminal justice mechanism often neglects victims' rights.

In 2008, India's Criminal Procedure Code (CrPC) was amended to include Sections for compensation to victims. Section 357A allows courts to order the state to provide the compensation to victims, even if the culprit is acquitted or discharged. This provision recognises compensations as a way to protect victims' interests.

The Honourable Supreme Court has clarified that the courts have a mandatory duty to consider for

compensation on every criminal case and provide reasons for their decisions.

## **Compensatory Provision Under The Bharatiya Nyaya Suraksha Sanhita, 2023**

The Bharatiya Nyaya Suraksha Sanhita, 2023 (BNSS) includes provisions to compensate the victims of crime. These provisions include:

- **Section 198:** Gives trial courts the power to order for compensation to the victims of crime.
- **Section 273:** Provides compensation for accusation made with unreasonable cause.
- **Victim Compensation Scheme:** Section 396 Provides funds to compensate the victim and the dependents of victim those who suffered damage or injury due to crime.

### **Section 198**

- Trial courts can order compensations for costs, damage, injury, or loss caused by death.
- Courts can use fines collected from offenders to provide compensation to victim.
- Courts can direct the accused to give compensation to victim even if no fine was imposed.

### **Section 273**

- Provides for compensation on accusations made with unreasonable cause.
- Complainants or informants who are directed to give compensation to victim can appeal the order.

### **Victim Compensation Scheme**

- Victims or dependents of victim can ask for the compensation even if the offence doer is not identified or no trial took place.
- The legal services authority of state or district can award compensation after the inquiry.
- The legal services authority of state or district can order immediate medical benefits or first-aid facilities.

Section 396 of the Bharatiya Nyaya Suraksha Sanhita, 2023 (BNSS) establishes the scheme of compensation to the victims of crime. The scheme provides funds for the victim those who suffered damage or injury and they require re-habilitation.

The scheme works as follows:

1. The State and Central Governments prepare a scheme for compensation.
2. A court may recommend compensation to a victim.
3. The District or The State Legal Services Authority (DLSA or SLSA) decides the value and quantum of compensation.
4. The DLSA or SLSA processes the claim, conducts inquiries, and awards compensation.
5. In cases of immediate need, the DLSA or SLSA may provide early relief to victim.

Following can apply for compensation:

- Victims or the dependents of victims those who suffered physical or financial losses due to the crime.
- Victims whose dependents need rehabilitation.
- Victims whose trial court considers the compensation ordered under section 395 to be inadequate.
- Victims those who are acquitted or discharged but still need rehabilitation.

### **Scheme of Victim Compensation at Central Level**

The Ministry of Home Affairs (MoHA) launched the Victim Compensation Scheme at Central level in August 2015 to support the victim of crimes. This scheme boosted the compensation amounts for sexual assault and rape cases. It also helped women who suffered disabilities due to cross-border conflicts.

The scheme ensured uniform compensation across all states for example, acid attacks victims and rape received Rs.3 lakh, while human trafficking victims received Rs.1 lakh for rehabilitation. If any victim is under 14, the amount of compensation increased by 50%.

Most states adapted this scheme, but some, including Uttar Pradesh, Karnataka, Tamil Nadu, Himachal Pradesh, Assam, Chhattisgarh, and Arunachal Pradesh didn't make changes. The Haryana Government, for instance, introduced the Haryana's Victims Compensation Scheme in 2020, which provided the compensation to victim of various crimes, including acid attacks, rape, and human trafficking.

**Various other Legal Provision:** With respect to Victim Compensation Under various Laws in India

“THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT,2005:”

Protection of Women from Domestic Violence Act, 2005, has been a game-changer for women's rights in India, specifically for those who are suffering from domestic violence. After 16 long years of struggle, this law has finally given women the protection they deserve.

What mainly does the law cover? It defines the domestic violence as physical, sexual, verbal, and any emotional abuse. This means that women who've suffered from any of these forms of abuse can seek help and compensation under this law.

In fact, in a recent case Smt.Haimanti Mal vs. The State of West Bengal, 2019, Calcutta High Court has given judgement and awards to woman Rs. 1,00,000 as compensation for mental harassment and emotionally distress. This was a landmark decision, as it acknowledged the trauma caused by physical abuse, even without medical reports.

