

VICTIM COMPENSATION IN CRIMINAL JUSTICE SYSTEM: A LEGAL ANALYSIS

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1. Introduction

The criminal justice system prioritizes the offender's rights and rehabilitation, often neglecting the victim's needs and suffering. This imbalance threatens the integrity of justice, as victims' rights, particularly regarding compensation, have historically been overlooked, save for minimal provisions in legal codes. Nevertheless, recent judicial trends in India emphasize the necessity of compensatory remedies for victims, highlighting the inadequacies of existing statutory frameworks to address their rights. Crime affects a large number of victims who suffer physical, social, financial, or emotional injury or harm, which needs to be promptly redressed by providing them easy access to justice.¹ In recent decades, there has been a notable shift in criminal law jurisdictions worldwide towards acknowledging the significance of victimization, emphasizing the necessity for victims to be treated with empathy and their dignity upheld. This study will scrutinize the effectiveness and particulars of victim compensation legislation, focusing on the Indian legal framework and recent advancements in victim-centered justice.

2. Criminal Justice System and Victims of Crimes

The adversarial legal system emphasizes the advocacy skills of representatives for each party, with an impartial jury seeking the truth, contrasting with the inquisitorial model, where judges investigate. In India, this system, rooted in British common law, was formalized through the Code of Criminal Procedure of 1882, introducing adversarial elements alien to the previous legal framework. Although victim compensation is acknowledged, it is often deemed minimal and challenging to enforce, resulting in inadequate relief for victims. Recent judicial practices and

¹Paranjape V.N (2012) *Criminology Penology with Victimology*, (15thedn) p. 633, Central Publications

reform proposals underscore the necessity of enhancing victim justice within the criminal justice framework, advocating for their substantive participation in proceedings.²

The committee has also suggested that some of the good features of the inquisitorial system can be adopted to strengthen the Adversarial system and to make it more effective. This includes the duty of the court to search for the truth, to assign a proactive role to judges, to give directions to the investigating officers and prosecution agencies in the matter of investigation and leading evidence to seek the truth, and focus on the justice of the victims.³ Now the victim's role has been confined only to initiating the criminal justice system. Under the recommendations of the Committee, the amendments have been incorporated into the Cr.P.C 1973 in 2009, and many legal rights have been given to the victims. THE present trends and schemes of compensation adopted by various States in India in the light of the Criminal Law Amendment Act 2009 are positive steps towards the resurrection of victims' importance in the Criminal Justice System.⁴

3. Meaning and Victims of Crimes

The Indian criminal justice system, while prioritizing the rights of the accused to ensure equitable trials, has historically overlooked the interests of victims, a gap addressed in 2009 with the legislative inclusion of a defined 'victim' in the Code of Criminal Procedure, encompassing individuals who suffer loss or injury due to the accused's actions, along with their guardians or legal heirs⁵. Victims' rights to be extended to the surviving family members of a homicide victim, or the parent, guardian, or other relative of a minor, disabled, or incompetent victim, a victim's legal representative or another person designated by the victim may also exercise rights on the victim's behalf. Along with general rights for crime victims, special rights for certain groups of crime victims with unique needs are a must. These include women victims of sexual assault, domestic violence, or stalking, or victims who are elderly, young children, or victims with disabilities.

²Committee on Reforms of Criminal Justice System. Dr Justice V.S. Maliimath 28.03.2003 submitted to Govt. of India, *Ministry of Home Affairs*

³*Ibid.*

⁴Sec.357A, Code of Criminal procedure 1973 inserted by Criminal Law Amendment Act 2009

⁵Sec 2 (w a) '(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;'. The Code of Criminal Procedure Amendment, Act, 2008 [Act no. 5 of 2009]

4. Rights of Victims of Crimes Under International and National Law

In 1985, the United Nations established the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which recognized four key rights for victims of crime: (a) access to justice and equitable treatment, (b) the entitlement to restitution, (c) the provision of personal assistance and support services, and (d) compensation. Also, Irvin Waller recognizes the inalienable rights of the victim⁶The rights encompassing recognition, information, assistance, reparation, protection from the accused, participation in justice, prevention policies, and effective implementation oversight are rigorously examined by Waller, who highlights both legislative and grassroots efforts by advocates to advance these rights.

