

Victim Compensation Schemes in India: A Critical Examination

Abstract

India's history traces from the earlier judicial system how the focus of a criminal justice system has always been on the offenders and their degree of punishment while victims were treated as mere participants. This paper examines the development of victim compensation, both in its legal framework and implementation through the Criminal Procedure Code, 1973 to the victim-centred reforms enacted under the Bharatiya Nagarik Suraksha Sanhita, 2023. Moreover, it will highlight various judicial pronouncements and their significance in mandating victim compensation. Further, it will identify significant gaps in the current victim compensation system, such as lack of defined rehabilitation, disparity between States in compensating victims, administrative hindrances presented by the DLSAs and SLSAs, delays in application processing, and lack of a compensation structure for victims of cybercrime and digital injuries. The paper ultimately concludes that to achieve true victim justice, India requires comprehensive Central legislation, recognised and defined standards for rehabilitation, broadened definitions of harm, and serious institutional reform to change compensation from judicial favour into a guaranteed constitutional right.

Keywords- *Victim Compensation, Bharatiya Nagarik Suraksha Sanhita, Judicial Discretion, Article 21, Digital Rehabilitation, Victims' Rights.*

Introduction

The true meaning of justice is to restore the dignity, rights and livelihood of the victim, rather than just punish the offender. India's Criminal Justice System has always treated victims as simply a vehicle for prosecuting offenders without regard to their suffering and focused on case outcomes based upon offender-centric considerations. The Delhi High Court in the case of *Karan v. State (NCT of Delhi)* stated- "*Victims are unfortunately the forgotten people in the criminal justice delivery system. The criminal justice system tends to think more of the rights of the offender than that of relief to the victims.*"¹

While India has made substantial legislative and judicial steps towards victim-centred justice starting from the fragmented sections of the Criminal Procedure Code 1973 to the transformative revisions of the Bharatiya Nagarik Suraksha Sanhita 2023 a persistent,

¹ *Karan v. State (NCT of Delhi)*, 2022 SCC OnLine Del 4242, para 129

fundamental question remains whether victim compensation is an enforceable constitutional right or simply an act of institutional grace? The paper analyses the structure, definition, administration, and legislative/reform strategies used to develop a scheme for compensating victims of Crime in India. It identifies numerous structural deficiencies within the current framework, such as vagueness of the definition of “rehabilitation”; significant variation in inter-State implementation; inadequate administrative systems; and the total lack of statutory compensation provisions for victims of cyber-crime and digital harm and it proposes a comprehensive, uniform and enforceable system of victim compensation that creates an entitlement for victims to receive compensation by removing allocation from judicial discretion and providing guaranteed constitutional entitlement to compensation.

Main Discussion

Legislative Evolution: Towards a Victim-centric approach

In a criminal justice system, it is often believed that the core focus of justice should lie on the offender of a crime, his gravity of punishment while protecting public morality and safety. Conversely, this means not giving a significant amount of importance to the victim restoration of such crimes. While India has tremendously undergone a huge transformation where victims are no more treated as mere instruments of prosecution but with sheer dignity and proper rights.

Internationally, the right to compensation was first recognised by the General Assembly of the United Nations through the adoption of the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This UN Declaration emphasised four spheres of victims' rights including Restitution; Assistance; Compensation; and Access to Justice and Fair Treatment.

In India there are some statutory laws where the right to compensation has been fundamentally recognised such as the Fatal Accidents Act, 1855, Motor Vehicles Act, 1988, Criminal Procedure Code, 1973² etc. If we take a closer look at CrPC it shows a high level of fragmented legislation for victim protection which was expanded exponentially by the recommendation of the³ Law Commission in its Forty-First Report (1969) provided in Section 373 of CrPC. While in India, Justice V.R. Krishna Iyer labelled victim reparation as the vanishing point of the criminal justice system. His emphasis on victim protection became a foundational principle for

² *Fatal Accidents Act, 1855; Motor Vehicles Act, 1988; Code of Criminal Procedure, 1973*

³ *Law Commission of India, Forty-First Report on the Code of Criminal Procedure, 1898 (1969)*

the introduction of ⁴Section 357A into CrPC (2009 Amendment). The word "victim" was previously not defined under CrPC but was later inserted via the ⁵Criminal Law Amendment Act, 2009. Nonetheless, the Bharatiya Nagarik Suraksha Sanhita, 2023 has led to a more victim-centric approach defining "victim" as-

⁶Section 2(1)(y) - *"It means any person who has suffered any loss or injury caused by the act or omission of an accused person and explicitly includes the guardian or legal heir of such victim."*

