

Victim Compensation and Restorative Justice in India: A Comprehensive Analysis of Progress and Challenges

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Abstract

Victimology is a growing field in the criminal justice system, which acknowledges the need to address the harm done to victims of crime. One of the essential components of restorative justice is victim compensation schemes, which provide a means of redress to victims and empower them in the process of repairing the harm. In India, victim compensation schemes are an important development in the pursuit of restorative justice, as they provide victims with a voice and help them recover from the effects of crime. This research paper examines the complex landscape of victim compensation and restorative justice in the context of the Indian criminal justice system through statutes like India Penal Code and landmark cases. Despite significant efforts to address the plight of crime victims, a comprehensive analysis of the developments and challenges in this realm is indispensable. The emergence of compensatory jurisprudence in light of the human rights of the victims is a positive philosophy. It underlines the observance of the doctrine of natural justice in the form of State Liability in the space of compensatory jurisprudence in this contemporary era. Compensatory justice to crime victims covers both areas viz., compensation from the accused and compensation from the state. The research acknowledges the prevailing challenges that plague victim compensation and restorative justice systems in India. Inadequate awareness among victims regarding available compensation schemes, lack of uniformity in compensation amounts, bureaucratic delays, and societal stigmatization of restorative justice are among the pressing issues addressed. Drawing from empirical data and case studies, this research puts forth viable strategies to strengthen victim compensation schemes and promote the wider adoption of restorative justice practices. The paper advocates for a victim-centric approach to the Indian criminal system. It is anticipated that this study will contribute significantly to the ongoing discourse on criminal justice reform in India, fostering increased awareness and sensitivity towards the rights and welfare of crime victims.

Keyword: Victimology, Criminal Justice System, Indian Penal Code, Victim Compensation Scheme, Compensation, Restorative Justice, Victim-Centric

Introduction

In the evolving landscape of criminal justice, societies worldwide are increasingly recognizing the need to shift the focus from punitive measures to more inclusive and victim-centered approaches. India, as one of the world's most populous and diverse nations, stands at the crossroads of this paradigm shift, embracing Victim Compensation and Restorative Justice as integral components of its legal framework. This dynamic transformation reflects not only a commitment to providing justice to victims but also a deeper understanding of the complex interplay between crime, society, and individuals. This comprehensive analysis delves into the progress made and the challenges faced by India in implementing victim compensation and restorative justice initiatives, illuminating the path towards a more empathetic and responsive legal system. The efficiency and speed of the Indian criminal justice system will be guaranteed once the legal framework acknowledges the rights

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of victims and sufficiently addresses their compensation. Within victimology-related legal discussions, there has been extensive debate about the extent of the State's responsibility. This debate revolves around whether the State's obligation concludes merely after registering a case, conducting an investigation, initiating prosecution, and delivering a sentence to the accused. Alternatively, it questions whether, beyond these procedural steps, the State holds an additional responsibility towards the victim. Enhancing victim-oriented legislations should go beyond mere legal requirements and should provide adaptable tools to address the diverse needs of victims. The implementation of compensation should be guided by the objective of facilitating recovery for the victim. Consequently, a comprehensive Victim Compensation Scheme should encompass support through legal proceedings, emotional assistance, and rehabilitative measures aimed at reintegrating the victim into society's mainstream.²

Victim compensation schemes have emerged as a cornerstone of India's efforts to empower victims of crime. These initiatives, often administered at the state level, aim to alleviate the financial burden faced by victims and their families, providing much-needed support for medical expenses, loss of earnings, and rehabilitation. Over the years, India has made significant strides in expanding the scope and reach of these compensation programs, recognizing the diverse needs of victims from various socio-economic backgrounds. By offering financial assistance, the Indian legal system attempts to restore a sense of dignity and security to those affected by crime, fostering a more inclusive and compassionate society. Simultaneously, restorative justice practices have gained traction, emphasizing dialogue, reconciliation, and community involvement. This approach acknowledges that crime not only harms individuals but also ruptures the social fabric. Through restorative justice processes, victims, offenders, and communities are encouraged to engage in open conversations, fostering understanding, empathy, and ultimately, healing. India's foray into restorative justice signifies a fundamental shift from punitive retribution to collaborative problem-solving, encouraging accountability and reintegration into society. This approach not only holds offenders responsible for their actions but also provides them with opportunities for redemption, thereby breaking the cycle of violence and crime. In 2008, the Government made significant revisions to the Criminal Procedure Code of 1973³ (herein after referred to as "CrPC") with the aim of fortifying India's criminal justice system.⁴ These amendments, emphasizing victim-centered justice, marked the inaugural attempt to clearly define the term "victim" and overhaul the obsolete laws pertaining to the provisos for the victims per se in the context of giving compensation.