Crime Victims' Rights Act⁷ Of US identifies the following rights of crime victims⁸ i) The entitlements of victims include adequate protection from offenders, prompt updates on legal proceedings, and participation in those proceedings unless otherwise mandated by the court, alongside rights to legal consultation, restitution, and expeditious processes; in India, reforms by the Law Commission and Malimath Committee have led to the implementation of Section 357A in the Code of Criminal Procedure (Amendment) Act 2008, which introduces a state-funded compensation scheme for victims, affirming that justice must be ensured regardless of the perpetrator's culpability.⁹

4. Judicial Trends for Victim Compensation in India

The Constitution of India and the criminal justice administration have a reciprocal relationship.¹⁰ The efficacy of the Constitution is intrinsically linked to the operational proficiency of the criminal justice system, which in turn cannot endure without constitutional backing, thus establishing a reciprocal dynamic between the two entities.¹¹ The operational efficacy of a robust criminal justice system is critical for crime deterrence and the maintenance

⁶Irvin Waller, Rights for Victims of Crime: Rebalancing Justice (Rowman & Littlefield Publishers, Lanham, 2011, p.7

⁷ Part of the United States Justice for all Act 2004, Pub.L.No.108-405,118Stat,2260(effect from Oct 30,2004.

⁸ Andrew Nash, Victims by Definition 85 *Wash. U. L. Rev.* 1419 at1422

⁹ *Rohtash @ Pappu v. State of Haryana CrI.A. No. 250 of 1999 decided on 1.4.2008, a Division Bench of the Punjab & Haryana High Court*

¹⁰ dalbir bharti, the constitution and criminal justice administration 1(2002)

¹¹ *Id* at52

of constitutional principles, yet the last forty years have seen a disconcerting deterioration in its effectiveness, reflected in rising violent crime rates, significant case backlogs, and declining conviction rates.¹² India's criminal justice framework is influenced by the British system, which provides constitutional and statutory rights and safeguards to ensure fair trials for the accused.¹³ The penal philosophy in India embraces crime prevention and the treatment and rehabilitation of offenders, as affirmed by numerous Supreme Court rulings.¹⁴ It is highly important to hold the justice guaranteed by the Constitution for the victims of crime.

The first landmark judgment where compensation to the victim ordered by the Madras High Court and upheld with some modifications by the Supreme Court of India was *Palaniappa Gounder v. State of Tamil Nadu*¹⁵ The laxity on the part of Indian legislature is so much so that

¹² See generally, Dalbir Bharti, *The Constitution and Criminal Justice Administration* (APH Publishing Corporation) (2002).

¹³ The constitution of India, the Code of Criminal Procedure 1973 and the India Evidence Act 1872 confer certain rights and privileges to the accused and provide for certain safeguards such as :Protection against arrest and detention (Ss.56, 57, 167, Cr.P.C.; and Art. 22(2) of the Constitution); rights to know grounds of arrest (Ss. 50, 173 of Cr.P.C. ;Art.22(2) of the Constitution); right to consult and to be defended by a lawyer of one's own choice (Ss. 303, 304, of Cr.P.C. and Art. 22(1) of the Constitution); Presumption of Innocence throughout the trial (Ss. 102, 105 of Indian Evidence Act.); Right against ex-post facto laws i.e. *nullum crimen sine lege and nullum poena sine lege* (Art. 20(1)) of the Constitution; Right to public trials (Sec.327, Crpc.) right to trial in his presence (Sec 273, Cr.P.C.); Right to Cross examine Prosecuting Witness (Ss. 137, 138, 143, 145 Indian Evidence Act.); Protection against self- incrimination (Ss.313, 315(1) Cr.P.C. ; Art.30(3), of the Constitution); Right to bail (Ss. 389, 436, 437, 438, CrPC); Right against double- jeopardy i.e. *autrefois acquit and autrefois convict* (Ss.219, 221, 300, Cr.P.C. Art. 20(2), of the Constitution); Right to legal aid (S. 304 of the Cr.P.C., Art.39 of the Constitution); Protection of Life and Personal Liberty (Art.21 of the Constitution) which includes right to speedy trial as a fundamental right; See A.N . Chaturvedi, *Rights of accused under Indian Constitution*, (Deep New Delhi, 1984).