One of the unique features of this law is that it allows victims to continue accessing shared resources, like their marital home, as part of their domestic relationship. Additionally, when a complaint is filed, the police or magistrate must inform the victim about their rights, including the option to seek protection orders, monetary relief, custody, residence, or compensation <sup>1</sup>.

Overall, this law is a significant step towards protecting women's rights, as guaranteed by the Indian Constitution. It's a powerful tool for women who've suffered from domestic violence, and it's helping to bring about a much-needed change in Indian society.

*Prevention of Caste-based Victimization and Protection for Victims: The Scheduled Castes and The Scheduled Tribes (Prevention Of Atrocities) Act, 1989*

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act aims to eliminate atrocities against SC/ST members. The Act mandates compensation for victims, along with other relief measures depending on the atrocity's severity. Compensation ranges from Rs.25,000 to Rs.2,00,000, determined by the offense's severity.

## **The Maintenance and Welfare of Parents and Senior Citizens ACT, 2007**

The Maintenance and Welfare of Parents and Senior Citizens Act is a landmark law aimed at protecting elderly individuals from abuse and victimization. The Act mandates children or legal heirs to support parents or senior citizens (above 60) who cannot sustain themselves financially, enabling them to live with dignity. If children or heirs neglect this duty, the Tribunal can order them to provide a monthly allowance.

## **Compensation Under Probation of Offenders ACT, 1958**

The Probation of Offenders Act, 1958, provides for victim compensation under Section 5(1). When releasing an offender under Sections 3 or 4, the court may order the accused to pay reasonable compensation to the victim for losses or injuries, as well as court costs, if deemed fit.

## **Compensation of Victim Under Motor Vehicle ACT 1988**

Victims of road accidents or their legal representatives (in case of fatal accidents) can claim compensation from the offender under Section 5 of the Motor Vehicle Act, 1988. However, only the court has the authority to award such compensation.

## **Compensatory on The Violation of Provisions of Constitution**

The Constitution of India doesn't have specific provisions for victim compensation. However, court has interpreted certain articles to support victims' rights. The right to get compensation is now considered a part of the right to personal life and liberty.

The Indian judiciary have played a pivotal role in providing compensatory justice to victims. Landmark Supreme Court judgments have ensured restorative justice, reflecting the growing concern for victims' rights.

The compensation principle was established on grounds that state shall have the duty to protect citizens fundamental rights and provide humanitarian support. Notable cases, such as “Rudal Sah vs State of Bihar” and (Nilabati Behra vs State of Orissa), have set precedents for the compensations in cases of wrongful imprisonment, custodial death, and human rights violations.

Other significant cases, like (Bodhi Satta Gautam vs Subhra Chakraborty), have introduced the interim compensation concept, allowing courts to award temporary compensations to the victims during ongoing trials.

These judgments demonstrate the judiciary's efforts to provide justice and the compensation to victims, upholding their rights and dignity..

## **Court Directions**

The court has reviewed the case involving Bodhisattwa Gautam and Subhra Chakraborty. Given the serious allegations, including a claimed marriage and two pregnancies resulting in abortion, the court has ordered that The Bodhisattwa Gautam must pay Subhra Chakraborty ₹1,000 per month as temporary compensation until the criminal case is resolved. He will also have to pay any unpaid compensation amount from the date of the complaint has been filed.

In above case, Court has taken a relatively lenient approach regarding compensation under (Cr.P.C.) Criminal Procedure Code compared to the Constitution.

## **Conclusion**

The primary objective of all states is to compensate financially to the victim of crime or the dependents of victims who require rehabilitation due to damage or injury suffered. This aligns with Section 357A, which constitutes the “Victim Compensation Scheme(VCS)”.

However, the VCS has a broader scope, aiming to provide financial assistance as well as comprehensive support services, including:

- Shelter
- Counselling
- Medical aid
- Legal assistance
- Education
- Vocational training

The VCS goes beyond mere compensation, offering holistic support to victims. It provides a one-stop facility, catering to victims' diverse needs, from the financial aid to the restorative support services, to alleviate their suffering and improve their circumstances.

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7. The Supreme Court has in many cases address this right to compensation as an indispensable right; Rudal Shah v. State of Bihar (1983 AIR 1086), the courts acknowledged and acted upon the claim of the petitioner who was unlawfully detained and thereby awarded compensation of a sum total of Rs. 35000

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