Victimology and History of Compensatory Laws

Who is the victim?

In the intricate web of criminal justice, understanding the concept of a victim is pivotal. The definition of a victim, both under the Criminal Procedure Code (CrPC) of India and international declarations, reflects the evolving perspectives on justice and victim rights. The definition of victims in both Indian laws and international declarations underscores the multifaceted nature of victimhood. It recognizes victims as individuals whose lives are impacted by criminal acts, extending beyond immediate physical harm to encompass emotional, economic, and societal

² Amol Deo Chauhan, *Analysis of Victimology in Indian Criminal Justice System : A need for separate legislation*, JETIR Aug. 2021, Vol. 8 (8).

³ Code of Criminal Procedure (Amendment) Act 2008

⁴ Jhalak Kakkar and Shruti Ojha, *An analysis of the vanishing point of Indian Victim Compensation Law*, World Society of Victimology's 13th International Symposium on Victimology at Tokiwa University, Mito, Japan, (August 23-28, 2009).

consequences.⁵ A victim of crime cannot be a 'forgotten person' in a criminal justice system, it is he who has suffered the most.⁶

In India, the Criminal Procedure Code (CrPC) of 1973, amended in 2008, marked a significant step towards acknowledging the rights of victims. According to Section 2(wa) of the CrPC, a victim is defined as any person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged. This broad definition recognizes victims beyond just the direct recipients of the crime, encompassing anyone who suffers due to the criminal act. Internationally, the United Nations has played a pioneering role in shaping the global discourse on victims' rights. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted in 1985, articulates a comprehensive definition of victims. According to this declaration, a victim includes individuals who have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states.⁷ Moreover, India is a signatory to international treaties like the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These conventions emphasize the protection and rights of specific categories of victims, namely children and women, ensuring their safety, well-being, and access to justice in cases of victimization.⁸

Defining Victimology

Victimology, the scientific study of victims and their experiences, has emerged as a crucial discipline within the realm of criminal justice. It delves into the multifaceted aspects of victimhood, aiming to understand the impact of crimes on individuals and society. In the pursuit of a more compassionate and holistic approach to justice, victimology plays a pivotal role, especially in promoting restorative justice systems.⁹ At its core, victimology examines the psychological, social, and economic consequences of crimes on victims. It analyzes the dynamics of victim-offender relationships, patterns of victimization, and the response of the criminal justice system. Victimology fosters empathy and understanding among law enforcement officials, judges, and policymakers. By comprehending the plight of victims, the criminal justice system can approach cases with sensitivity, acknowledging the emotional trauma and needs of those affected by crime. Victimology aligns seamlessly with the principles of restorative justice, which focuses on repairing the harm caused by the crime and facilitating the rehabilitation of offenders. By understanding the needs and perspectives of victims, restorative justice processes can be tailored to address their specific concerns, promoting healing and reconciliation.¹⁰ Restorative justice, guided by victimology, emphasizes community involvement in the rehabilitation process. Communities are encouraged to actively participate in supporting victims and rehabilitating offenders, fostering a sense of collective responsibility and promoting social healing.

History of Compensatory Laws

Throughout history, the concept of compensating victims of crime or wrongdoing has been integral to

⁵ Vidya Shankar, *Victimology in India: Need for Victim-Oriented Laws*, IJLMH, Vol. 3(5), 2020.

⁶ *Supra* Note 3

⁷ *Supra* Note 6, pg – 6

⁸ *Id.*

⁹ Md. Atiqur Rahman, *Victimology: Concept and History of Victimology*, SSRN Review Feb. 2021