¹⁴ *Rudul Sah v. State of Bihar* AIR1983 1086 SC; *DK Basu v. State of West Bengal* AIR1997 610 SC; *State of Maharashtra v. Madhukar N. Gardikar* [1991] 1 SCC 57.; *Balram Prasad v. Kunal Saha* Civil Appeal No..2867 Of 2012; *Dr. Suresh Gupta v. Govt. of NCT of Delhi* [2004] 6 SCALE 432.; *Sebastian v. Union of India*; *Poonam Verma v. Ashwin Patel* [1996] 4 SCC 332;; *Karthar Singh v. State of Punjab* (1994) 3 SCC 569; *State of Rajasthan v. Jaggu Ram* (2008) 12 SCC 51; *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) 6 SCC 770; *In Re: Indian Woman says gang-raped on orders of Village Court* published in *Business and Financial News* (2014) 4 SCC 786; *Mohammad Haroon v. Union of India* (2014) 5 SCC 252; *Laxmi v. Union of India* (2014) 4 SCC 427; *Abdul Rashid v. State of Odisha and Ors.* (2014) 1 ILR-CUT-202; *Kewal Pati v. State of U.P.* (1995) 3 SCC 600; *Supreme Court Legal Aid Committee v. State of Bihar* (1991) 3 SCC 482; *Chairman, Railway Board v. Chandrima Das* (2000) 2 SCC 465; *Khattri (I) v. State of Bihar* (1981) 1 SCC 623; *Union Carbide Corporation v. Union of India* (1989) 1 SCC 674; *Delhi Domestic Working Women's Forum v. Union of India and Ors.* (1995) 1 SCC 14; *State of Gujarat and Anr. v. Hon'ble High Court of Gujarat* (1998) 7 SCC 392; *Rohtash @ Pappu v. State of Haryana* Crl.A. No. 250 of 1999; *Hari Krishan and State of Haryana v. Sikhbir Singh* AIR 1998 SC 2127; *Nilabati Behera v. State of Orissa* 1993 2 SCC 746; *Savitri v. Govind Singh Rawat* (1985) 4 SCC 337; *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2008)9 SCC 632.

¹⁵ In this case the High Court after commuting the sentence of death on the accused to one of life imprisonment, imposed a fine of Rs.20,000 on the appellant and directed that out of the fine, a sum of Rs.15,000 should be paid to the son and daughters of the deceased under Section 357 (1) (c) of the Code of Criminal Procedure, 1973. The Supreme Court while examining the special leave petition of the appellant observed that there can be no doubt that

India has not made any legislation to give compensation to victim of crime when accused is acquitted despite of its obligation under various International Covenants. In this regard, even the Hon'ble S.C. in the case of Delhi Domestic Working Forum v UOI¹⁶ in the following words.

Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board, whether or not a conviction has taken place. The Board will take into account pain, suffering, and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result...¹⁷.” In Rattan Singh v. State of Punjab,¹⁸, Krishna Iyer J It is a notable inadequacy of our legal system that the plight of crime victims and their families remains largely unaddressed. This deficiency necessitates legislative action to enhance victim reparation within the framework of criminal law.. Nilabati Behera v. State of Orissa,¹⁹ Chairman, Railway Board v. Chandrima as²⁰ are illustrative of this new trend of using Constitutional jurisdiction to do justice to victims of crime. In S. S. Ahluwalia vs. UOI²¹, the Hon'ble Supreme Court held that in the expanded meaning attributed to Article 21 of the Constitution, where the State fails to protect the life of the people, it could not escape the liability to pay compensation to the victims.²² In Ankush Vhivaji Gaikwad Vs. State of Maharashtra,²³ the matter was reviewed by the Hon'ble Supreme Court concerning development in law in recognizing compensation to victims of crimes and it was observed thus: The Court's extensive

for the offence of murder, courts have the power to impose a sentence of fine under Section 302 of the IPC but the High Court has put the “cart before the horse” in leaving the propriety of fine to depend upon the amount of compensation. The court further observed, “the first concern of the court, after recording an order of conviction, ought to determine the proper sentence to pass. The sentence must be proportionate to the nature of the offence and sentence including the sentence of fine must not be unduly excessive.” In fact, the primary object of imposing a fine is not to ensure that the offender will undergo the sentence in default of payment of fine but to see that the fine is realized, which can happen only when the fine is not unduly excessive having regard to all the circumstances of the case, including the means of the offender. The Supreme Court thus reduced the fine amount from Rs.20,000 to a sum of Rs.3,000 and directed that the amount recovered shall be paid to the son and daughters of the deceased who had filed the petition in the High Court. This is a case wherein the Supreme Court reduced the amount of fine and achieved a proper blending of offender rehabilitation and victim compensation. The important point, which emerged in the case, was the Supreme Court upholding the order of compensation. AIR 1977 SC 1323.

¹⁶ 1995 SCC (1) 14

¹⁷ Ibid at para 21

¹⁸ (1979) 4 SCC 719

¹⁹ AIR 1993 SC 1960

²⁰ AIR 2000 SC 988

²¹ (2001) 4 SCC 452

²² Mukesh Yadav, Pramendra Singh Thakur, Pooja Rastogi, “Compensation and Rehabilitation of Rape Survivors A Constitutional Right”, J Indian Acad Forensic Med. July-September 2014, Vol. 36, No. 3 <http://medind.nic.in/jal/t14/i3/jalt14i3p284.pdf>

²³ (2013) 6 SCC 770

judicial rulings have distinctly recognized a pivotal shift in addressing crime victims' rights to reparation, restitution, or compensation, marking a transition from retribution to restitution that began in the mid-1960s and notably mirrors ancient practices once considered normative.

5. Implementation of Victim Compensation Scheme: Statutory Scheme for Compensation

In 2009, Section 357A was added to the Code of Criminal Procedure to address victim compensation by requiring states to create a compensation fund, particularly for serious offenses like acid attacks and gang rapes. District and State Legal Services Authorities are responsible for assessing compensation and meeting victims' urgent medical and interim relief needs, with nearly all states and union territories implementing the scheme to support victims and their dependents.

6. Analysis of VCS

Victim Compensation Schemes (VCS) were instituted in India to provide financial support and rehabilitation for crime victims. This study evaluates the VCS across twelve states and one Union Territory, highlighting the variations in implementation timelines and documentation requirements, and underscores the urgent need for standardized practices and enhanced legal authority capacities to achieve effective restorative justice.

7. An Overview of Victim Compensation in Kerala Victim Compensation Scheme

For implementation of Section 357A of the CrPC, the Kerala state Government have decided to make the Kerala Victim Compensation Scheme 2014 in coordination with the central government for providing funds to give compensation to the victims or their dependents who have suffered loss or injury as a result of crime and who require rehabilitation. Under the scheme the victim²⁴ or the dependent²⁵ can apply for compensation. The Supreme Court in Nipun

²⁴ "victim" means a person who .has suffered any loss or injury caused because of the act or omission on the p art of - the accused and who requires rehabilitation under this scheme and includes the guardian or legal heir of such person, but does not include a person who is responsible for injury to such person. Sec. 2(i) of the Kerala victim compensation scheme

