



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

A Critical Evaluation of Victim Compensation Scheme in India: Past, Present and Future Insights

Nishica Srivastava^a

^aAmity University, Kolkata, India

Received 19 March 2024; *Accepted* 23 April 2024; *Published* 27 April 2024

Victim restitution is a matter of great importance, and should, rightly, be given weightage in the legal system of every country. The rights of victims deserve to be recognized. Victims of crimes need to be treated with dignity and in a humane manner. Even though the concept of restitution can be traced back to the olden times, in recent times, the focus on victims and their indemnification has gained significance on a global scale, thanks to the efforts undertaken by the United Nations. This paper focuses on the evolution of the concept of victim compensation in India. It traces its journey from the ancient times to the colonial period to the present times and also focuses on its future in India. With the help of empirical data, a statistical analysis of the Victim Compensation Scheme between the years 2016-2023 in India has also been included in this paper. The main focus of this paper is to conduct an in-depth examination of the concept of victim restitution in India and to gain a deeper insight into how it has evolved, through a thorough evaluation of the major amendments, policy reforms, and judicial precedents that have helped to shape it. Furthermore, the challenges faced by the Victim Compensation Scheme in India have been identified and highlighted in this paper. Finally, the paper concludes by suggesting a few recommendations for improving the victim compensation mechanism in India.

Keywords: *victim, compensation, restitution, crime, justice, law.*

INTRODUCTION

The purpose of justice, at the very rudimentary level, is to protect the helpless and innocent and punish the perpetrators of crime and those who destroy the fabric of civility and society. A very crucial facet of justice is to ensure that the victims are compensated adequately. The law needs to be reparative in nature and not simply punitive. The loss suffered by victims of violent acts and crimes needs to be compensated.

A victim is a person who has suffered a loss, injury, or adverse effect at the hands of another person. Through an amendment made to the Code of Criminal Procedure, 1973 (CrPC) in 2009, the definition of 'victim' was added in order to bring about a change in the old laws and draw more attention to the reparation of victims and their rights. As per section 2(wa) of the CrPC, "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".¹

The legal heirs of the victim possess the locus standi to continue the suit filed by the deceased victim. The Karnataka High Court observed that "... a genuine victim is to be permitted to come on record and the definition of 'victim' as found in Section 2(wa) of the Cr.P.C. cannot be rendered a restrictive meaning and has to be liberally construed."²

ORIGIN OF THE CONCEPT OF VICTIM COMPENSATION

Restitution, in itself, is not a novel or foreign concept. The roots of the concept of compensation can be traced back to ancient times. Religious books and legal texts of olden times contain references to the concept of victim restitution. The Code of Hammurabi, which is one of the earliest known texts containing laws, is a prominent example.

Ancient Hindu texts such as Manusmriti and Dharmashastra emphasized the necessity of maintaining harmony in society. The system of justice in these texts imbibed the principles of dharma and karma and required that whosoever causes harm or loss to others should compensate the victim as part of their dharma. The compensation was often monetary in nature, being equivalent to the amount of loss caused. However, the compensation could also be in kind

¹ Code of Criminal Procedure 1973, s 2(wa)

² *Scnia Commercial Vehicles Pot Ltd v State of Karnataka* Crim P No 2778/2020

such as acts of labour or service meant to benefit the victim or the community, in general. It can be compared to the concept of community service given as punishment in the USA.

The idea behind the concept of compensation in ancient India was rooted in the belief that by providing restitution harmony could be restored. It was believed that restitution would act as a deterrent and discourage offenders. While the process and concept of victim restitution have evolved and become more refined over the years, the basic idea of restoring harmony and discouraging people from committing offences has stayed the same.

In recent times, the United Nations played a significant role in creating awareness about the rights of victims by shedding light on the plight of victims. It helped to shape the global discourse on victims' rights and influence the development of victim compensation schemes on an international level. The adoption of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985 was a milestone moment in this regard. This Declaration, also known as the Victims' Declaration, contained principles and guidelines aimed at providing support, dignity, and justice to victims.

The right to seek justice, participate in legal proceedings, receive fair treatment, and seek redress for the loss suffered due to acts of the accused were all affirmed and reiterated in this Declaration. It also focused on the need to rehabilitate victims of crimes and provide them with the necessary support services including medical assistance, legal aid, and counseling.

The Declaration contained a framework that the States could use as a guideline to develop municipal victim-centric laws and policies. The UN Declaration had a positive impact on India and influenced the introduction of much-needed reforms in legal frameworks and policies. It catalyzed the evolution of victim compensation schemes in India.