¹⁰ Victimology in India with special reference to child victim, Mudra Singh and Durga Shukla, International Research Journal of Management and Social Sciences, pg - 3

the majority of legal systems. Restitution, used as a punitive measure, has deep historical roots. Reimbursement of victims was applied in a universal manner without distinguishing between criminal or civil cases but there was a mandate of reimbursement in the ancient societies. However, the primary purpose of such restitution was misplaced since it was meant to protect the offender from violent retaliation by the victim or the community as opposed to compensating the victim.¹¹ In the 12th and 13th centuries a distinction was made between various kinds of wrongs, i.e., civil wrong and public wrongs.¹² Various justifications for compensation have been used, such as: benefit to the victims, symbolic social recognition for the victims suffering, deterrent effects on the offender as also the reformatory effects on the offender as the paying of compensation has an “intrinsic moral value of its own”.¹³ The Hammurabi code of ancient Babylonian makes the earliest reference to state compensation for victims of crime.¹⁴ It specified that:

“If a man has committed robbery and is caught, that man shall be put to death. If the robber is not caught, the man who has been robbed shall formally declare what he has lost . . . and the city. . . shall replace whatever he has lost for him. If it is the life of the owner that is lost, the city or the mayor shall pay one maneh of silver to his kinsfolk.”¹⁵

French and American jurist who were advocates of social contract theory such as Jeremy Bentham and Jean Rousseau contended that it is due to the nature of the theory the state should be beholden with the responsibility to not only prevent crime and safeguard the citizens and their property but also to compensate the ones who are affected by the harm caused per se due to the lack of security afforded by state authority. The idea of state compensation was deliberated during the fifth International Prison Congress in the latter part of the century. The shift towards state compensation was also reflected in the United States, with California becoming the pioneer state to implement this approach in 1965. The importance of compensating crime victims was underscored by the United Nations in both its Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the 2006 Basic Principles and Guidelines on the Right to a Remedy.

Ancient India, with its rich tapestry of legal and ethical principles, was remarkably progressive in implementing the idea of victim compensation and exploring the realms of victimology. In a society deeply rooted in dharma (righteousness) and justice, ensuring reparations for victims was a fundamental aspect of the legal system. One of the key principles guiding ancient Indian jurisprudence was the concept of "Nyaya," which translates to justice.¹⁶ Early legal texts, such as the Manusmriti and Arthashastra, laid down comprehensive guidelines for compensating victims of various crimes. Offenders were not just punished but were also obligated to provide restitution to the victims. This ancient understanding resonates with the modern concept of victim compensation. The ancient Indian legal system was also astoundingly nuanced in its understanding of victimology,

¹¹ Dilip S. Dahanukar v Kotak Mahindra Co. Ltd. and Anr. (2007) 6 SCC 528; Victim Restitution in Criminal Law Process: A Procedural Analysis, (1984) 97 Harvard Law Review, p. 931 – 946.

¹² K.I. VIBHUTE, Justice to Victims of Crime: Emerging Trends and Legislative Models in India, in CRIMINAL JUSTICE: A HUMAN RIGHTS PERSPECTIVE OF THE CRIMINAL JUSTICE PROCESS IN INDIA 370, 392-93 (2004).

¹³ LAW COMMISSION OF INDIA, ONE HUNDRED AND FIFTY FOURTH REPORT ON THE CODE OF CRIMINAL PROCEDURE, 1973 (1996), at 57.

¹⁴ See Morris Fish, An Eye for an Eye: Proportionality as a Moral Principle of Punishment, 28(1) OXFORD JOURNAL OF LEGAL STUDIES 57, 58-61 (2008).

¹⁵ See generally Gerhard O. W. Mueller, Compensation for Victims of Crime: Thought before Action, 50 MINN. L. REV. 213 (1965).

¹⁶ Supra note 10

focusing not only on material restitution but also on emotional and psychological healing.¹⁷ The concept of "Prayaschitta," or atonement, allowed offenders to seek forgiveness and make amends directly to the victims.¹⁸ This emphasis on restoring the victim's well-being and dignity was a precursor to the holistic approach embraced by contemporary victimology.

A sight of predicament for the victims

Victims within the criminal justice system often find their rights overlooked, reduced to the role of witnesses in the pursuit of prosecuting and penalizing the perpetrators. Within the Indian Criminal Justice System, justice is narrowly defined as compensating and reconciling victims, rather than encompassing their broader protection and safeguarding their property from harm. Several statutes, including The Criminal Procedure Code of 1973, The Motor Vehicles Act of 1988, and The Fatal Accidents Act of 1855, offer compensation to those who have suffered due to criminal acts. The Criminal Justice system focuses primarily on the crime, the perpetrator, the trial proceedings, evidence collection, and case prosecution, establishing the guilt of the offender, safeguarding the human rights of the accused, and delivering punishment. Unfortunately, it completely disregards and sidelines the victim after their role as a witness in the case.

