



# International Journal of Research Publication and Reviews

Journal homepage: [www.ijrpr.com](http://www.ijrpr.com) ISSN 2582-7421

## Judicial Approach Towards Victim Compensation in India

*Amitabh Pandey<sup>1</sup>, Dr. Ratnesh Kumar Srivastava<sup>2</sup>*

<sup>1</sup>Student, B.A. LL.B. (Hons.), Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

<sup>2</sup>Assistant Professor, Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

DOI : <https://doi.org/10.55248/gengpi.6.0425.1560>

### ABSTRACT

From punitive to restorative justice, victim compensation emerged as a significant part of the criminal justice system of India. The traditional neglect of the rights of victims has assumed a constitutional status, statute and case law formulation. Landmark judgments in Rudul Shah v. State of Bihar and Nilabati Behera v. the State of Orissa are cases in point that have widened the sweep of Article 21 of the constitution to recognize compensation as a constitutional right. The statutory advancements such as the victim compensation schemes under the Bharatiya Nagarik Suraksha Sanhita, 2023, have locked the state responsibility of compensation of victim in the event of unidentified offenders or where offenders cannot pay.

However, difficulties remain, including delay in judicial processes, inadequate funding, unawareness, administrative bottlenecks and variation between the states. Insights of comparative nature derive from the United States and the United Kingdom, which underline the importance of availability of streamlined procedures, adequate state funding, and victim centered framework. It has been the proactive role of the judiciary to fill up gaps, stress on interim compensation, and for uniformity in compensation schemes. But they need to be put in place systemically and with appropriate awareness and accountability.

However, this research serves to agitate the judiciary to provide victim compensation through their advocacy for possible global best practices in victim compensation and for the equitable and efficient justice. Discussing the implementation gaps of victim compensation can address the earnest issues involved in showing through victim compensation a true reflection of social justice described in the Indian constitution.

**Keywords:** Victim compensation, restorative justice, judicial activism, Article 21, Bharatiya Nagarik Suraksha Sanhita, victim rights, constitutional law, criminal justice

### Introduction

Compensation of victims in the crime committed in India has emerged as a vital dimension of the criminal justice system that advocates the ideologies of Policy that the state has an obligation not only to punish the offender but also to compensate the victim. Traditionally, the Indian criminal justice system involved only the sentencing of the known offender and his punishment, leaving out the victim's needs. Nevertheless, with a changing trend of jurisprudence in criminal justice as well as focus on human rights, more attention is paid to the right of the victim to be compensated, which is in concordance with the concept of restorative justice. Victim compensation is meant to offer monetary assistance to the individuals who are affected by criminal conduct and therefore receive it as a recognition of the inflicted loss and as a tool for easing the impact of the victimization process. This development, as the PM said, has its roots in justice—social, economic, and political justice—in a way that resonates with the so-called “Directive Principles of State Policy” under “Article 38” and “Article 41” of our constitution. These provisions require the state to establish a social order for the improvement of the welfare of the people and to ensure provisions for the employment rights of persons, education, and public aid for the unemployed, aged, sick, and disabled, respectively.<sup>1</sup>

### Importance in the Criminal Justice System

Victim compensation as a rule has a significant place in the criminal justice system of India in its quest to punish the criminal and adjudicate the loss suffered by the victim. The measures of legal requirements for the compensation of victims are contained in several laws; one such law is Section 357 of the “Code of Criminal Procedure, 1973” CrPC, which of course gives the courts the powers to order the award of compensation to a victim from the fines that are imposed on offenders. Furthermore, “Section 396” of the CrPC gives the concept of “Victim Compensation Scheme,” according to which the

<sup>1</sup> Victim Compensation: Judicial Approach towards Compensatory Jurisprudence, available at: [https://www.nja.gov.in/Concluded\\_Programmes/2022-23/P-1341\\_PPTs/3.Victim%20compensation%20scheme%20-Session%20V.pdf](https://www.nja.gov.in/Concluded_Programmes/2022-23/P-1341_PPTs/3.Victim%20compensation%20scheme%20-Session%20V.pdf) (Visited on November 12, 2024).