HISTORY OF VICTIM COMPENSATION MECHANISM IN INDIA

The existence of the concept of victim compensation in India can be traced back to the times of British Imperialism. The very first trace of restitution in Indian law can be found in sub-clause (1)(b) of Section 545 in the Code of Criminal Procedure of 1898, which provided that courts may direct: 'payment to any person of compensation for any loss or injury caused by the offence,

when substantial compensation is, in the opinion of the court, recoverable by such person in a civil court'.³

After achieving independence, the legal system in India underwent a complete overhaul. In 1969, the Law Commission in its 41st Law Report, while discussing section 545, stated that the usage of the word 'substantial' led to the sidelining of cases where nominal amounts were recoverable, and the courts hardly ever exercised the discretion to apply the section to cases.

Acting on the recommendation of the Law Commission, the Code of Criminal Procedure, 1973 was introduced wherein Section 545 was repealed and Section 357 was substituted. The main difference between these two sections was that while under the previous section, compensation was only limited to the amount of fine imposed, however, under section 357 the court could award compensation regardless of whether the sentence imposed contained a fine. The only condition was that the accused needed to be convicted. Therefore, the new section widened the ambit considerably.

In 2000, a committee under the chairmanship of Justice VS Malimath, a former Chief Justice of the Karnataka High Court, was constituted by the Central Government to evaluate and suggest reforms for the improvement of the criminal justice system in India. The Malimath Committee, formally known as the Committee on Reforms of the Criminal Justice System, in its report in 2003, recommended the introduction of a structured mechanism for compensation to victims after conducting a comprehensive review of the legal system in India. The Committee played a crucial role in the incorporation of a victim compensation mechanism in the Indian justice system. It also recognized the predicament of indigent people the challenges they faced while trying to fight for justice and the negligent support they received.

The recommendations of the Committee propelled the initiation of reforms needed to address the lacunae in the system. Consequently, in 2009, an amendment was passed that introduced section 357A which dealt with the Victim Compensation Scheme in India.

³ Vibha Mohan, 'Revisiting Victim Compensation in India' (2017) Manupatra
<https://docs.manupatra.in/newsline/articles/Upload/6F5E12E5-2A56-49A9-BF1B-CBE1DF4F8726.2-F_criminal.pdf> accessed 15 March 2024

PRESENT FRAMEWORK GOVERNING VICTIM COMPENSATION SCHEME IN INDIA

The present framework governing the Victim Compensation Scheme (VCS) in India is primarily guided by the provisions of the Code of Criminal Procedure (CrPC) and various state-specific laws and policies. Additionally, the National Legal Services Authority (NALSA) has also issued guidelines for the implementation of the scheme, outlining procedures for filing claims and disbursing compensation to victims.

Section 357: Section 357 of CrPC provides that the Court may pass an order for compensation when imposing:

- a sentence of fine; or
- a sentence of death of which fine forms a partner.

The compensation recovered shall be used, partly or as a whole,

- i. in covering the court proceeding expenses incurred by the prosecution
- ii. for compensating any loss or injury sustained as a result of the offence and which is recoverable before a Civil Court
- iii. for compensating the loss caused to individual(s) who, under the Fatal Accidents Act 1855, are entitled to recover damages caused by the death of a person from the person sentenced for causing or abetting the death of such a person.
- iv. where the offence includes criminal breach of trust, and criminal misappropriation, for compensating purchasers of stolen properties for the injury caused if the property is restored to the person entitled thereto.

An order for compensation may also be passed, in addition to the trial court, by the Appellate Court, High Court, or the Court of Sessions while acting in the capacity of its revisional jurisdiction.

However, if the fine imposed by the trial court is appealable, then the fine will not be recovered unless the window of appeal has passed.

Moreover, if the sentence imposed on the accused does not include a fine, the Court may during the judgment, additionally, require the payment of an amount mentioned in the order as compensation to the victim for the loss caused due to the accused's offence.

Section 357A: After the amendment in 2009, section 357A was added to the Code of Criminal Procedure, 1973⁴. This section is dedicated to the creation of victim compensation schemes by every state in cooperation with the Union. Section 357A (1) states, "Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation."⁵

As per sub-section 2 of the section, whenever the Court makes a recommendation for compensation, the authority to decide the amount of compensation lies with either the District Legal Service Authority or the State Legal Service Authority as the case may be.

However, as per sub-section 3 of section 357A⁶, the court of first instance may make recommendations for compensation if:

- it believes that the quantum of compensation is not sufficient for rehabilitation; or
- the defendant is acquitted or discharged, and the victim needs rehabilitation.

Moreover, in situations where the offender is at large or cannot be identified but the victim has been identified and no trial takes place, the victim or his dependants may directly apply to the District or State Legal Services for compensation under the victim compensation scheme as per section 357A(4)⁷.