Section 190 of Cr.P.C gives the victim the right to approach with the complaint avoiding the hurdle approaching the same to police station, directly to the magistrate. But the very proviso doesn't entitle the victims to know about the process, the victim's roles are restricted in the hands and whimsies of the act and deliberation of the respective police stations. The information which should have been as prima facie obligation of the authorities to be given to victims, only reach to the victims after perusal request and that also is been allowed only in some states. The plight of the victims lies in gathering the info and the justice system should take this consideration and behold it as right to information under article 19(1) of the Indian Constitution.¹⁹ The victims' situation is distressing until the police file the charge sheet under section 173 of the Cr.P.C. The Magistrate, upon acknowledging the charge sheet, assesses whether the case can be dismissed. If it can, the Magistrate notifies the informant to address their concerns, dismissal of the same not only abridges the fundamental right to being heard but also victimizes the plight of their state. When there is absence of strict proviso to restore justice and compensate victims, our criminal justice finds way to relief to the offenders under section 250, 358 and 359 of Cr.P.C. The court can order the informants and the state to give compensation to the accused if the arrest is wrongfully done or being done per se by taking into consideration false information. When a survivor of sexual harassment or a rape victim navigates the criminal justice system, she encounters an archaic approach during medical examinations. This traditional and archaic method forces the victim to relive the trauma, and subsequent experiences include harassment, prolonged delays, frequent court appearances, and character defamation by defense attorneys, as evidenced in high-profile cases like the Nirbhaya Case²⁰, perpetuating a cycle of suffering. After the Nirbhaya case a forum of women activist approached the Bombay High Court through a PIL per se in demand of the direction to implement the order of Supreme Court which directed a compulsory compensation and mode of rehabilitation for the survivors of rape incidents.²¹ The vexatious nature of the justice system as well as the

¹⁷ Evolution of criminal justice system in ancient India, Dr. Rahul Tripathi, International Journal of Multidisciplinary Research and Development.

¹⁸ Supra note 10

¹⁹ Raj Narain v. State of Uttar Pradesh (1975) 3 S.C.R. 333

²⁰ (2017) 6 SCC 1

²¹ Delhi Working Women's Forum v. Union of India (1995) 1 SCC 14.

legislature per se lead to persistent wait of 18 years even after so many horrifying gang rape incident came into news, and still now it is not implemented.²² In the case of *Sheela Barse vs Union of India*²³, the court opined that children are the most important asset of our country which was declared before in The National Policy for Children in 1974. But the plight lies that in India every third victim be it heinous crime such as rape or kidnapping or any other it is always a child.²⁴ The Human Rights Watch²⁵ connoted that in India, children's are the most ill-treated by the criminal justice system per se in laxity of hearing their matter or even registering their case per se which results in delivering justice becomes a long due action.

Insufficient funds allocated to compensation schemes hinder their efficacy. Adequate budgetary provisions and financial management are essential to ensure victims receive timely and sufficient compensation. Disparities in compensation amounts and eligibility criteria across states create an inequitable system. Standardizing compensation guidelines and ensuring uniform implementation can enhance the effectiveness of victim compensation schemes.

A step towards advancing restorative justice

Victim compensation not only addresses the tangible losses but also acknowledges the pain and trauma endured. The interconnectedness among victimology, victim compensation, and restorative justice becomes apparent through their common objective: empowering victims. By holistically meeting victims' requirements, including financial and emotional support, society can promote healing and break the cycle of violence. Restorative justice complements this by offering victims a voice, a chance to confront offenders, and seek emotional closure. Moreover, when offenders actively participate in restitution processes, they understand the real impact of their actions, fostering a sense of responsibility and preventing future offenses. The interlinking of victim compensation and restorative justice promotes a sense of community and social responsibility.