²⁵ "Dependent" includes wife, husband, father, mother, unmarried daughter and minor children of victim as determined by the authority empowered to issue a dependency certificate or any other authority authorized by . Government in this regard. Sec. 2(j) of the Kerala victim compensation scheme

Saxena v. Union of India (2018) directed NALSA to formulate Model Rules for Compensation to Women Victims of sexual assault and Acid Attacks. These rules aimed at Standardized eligibility, clearly defined compensation procedures, creation of victim compensation funds. The State of Kerala have introduced updated VCS frameworks, Kerala VCS 2017, replacing earlier versions with more inclusive and detailed mechanisms for awarding compensation.

8. Eligibility Criteria Under the Scheme

Sec 4 of the schemes outlines the eligibility criteria under the scheme in the following the Court may recommend compensation under specific provisions of section 357A for rehabilitation in various scenarios, including insufficient trial awards, cases without identified offenders, and eligibility restrictions based on government employment and income, while acknowledging victims from crimes occurring outside the State if they seek interim relief.

9. Procedure for Granting of Compensation

Upon receiving the trial court's recommendation or an application according to subsection (4) of section 357A of the Code, the State or District Legal Services Authority shall, following a thorough investigation deemed appropriate, confer suitable compensation within two months.²⁶ The District Legal Services Authority is tasked with the assessment and validation of claims related to victim loss or injury stemming from criminal acts, with the authority empowered to solicit pertinent information for claim authenticity, and upon thorough examination, shall dispense appropriate compensation within a two-month timeframe as per the established scheme regulations.²⁷ The District Legal Services Authority is authorized to offer immediate, no-cost medical aid upon certification and may provide further interim relief as necessary; compensation will be distributed within sixty days based on specific criteria, assessing victim losses and rehabilitation costs, while excluding claims under the Motor Vehicles Act, 1988; additionally, the Authority will seek recovery of compensation from ineligible accused individuals, with payments processed through Aadhar-linked bank accounts, especially for minors.

²⁶ Section 5(1)

²⁷ Section 5(2)

10. Rejection, Withholding, or Reduction of Compensation

The District Legal Services Authority possesses the authority to deny, diminish, or withhold compensation based on factors such as the applicant's untimely crime reporting, non-cooperation with law enforcement, inadequate support to relevant authorities, or if the victim's situation does not justify compensation; furthermore, claims must be submitted within 180 days of the incident, although extensions may be granted upon documented justification.²⁸ The victim or his dependents aggrieved by the rejection his/her claim by the District Legal Services Authority may file an appeal before the State Legal Services Authority within ninety days.²⁹ A secondary appeal may be directed to the Government's Home Department in response to the State Legal Services Authority's first appeal decision within 30 days of that decision, with the ruling of the second appeal authority being conclusive³⁰.

11. Victim Compensation Fund

Section 3 of the scheme deals with constitution of victim compensation fund³¹ Section 3 delineates the creation of a victim compensation fund managed by the Home Department, with the Kerala State Legal Services Authority's Member-Secretary overseeing operations, tasked with implementing the scheme and reporting on financial allocations from the State Government; a detailed investigation has been conducted to analyze beneficiaries' challenges in accessing the fund, aiming to explore the relationship between compensation awarded and conviction rates within the jurisdiction of The District Legal Services Authority, Thiruvananthapuram.