The District or Legal Services Authority after receiving an application or a recommendation from the court needs to carry out an enquiry within two months, after the completion of which the compensation will be awarded.

The State or District Legal Services Authority shall also have to power to make orders for immediate and free first-aid facility or medical benefits on the certificate of the police officer in the rank of the officer in charge of the police station or above or the Magistrate of that area. The Legal Services Authority may also pass orders for any other interim relief to alleviate the victim's suffering as it may deem fit.

⁴ Code of Criminal Procedure 1973, s 357A

⁵ Code of Criminal Procedure 1973, s 357A(1)

⁶ Code of Criminal Procedure 1973, s 357A(3)

⁷ Code of Criminal Procedure 1973, s 357A(4)

Thus, under the Victim Compensation Scheme in India, even if the accused is acquitted or discharged the victim shall still be indemnified. The State, under Section 357A, shall compensate the victim from the State Victim Compensation Scheme. It is, undoubtedly, a watershed moment in the development of victim-centric laws in India. However, it is a double-edged sword.

Since victims can be compensated even if the accused is acquitted, it may lead to an increase in the filing of false cases just to receive the compensation amount. In 2022, the Karnataka High Court in the case of *The State Through Cpi vs Laxmi W/O Durgappa*, acknowledged this possibility of misuse. In this case, the accused was acquitted and was not liable to pay any compensation, but the Court adjudged that the 8-year-old prosecutrix, who had lost her parents and elder sister in the accident, is entitled to compensation under Section 357 A of CrPC.

The Court in para 41 held that, “However, as a word of caution it is to be observed that the Trial Court before recommending compensation under Section 357A of the Code should ensure that the scheme is not misused to claim compensation by registering the false criminal cases. Whenever the Court finds that the Crime has not taken place and there is no victim of the crime, then there cannot be a recommendation to pay the compensation.”⁸

Section 357B: Through another amendment in 2013, section 357B was introduced in the Code which states that the compensation payable by the State Government under section 357A shall be in addition to the payment of a fine to the victim under section 326A, section 376AB⁹, section 376D¹⁰, section 376DA¹¹ and section 376DB¹² of the Indian Penal Code.¹³

CENTRAL VICTIM COMPENSATION FUND

Since the introduction of section 357A, the State Governments framed and implemented their own Victim Compensation Schemes. However, in 2016, the Central Government introduced a Central Victim Compensation Fund (CVCF) in a bid to centralize the mechanism of compensating victims, thereby ensuring uniformity and efficiency in state victim compensation schemes. The CVCF provides financial aid to victims of rape, acid attacks, trafficking, and other

⁸ *The State through C.P.I v Laxmi W/O Durappa* CrI App No 3628/2012

⁹ Code of Criminal Procedure 1973, s 376AB

¹⁰ Code of Criminal Procedure 1973, s 376D

¹¹ Code of Criminal Procedure 1973, s 376DA

¹² Code of Criminal Procedure 1973, s 376DB

¹³ Code of Criminal Procedure 1973, s 357B

crimes against women and children. It was established under the Nirbhaya Fund, which was founded after the horrific Delhi gang rape case of 2012.

The establishment of CVCF signified the acknowledgement of victims' rights and promoted reparative steps to be taken promptly.

COMPENSATION SCHEME FOR WOMEN VICTIMS/SURVIVORS OF SEXUAL ASSAULT/OTHER CRIMES

The Supreme Court of India, in the case of *Nipun Saxena v Union of India*, opined that 'it would be appropriate if NALSA sets up a Committee of about 4 or 5 persons who can prepare Model Rules for Victim Compensation for sexual offences and acid attacks taking into account the submissions made by the learned Amicus.'¹⁴