Provided the strict definition of "loss or injury" suffered by the victim above, there is a need for an expansive and wider interpretation of the same to address certain limitations. This will assist in minimising the variations in definitional interpretation that exist and facilitate uniform compensation dispensation. Additionally, this should include third persons as well who are constantly aiding while preventing the harm of victimisation. The Constitution of India provides no statutory framework for such victims. However, Part IV, Directive Principles of State Policy, ⁷Article 41 and Part V, Fundamental Duties, Article 51A lay down the duty of the state to secure "the right to public assistance in cases of disablement and in other cases of undeserved want" and to "have compassion for living creatures" and "to develop humanism" respectively. Moreover, these have been expanded further for the support of victims of crime. Further, ⁸Article 21 recognises the right to compensation as a central part of the right to life and liberty which has been further established in the case of ⁹*Bodhisattwa Gautam v. Subhra Chakraborty* (1996) and is core for awarding interim relief. Additionally, in the case of ¹⁰*Rudal Shah v. State of Bihar* (1983), the Supreme Court recognised this right by protecting the petitioner's right to claim compensation of ₹35,000 for his illegal detention.

A Closer look at Statutory and Institutional Framework

¹¹Section 396 of BNSS makes the establishment of a Victim Compensation Scheme by every State Government in coordination with the Central Government mandatory. Institutionally funded by the State through bodies such as the District Legal Services Authority (DLSA) and

⁴ Section 357A, Code of Criminal Procedure, 1973 (inserted by Act 5 of 2009)

⁵ Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009)

⁶ Section 2(1)(y), Bharatiya Nagarik Suraksha Sanhita, 2023.

⁷ Constitution of India, art 41; Constitution of India, art 51A.

⁸ Constitution of India, art 21

⁹ *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490

¹⁰ *Rudal Shah v. State of Bihar*, (1983) 4 SCC 141

¹¹ Section 396, Bharatiya Nagarik Suraksha Sanhita, 2023

State Legal Services Authority (SLSA), compensation can be awarded even where the identity or arrest of an offender does not exist, thus making the awarding of compensation an independent individual right. Victims or dependents can make applications directly to competent authorities and courts may suggest awarding compensation when initiating the judicial process or after completing the trial. This provision ensures timely relief within a period of two months. It also ensures that victims receive immediate first aid and medical treatment free of cost, with such support being provided irrespective of the outcome of the trial, which becomes an utmost necessity. Thus, the newer provisions for restoration of victim rights under BNSS collectively acknowledge the sufferings such as financial burden and emotional stress of the victims, making it more victim centric.

¹²Section 397 of BNSS makes it mandatory for all hospitals, whether public or private, to provide free medical treatment to victims of serious offences such as rape and acid attacks. Further, the statutory provisions under ¹³Section 413 of BNSS aim for a participative, accountable and transparent approach by providing the right to appeal against acquittal, conviction for lesser offences, or inadequate compensation. Hence, the law ensures that even in cases where there is no true determination of the trial, including disparities or unknown offenders, the victim should not suffer and should be given an adequate amount of protection and safeguards, advancing rehabilitation through the lens of equity, justice and dignity.

Consistent with the legislation of India, each state and union territory has its own Victim Compensation Scheme (VCS) differing in eligibility criteria, scope, compensation amount and procedural aspects. It is always on the victim to report the crime, claim the compensation, verify the documents or certificates required and recount the crime, while the varying demands for cooperation present disparities that require urgent attention and need for uniformity and standardisation. All these state-specific schemes are designed to be left to the discretion of institutions like District Legal Services Authorities (DLSAs) and State Legal Services Authorities (SLSAs). These bodies are fundamental in providing financial assistance and determining a fair amount of compensation including immediate relief. On a recommendation or an application received by the Court, these institutions examine and verify the facts after holding a proper inquiry. Generally, the losses borne by the victim, minimum sustaining amount or the medical expenses determine the compensation given to victims, subject to the decision

¹² Section 397, *Bharatiya Nagarik Suraksha Sanhita, 2023*

¹³ Section 413, *Bharatiya Nagarik Suraksha Sanhita, 2023*

of the state while prescribing the maximum value. Among these bodies, the ¹⁴National Legal Services Authority (NALSA) holds the highest authority, aiming to guide designated police officers and impose guidelines while balancing smooth coordination and functioning among all the states. It is to be noted that the word "rehabilitation" has not been defined in any of the schemes, which is left to the discretion of DLSA/SLSA to decide in governing such matters. Generally, rehabilitation by logic simply means providing temporary shelter, medical assistance, psychological counselling etc.