state governments are bound to form the funds for compensating victims, especially when the offender is unknown or is in bad shape financially. This statutory provision can reflect a tendency towards the new paradigm that calls for justice for the victim with the purpose of compensation and support.<sup>2</sup>

The need for compensation to the victims of the crime cannot be overemphasized, since compensation forms a major input to a victim's recovery process. It is neither an employee's remuneration package but rather the recognition of the harm that has been committed in a materialistic way. In very serious offenses like rape, murder, and acid splashing, compensation is an important component of recovery for the victim.

---

## Purpose of the Research

This work studies the Indian judicial verdicts pertaining to compensation of victims in India and is an effort to work out the meanings and applications given to legal provisions on compensation over the years in Indian courts. Statutory laws govern and comprise the backbone of how victims are rewarded, but the judiciary is the body that implements and, in most cases, broadens such rights. This research aims to identify and document major landmark judicial precedents that influenced reforms in victim compensation and examines courts' roles in dispensing justice to victims.

---

## Historical Evolution of Victim Compensation in India

The view that the offender has to compensate the victim is predicated on Indian law of justice that goes beyond the punitive process to include the victim. Manusmriti, one of the oldest Hindu texts, has elements of compensation for victims in criminal offenses such as theft or using violence. The premise was that the resulting state must, as much as possible, return the victim to his previous condition, which could be considered partially restorative justice. During this period, not only the prevention of the criminal and his punishment were paramount, but it was necessary to determine the subject of the rights of the injured person and restore his violation. Criminal drastic measures being punished were seen as a responsibility of not only the offender but also the society; this was a clear indication of the victimology even in ancient India.<sup>3</sup>

This is an approach that goes back in time, while the modern way is punishment enforced by the state, and in ancient regimes there seemed to be a more communal approach to justice. The same principles were followed in medieval India, when it was under the Mughal rule. People there also paid attention to justice, as this was the main aim of the authorities to bring back the lost property with special attention to the theft and property damage cases. On the other hand, the meaning of victim compensation in a more formal way, in legal terms, came later in India as its civil laws have grown due to colonialism and codification.

---

## Development in Post-Colonial India

The concept of justice experienced a major transition from victims' compensation form of justice into a new type of justice that was largely based on the state's interest in punishing the offender. In colonial times, the Indian Penal Code was enacted in 1860. This code defined criminals and offenders and their punishment, but little or nothing was mentioned about the victims of the offenders. This system seemed to be inclined towards punishment as opposed to compensatory remedies. Most attention was paid to punishment of the offender in the interest of controlling social deviants, thus a utilitarian view of law that dominated the British legal system at the time. Consequently, the victim was left on the margins of the process, and they were typically not even compensated for the harm they received.

The discussion of victim compensation only emerged again much later, when India had achieved its independence in 1947. The Constitution of India, especially by its provisions known as the 'Directive Principles of State Policy', sowed the seeds of the principle of more focus on the victim while delivering justice. Articles 38 and 41 of the Indian Constitution say that the state shall, using its resources, endeavour to promote the welfare of the people and shall make provision for public welfare and for promoting the interests of the weak and vulnerable sections of society. Yet, the genuine shift in political direction, which started implementing institutionalized victim compensation in a legislative framework, did not take several decades but began only with the amendments in the "Code of Criminal Procedure" (CrPC).<sup>4</sup>

---

## Key Milestones in Legal Reforms

Currently in India, compensation for the victims is provided through the CrPC, particularly Section 357 and Section 396 of the Code of 1973. Stating "Section 357," that was enacted to enable courts to order that any fine paid by an offender for the offense should be paid to the victim or his family depending on the loss or the extent of the injury. This was a significant process in the appreciation of the victim's requirement for monetary compensation, despite this depending on the application of a fine. However, a critical weakness of 'Section 357' was that it was dependent on the economic status of the offender; this meant that were the offender to lack the ability to pay, then the victim gained nothing.