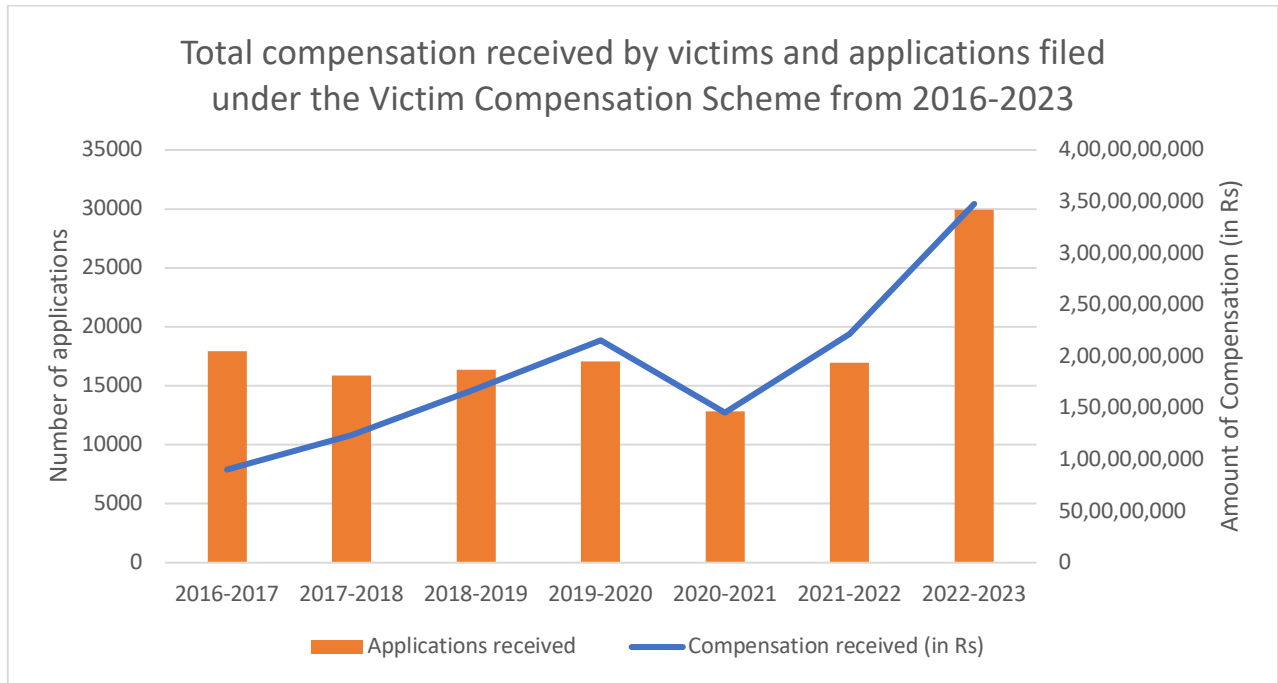
The Committee held rounds of meetings and it was decided to prepare a separate 'Chapter' or a 'Sub-Scheme' within the existing Victim Compensation Scheme for victims of sexual assault. The Committee drafted Part-II of the Victims Compensation Scheme and invited suggestions/comments from various stakeholders on the draft. Taking into consideration the suggestions/comments, the Committee has finalized the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes and submitted the same before the Hon'ble Supreme Court of India on 24.04.2018.¹⁵

After conducting additional hearings and incorporating other suggestions, on May 11, 2018, the National Legal Services Authority launched the Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes. This scheme aims to provide monetary aid to victims of sexual violence and abuse. The scheme provides for the procedure to apply, the criteria of eligibility, and the amount of compensation that may be awarded based on severity. The introduction of a centralized victim compensation scheme indicates the growth of a victim-centred justice system in India.

¹⁴ *Nipun Saxena v Union of India* WP (C) 565/2012

¹⁵ 'NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes - 2018' (NALSA) <<https://nalsa.gov.in/services/victim-compensation/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018>> accessed 16 March 2024

STATISTICAL ANALYSIS OF THE VICTIM COMPENSATION SCHEME (2016-2023)¹⁶



The above chart represents the total number of applications received by the State Legal Services Authority, both directly and through court orders, and the total amount of compensation given in connection with the same between 2016 and 2023.

As the data suggests, the number of applications under the victim compensation scheme is on an upward trend, with the highest number of applications received in 2022-2023, i.e., 29,936 applications. Likewise, the total amount of compensation awarded indicates a positive trend with the highest amount of compensation awarded in 2022-2023, i.e., Rs 347.80 crores. The growing number of applications with increasing compensation indicates a positive correlation, which is a desirable development. The positive trend in both the number of applications and the amount of compensation points towards the growing awareness and efficiency of the scheme. It proves the effectiveness of the scheme, in general.

Despite the positive trends, there was a notable fluctuation in 2022-2023. This significant decline could be attributed to the outbreak of the COVID-19 pandemic. Due to the strict social distancing measures in place, individuals were forced to remain indoors, and it took a while to adjust to

¹⁶ 'R/O Victim Compensation Schemes Report' (NALSA) <<https://nalsa.gov.in/statistics/r-o-victim-compensation-schemes-report>> accessed 16 March 2024

the new normal. The courts were forced to prioritize matters of utmost importance and other proceedings were either put on hold or heard in a limited manner which could explain the lower number of applications and consequently, the compensation awarded.