In rape cases only in the final order the decree of compensation was awarded but after the landmark case of *Bodhisattwa Gautam v. Subhra Chakraborty*²⁶, the court passed the order of giving interim compensation to the rape victim while undergoing the process of trial. This was the first case which led an impact country wide in terms of victim compensation to rape victims. Also in the case of *Rudal Shah vs State of Bihar*,²⁷ court ordered additional sum over the compensation given due to the unlawful incarceration. Law Commission of India in 2009 made a prudent action per se in advancing victim compensation. It was the first commission which held into account of pecuniary losses, substantive loss including pain and suffering, it made a clear stance to compensate the victim in all the matters. Also maintenance of child born out of sexual assault by the accused was one of the prominent rules laid down by the commission. The Justice V. S. Malimath Committee, formed in 2000, was a significant initiative undertaken by the Indian government to reform the criminal justice system in the country. The committee focused on the rights and welfare of victims. It suggested the establishment of Victim Compensation Funds and witness protection programs to support victims and encourage their cooperation in the legal process. By prioritizing the needs of victims,

²² *Id*

²³ AIR 1986 SC 1873

²⁴ REPORT OF INTERNATIONAL BUSINESS TIMES, Sept. 14, 2016.

²⁵ BREAKING THE SILENCE Child Sexual Abuse in India, HUMAN RIGHTS WATCH, <https://www.hrw.org/sites/default/files/reports/india0113ForUpload.pdf>.

²⁶ 1996 SCC (1) 490

²⁷ (1983) 4 SCC 141

the committee sought to create a more empathetic and supportive justice system. This committee led an exclusive duty and obligation of the state to compensate the victims in all dire crimes. The POCSO Act²⁸ is specifically designed to be victim-centric, providing a child-friendly legal process for victims of sexual abuse. Under this act, the identity of the child victim is protected, and the child's statement is recorded in a child-friendly manner, often in the presence of a counselor or psychologist. The Juvenile Justice (Care and Protection of Children) Act, 2015 mandates the establishment of special courts for the speedy trial of offenses against children, ensuring that the legal process is expedited to reduce trauma for the victims. The Criminal Law amendment act, 2018 is one of the pioneer in advocating victim oriented based approach and the amendment per se brought many changes in the same such as in camera recordings, swift and less filing of charges and advocating the basic rights of victim such as having information regarding the progress and others linked to the offence. Our criminal justice system's policy is centered on the victim, and we have, to some extent, integrated the concept of compensatory criminal jurisprudence.

Conclusion

The entire criminal justice system in India is offender oriented. Many a times even the judiciary, the legislative and the executive is concerned about the rights of the accused or the criminal. The traditional notion of the criminal justice system in our country has been predominantly in favour of the offenders. All the three organs per se legislature, executive and judiciary have been often through their actions prudently concerned more about their rights of perpetrators. Since the provisions are discretionary, judges are not legally obligated to order compensation for crime victims in all appropriate cases, nor are they required to provide reasons for not doing so. Likewise, these provisions do not grant victims a legal entitlement to receive compensation from either the accused or the state for the losses or injuries incurred due to the cause of the crime or offence per se. Though, justice has been meted out to the victims through judicial creativity at the appellate level; these instances are few and far between.²⁹ The recent amendments to the CrPC have adopted a more comprehensive approach in addressing the challenges faced by victims. Nonetheless, the rare utilization of these provisions by judges in an attempt to achieve justice for victims and ease their suffering could render these clauses obsolete, becoming the diminishing factor in the Indian victim compensation system. To implement any progressive reforms in victim compensation, it is crucial to have a judiciary that is aware of the significance of compensating victims and acts with sensitivity in this regard.

Suggestions

It is crucial now to extend the concept of restorative justice by introducing a distinct and robust legal framework. The victims through this legislation can avail their basic right of freedom of opportunity to ask for compensation through a due process of law in the courts, regardless of the accused person's conviction status. Each state administration has the option to establish a web-based grievance platform specific to their state. This platform would encompass comprehensive information about the complaint, the investigative process, and the officers responsible for the inquiry. Additionally, the Central Government can introduce a toll-free helpline to streamline the complaint registration process. In India, it is imperative to reassess and broaden the principles

²⁸ Protection of Children from Sexual Offences (POCSO) Act, 2012

²⁹ C. Raj Kumar, Emergence and Evolution of Victim Justice Perspectives in India, 25 (2) INDIAN JOURNAL OF CRIMINOLOGY 71, 74-77.

governing compensation for crime victims, ensuring comprehensive coverage for all instances. Compensation should not be restricted solely to fines, penalties, and forfeitures. It could be mandated that cases involving female victims must be investigated by a female police officer holding a rank higher than constable. There can be statutory fund created by the central government for treatment of victim's per se availing treatment immediately. Creation of more fast track courts in this regard will help the criminal justice not only redress the matters but also award compensation not in a haste manner.