Judicial activism as the Backbone of Victim Justice

The right to compensation and recognition of victim protection has not evolved overnight; rather, it is a constant emergence and result of progressive steps undertaken by the judicial system of India. The judiciary has ensured that compensating the victim is not merely a part of a criminal trial, but rather a core part of delivering justice. In ¹⁵*Suresh v. State of Haryana* (2010), as one of the earliest post-amendment cases, the Court mandated the provisions of VCS and ordered the states to grant compensation to victims even in the absence of such a request by the victims. In several other cases such as ¹⁶*Manju Bhatia v. N.D.M.C.*, AIR 1998 SC 2233; *Bhim Singh v. State of Jammu & Kashmir* (1985); *Dr. Jacob George v. State of Kerala* (1994); *Paschim Bangal Khet Mazdoor Samity v. State of West Bengal & Ors.* (1996); and *People's Union for Democratic Rights v. State of Bihar* (1987), the Court has directed the right to compensation as a foundational aspect of Article 21.

In *Rohtash @ Pappu v. State of Haryana*¹⁷ (2008), the Court raised a pertinent question — "Should justice to the victims depend only on the punishment of the guilty?" The Court held that victims hold a right to receive justice and to be compensated for damages caused by crime; this right is fundamentally separate from the right to retribution which the state assumes under a Rule of Law based society. Should the state fail in its duty to fulfil this responsibility, it must provide a process to ensure that victims' rights to restoration for their injuries are not disregarded or denied, as was affirmed in *Dr. Jacob George v. State of Kerala* ¹⁸(1994).

¹⁴ National Legal Services Authority, *Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes*, 2018, available at <https://nalsa.gov.in> (last visited May 2026)

¹⁵ *Suresh v. State of Haryana*, (2015) 2 SCC 227

¹⁶ *Manju Bhatia v. N.D.M.C.*, AIR 1998 SC 2233; *Bhim Singh v. State of Jammu & Kashmir*, (1986) 2 SCC 17; *Dr. Jacob George v. State of Kerala*, (1994) 3 SCC 430; *Paschim Bangal Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37; *People's Union for Democratic Rights v. State of Bihar*, (1987) 1 SCC 265

¹⁷ *Rohtash @ Pappu v. State of Haryana*, (2008) 16 SCC 585

¹⁸ *Dr. Jacob George v. State of Kerala*, *supra* note 16

In *Laxmi v. Union of India & Others*¹⁹ (2014), the Supreme Court laid down detailed guidelines and particulars of compensation in acid attack cases, such as providing minimum compensation of ₹3,00,000 to each survivor while mandating every private or government hospital to not refuse such treatment. In *Bodhisattwa Gautam v. Subhra Chakraborty*²⁰ (1996), the Court directed the accused to pay interim compensation for sexual offences even while the trial was ongoing. The Court, following the directive in *Nipun Saxena v. Union of India*²¹ (2019), mandated uniform compensation schemes for children and women who have been victims of sexual offences.

The Court directed the application of Section 357 of BNSS as mandatory and not discretionary in *Ankush Shivaji Gaikwad v. State of Maharashtra*²² (2013), thus requiring judges to consider victim compensation, and failure to do so should be accompanied by appropriate reasons on record. The Court, through its judicial pronouncements, has not only considered the accused's liability to compensate the victim but also the State's liability to compensate in cases of default, as ruled in *Nilabati Behera v. State of Orissa*²³ (1993), establishing the liability of the state in violation of fundamental rights.

Emerging Victimhood of Cyber-crime

Bringing the laws of Victim compensation to modern times, we notice how people are not only suffering because of criminal offences but rather Cybercrimes and digital harms too. This gives a unique and a considerate approach that should be taken by the appropriate legislation to combat the victims of cyber-crimes which is left missing in current BNSS framework²⁴. Victims are now largely suffering due to Cyberstalking, Cybersquatting, breach of privacy, deepfake technology, sharing intimate pictures online without consent, online blackmailing etc. Thus, the term victim is no more restricted to civil or criminal offences in this largely AI based world. Hence, the law should have a wider interpretation of providing compensation and “loss or injury” which raises a serious question- should compensation be only provided based on physical injury? Should the legislation not be considerate enough to understand and compensate for the mental distress it may cause to the victims? Not only that, but the victims also suffer economic loss as well, covering major loss of livelihood, employment, education,

¹⁹ *Laxmi v. Union of India*, (2014) 4 SCC 427

²⁰ *Bodhisattwa Gautam v. Subhra Chakraborty*, *supra* note 9

²¹ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703

²² *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770

²³ *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746

²⁴ *Bharatiya Nagarik Suraksha Sanhita*, 2023; *Information Technology Act*, 2000

social stigma and various serious mental health issues. Now, this gives an idea how compensation is nowhere only linked to physical injury or loss but it demands a much wider aspect.