The spike in applications as well as compensation in 2022-2023 could be explained by various factors including convenient reporting and filing procedures, increased victim awareness, or a higher level of trust in the scheme. Increasing crime rates cannot be included as a factor there was a decrease in violent crime rate in 2022. 'Crime in India' 2022 report by the National Crime Records Bureau shows a 4.5% dip in crimes registered nationwide.¹⁷

Based on the data, we can deduce that the victim compensation scheme in India, as a whole, is showing signs of progress. However, certain deficiencies need to be addressed to enhance the efficacy of the compensation scheme.

FUTURE PROSPECT OF VICTIM COMPENSATION SCHEME IN INDIA

The Indian Penal Code 1860, the Code of Criminal Procedure, and the Indian Evidence Act 1872 are going to be replaced by the new criminal laws, i.e, Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhinyam respectively from 1 July 2024.

Under the Bharatiya Nagarik Suraksha Sanhita, 2023, the order to pay compensation is present under Section 395 whereas the same is present under Section 357 of CrPC. Apart from the change in section number, the content of the section has remained the same. The provision for the Victim Compensation Scheme in the new legislation is provided under Section 396. Though the majority of the section bears semblance to the original scheme under Section 357A in CrPC, there is one notable difference -

Section 357B of CrPC has now been incorporated under sub-section (7) of Section 396 of Bharatiya Nagarik Suraksha Sanhita. Further, sections 326A, 376AB, 376 D, 376 DA, and 376 DB of the Indian Penal Code referred to in Section 357B of CrPC have now been replaced in Section 396(7) of Bharatiya Nagarik Suraksha Sanhita by sections 67(4), 68, 70(1) and 70(2) of the Bharatiya Nyaya Sanhita, which is to replace the Indian Penal Code.

¹⁷ 'City crime rate down 14%, ranks 8th in India: NCRB' *The Times of India* (05 December 2023) <http://timesofindia.indiatimes.com/articleshow/105740362.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 16 March 2024

The future of victim jurisprudence seems to be on an unstoppable rise taking into consideration the data available, the legal reforms, and the judgments being made in favour of victims.

CHALLENGES

Although the introduction and growth of the Victim Compensation Scheme in India herald the rise of victim-centred jurisprudence and victim reparation laws, there are quite a few challenges that need to be addressed to improve the efficiency and effectiveness of this system in India. A few challenges that plague the victim indemnity mechanism in India are as follows:

- First and foremost, ignorance about the scheme is the biggest obstacle. Most victims from impoverished and remote areas are not aware of the existence of the compensation scheme. Even if they might know about the scheme, they often lack knowledge about the application procedure.
- Secondly, the funds under the compensation scheme are often insufficient, which leaves victims often under-compensated. The lack of funds arises due to limited budget allocation, delay in disbursements, and more often than not, corruption plays a part too.
- Thirdly, the procedure is extremely lengthy and complicated with a dreary amount of paperwork and procedures. This drawn-out process often deters victims from going through with the procedure or causes undue delays in compensation.
- Fourthly, since every State has implemented its own Victim Compensation Scheme there are discrepancies in the system including the procedure and compensation amounts which may confuse victims.

CONCLUSION - SUGGESTIONS AND RECOMMENDATIONS

Victim restitution is a concept that in the last decade has started gaining significance, as evidenced by the growing incorporation of the same in India's legal system. The increase in the number of guidelines, policies, and schemes governing compensation to victims in India is an indication of the growing awareness and importance being paid to the rights and dignity of victims. Undoubtedly, it signifies a step in the right direction. Of course, there is always room for improvement, and concrete measures need to be implemented to overcome the hurdles that the victim compensation system in India is currently facing.

A few recommendations have been suggested below, the incorporation of which may contribute to the creation of a stronger and more efficient compensation mechanism for victims in India.

1. To ensure that every victim of crime in India has access to the compensation scheme, awareness about the scheme must be spread even in rural and remote parts of India. Awareness can be spread through the dissemination of information through campaigns, outreach programs, workshops, distribution of concise educational material such as pamphlets and posters in the local language.
2. A sure-shot way to improve the system would be the simplification of the application procedure. When the process is too complex and tedious, it can deter the victim from applying.
3. Another way to encourage more victims to apply for compensation is by setting strict deadlines which will ensure that the process does not drag on for too long which may further the mental suffering of the victim.
4. For the calculation of the compensation amount, the severity of the victim's suffering and loss along with their financial circumstances needs to be taken into account. Higher amounts of compensation should always be disbursed, never less.
5. To improve the system, victims should also be provided access to free rehabilitation and counseling services. Victims from marginalized areas may not be aware or may not have access to such services but in the course of recovery, physical, emotional, and mental recuperation is very essential.