Conviction under IPC Charges & Victim Compensation Awarded

Conviction Under IPC Charges & Victim Compensation Awarded				
Year	Total Conviction	Conviction IPC Charges	Victims Compensated	Total Compensation
2006	34	15	0	0

²⁸ Sec 9

²⁹ Sec 10(1)

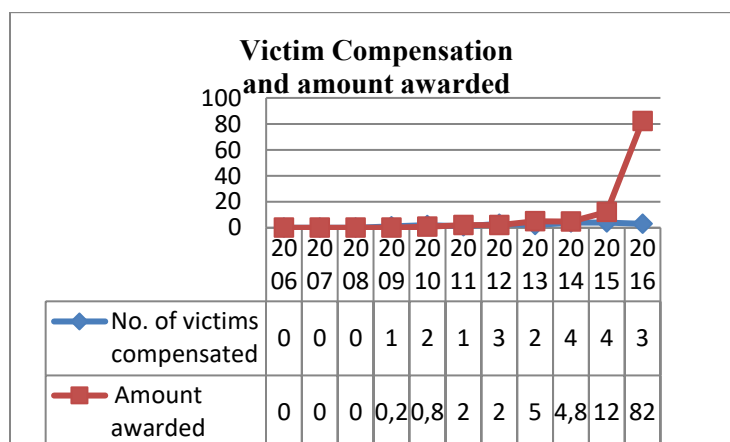
³⁰ Sec 10(2)

³¹ Victim Compensation Fund shall consist of

- (a) Budgetary allocation made in the annual budget by the State;
- (b) Receipt of amount of fines imposed-under section 357 of the Code;
- (c) Donations and contributions received from International or National Charitable Institutions, organisations and individuals.

2007	53	22	0	0
2008	54	19	0	0
2009	43	14	1	Rs. 15000
2010	47	18	2	Rs. 75000
2011	22	19	1	Rs. 2 lakh
2012	37	20	3	Rs. 2 lakh
2013	104	48	2	Rs. 5 Lakhs
2014	87	30	4	Rs. 4.8 lakh
2015	58	26	3	Rs.12.25 lakhs
2016	9	3	2	Rs.82.25 lakhs

The data indicates a significant lack of compensation awarded to crime victims despite the provisions of section 357(3) of the Cr. P. C from 2006 to 2008, with no compensation being granted during that period. However, a notable shift occurred in 2009 when a rape victim was awarded compensation of Rs. 15,000 from a fine of Rs. 25,000, suggesting an increasing judicial inclination to grant compensation in subsequent years,³² Principal Sessions Judge awarded compensation of Rs. 80 Lakhs to the heirs of the deceased for the first time in the history of the Sessions Court.



The analyzed data reveals a markedly low conviction rate for IPC offenses compared to other crimes. Following 2010, courts began to provide limited compensation under Section 357 of the Criminal Procedure Code, indicating judicial discretion is restricted and often unresponsive to victim needs. Additionally, inadequate Victim Impact Assessments hinder prosecutors from

³² State of Kerala V. Nino Mathews S.C.No. 1480 of 2014, judgement dated 18th April 2016.

effectively advocating for compensation, illustrating the inefficacy of the current adversarial criminal justice system in addressing victim restitution.

Suggestions

- A transformation of the justice system is required, focusing on the rights of victims rather than solely on offenders. The state must evolve to serve as a guardian for both offenders and victims, ensuring equitable attention and care.
- Legislative reforms must uphold the *parens patriae* doctrine, reinforcing the state's commitment to victim advocacy. Compensation determinations should consider the injury specifics and loss extent to ensure fairness.
- Courtrooms should be transformed to create a supportive environment that encourages victim participation. Victim impact statements should be integrated into proceedings to amplify victims' voices regarding the crime's effects.
- Strong victim and witness protection programs are essential to safeguard individuals from intimidation or harm.
- Comprehensive legal frameworks are necessary to address victim injustices, outlining their rights, protection protocols, compensation funds, eligibility criteria, and compensation guidelines.

Conclusion

The victim compensation mechanism within the criminal justice system is a critical legal tool that addresses the severe harm inflicted on crime victims, acknowledges the state's duty to provide financial and supportive assistance, and facilitates their rehabilitation and societal reintegration, ultimately serving as an essential component of a fair justice system that enhances both victim well-being and societal justice objectives.