Challenges and Recommendations

Many people, especially those belonging to rural or backward areas, are not aware of the right to compensation under this scheme, which makes it of less use. People are lacking the knowledge and the right amount of guidance to claim the right and relief, which is a big gap in the practicality of victim compensation; this stems from high illiteracy and major socio-economic gaps. Moreover, since there is no end to such criminal offences on a daily basis, while keeping in mind the pendency of justice, the government requires enough funds to allocate monetary compensation or relief to victims. The harsh truth is that the government will never be equipped with a "sufficient" amount of funds to compensate each victim adequately while delivering speedy justice. Thus, the lack of a national fund has left the states vulnerable and struggling. The Indian Judiciary has often traced a history of prolonged procedural gaps and delays, which has also impacted the application process for the right to compensation in a paramount manner. The lack of uniformity among various state schemes has caused severe disparities in implementation and provision of compensation. The institutions are mandated to provide quality accessibility of legal aid but have still failed to be consistent with their claims. Many victims face serious delays in finding the right and competent legal representation for their recovery.

To combat such systemic flaws and push India to become an absolute victim-centric nation, a multi-pronged approach is essential, where the key is spreading awareness and providing accessibility to legal representation, especially to backward and marginalised groups. This ensures equity and fairness. There should be a launch of outreach programmes and campaigns to spread information regarding the procedure to apply for such compensation schemes. The goal is to develop easy-to-read and easy-to-understand brochures and posters in simple language to ensure simplification of the process. To address the shortage of funds, the National Government should come up with a scheme that directly ensures resources for victim compensation. This should be administered centrally, backed by legislation and the appropriate ministry. The government can thereafter raise funds at the state or district level, safeguarding a fair amount of compensation to be granted. The government can make interim relief mandatory in cases of serious offences to give immediate relief to such victims, allowing a comprehensive

approach towards restoration. While understanding the concept of "injury or loss", which should not be limited to only physical harm, the interpretation should be broadened enough to incorporate every type of harm ranging from mental, economic or cybercrime related harm, as discussed earlier. For this matter, the Court can order the formal incorporation of Victim Impact Statements, where the victim explains the harm suffered in totality so that adequate compensation could be granted, giving the sufferer a chance to speak about the loss caused to them. Since the current legal framework does not sufficiently stress upon the protection of third persons, it is important to give appropriate recognition to their loss such as injury and disability. Thus, the scheme should widen its ambit to include protective intervenors who voluntarily took harm upon themselves to prevent victimisation. We often see how crime is thought to be the wrong committed only by the offender, while it also represents a partial failure of the state under²⁵ Article 21 of the Constitution to protect the life, liberty and dignity of its citizens. Thus, this should be observed as a constitutional failure as well, and the government should be held accountable for such loss caused. Also, India's Constitution and legislation guarantee the right to compensation as an integral part of human rights, but the paradox is that a victim has to claim this right by filing a writ petition under ²⁶Article 226 before the High Court for the enforcement of such rights, which is a systemic failure, thus, they are litigating against the crime and then against the system for relief.

²⁵ *Constitution of India, art 21; Nilabati Behera v. State of Orissa, supra note 23*

²⁶ *Constitution of India, art 226*

Conclusion

Even though India has fundamentally evolved over time and decades by protecting the rights of victims through legislation, including the BNSS, constitutional amendments and various judicial pronouncements, it has still not been able to guarantee the right to adequate compensation as a mandatory fundamental right, with no practical solutions to the problems during the implementation of the scheme. The core issue lies in systemic failure, lack of awareness and inconsistent implementation of the scheme at a larger level. The term "loss or injury" has been narrowly interpreted, limiting the scope to physical harm only, whereas inclusivity should be extended to mental harm, economic distress and digital crimes.

In conclusion, in India, compensation remains a form of grace to victims, contrary to a legal entitlement, governed entirely by discretion. It is deeply concerning that victims are required to go through the process of litigation twice, they are first required to file a complaint against a criminal offender to establish liability and then must engage in further litigation by filing a writ petition before the High Court for appropriate compensation for restoration. The Government should take appropriate measures to make such schemes accessible to every part of the country while raising adequate funds for their distribution. Compensation that is delayed or remains dependent on the discretion of administrators or courts is, at the end, the denial of justice.

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