---

<sup>2</sup> Compensation of victim of crime in India, available at: <https://blog.ipleaders.in/compensation-victim-crime-india/> (Visited on November 15, 2024).

<sup>3</sup> Compensation to victims under Indian criminal justice system, available at: <https://articles.manupatra.com/article-details/Compensation-to-victims-under-Indian-criminal-justice-system> (Visited on November 18, 2024).

<sup>4</sup> Justice Mohan M. Shantanagoudar, "Victim Compensation in Criminal Justice System", available at: <https://kjablr.kar.nic.in/assets/articles/VictimCompensationinCriminalJusticeSystem.pdf> (Visited on November 20, 2024).

The implementation of “Section 357A” of CrPC in 2009 can be considered a major step in the development of compensation for the victims in India. It was in this section that state governments were forced to set up what is called a “Victim Compensation Scheme,” where through this, the state is able to compensate where the offender cannot be identified or where he is unable to remit any amount. This provision altered compensation within civil compensation laws so that the offender was not solely responsible for paying compensation to the victims; rather, the state adopted responsibility for the compensation to the victims because compensation was no longer possible because the offender lacked the financial means for this purpose. The topmost court of the country has bestowed a vital function in enforcing the significance of this provision. In “*Laxmi v. Union of India*”<sup>5</sup>, the Court stated that compensation awarded must be proportionate to losses suffered and stated that victims of ‘acid attacks’ should be adequately compensated from where ever possible—even if the perpetrator was unable to do this for the courts to endorse state-funded compensation.

The judiciary has progressively expanded the significance of victim compensation through various landmark rulings. In *Rudal Shah v. State of Bihar*<sup>6</sup>, the Supreme Court held that a man wrongfully detained for 14 years was entitled to compensation, emphasizing that compensation for the violation of fundamental rights forms part of the relief. This case laid the foundation for recognizing compensation not merely as a statutory right but also as a constitutional right. Similarly, in *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>7</sup>, the Court granted interim compensation to a rape victim. This decision not only underscored the importance of balancing the rights of victims and protecting their legitimate interests but also reinforced the principle of providing effective remedies to ensure justice.

Altogether, changes in prosecuting victims in India can be noted to have met with some important milestones, and the judiciary has remained an essential decision-maker, ensuring the victims’ rights, particularly their compensation, do not lose focus of the need to punish the offenders. The idea of compensating the victims has evolved over the years from ancient restitution traditions to present statutory provisions, which have become an integral component of the Indian criminal justice system, but the practical reality of compensation is not very smooth.<sup>8</sup>

---

## Legal Framework Governing Victim Compensation in India

The basis of victim compensation in India is the Indian Constitution, but the Constitution guarantees and enshrines justice for all, including victims of crime. Constitutionally, one of the major provisions of law that is indispensable while defining and applying fundamental rights is the “Article 21 Right to Life and Personal Liberty.” The judiciary and the constitution have expanded “Article 21” to include not only the ‘right to life’ but also the right of a person to live with dignity, particularly the right of compensation to victims of criminal activities. The highest court has been bureaucratic in broadening the analysis and implementation of “Article 21,” especially in relation to the sufferers where the state and its officials have perpetrated unlawful conducts against the rights of the suffering parties.<sup>9</sup>

---

## Right to Life under Article 21

The expansion of the meaning of “Right to Life” under “Article 21” has now become a fundamental feature of the emergence of victim compensation. Until recently, “Article 21” has been used to protect only the right of life itself, but now a more liberal clause of dignity of the human person, personal safety, and social well-being is available. In the case of *Delhi Domestic Working Women’s Forum v. Union of India*<sup>10</sup>, the apex court pointed out that the sexual assault survivors must be reimbursed by the state since it has reduced the victim’s dignity, and that is part of ‘Article 21.’ This interpretation reveals the judiciary’s incremental adoption of victim compensation as a constituent of the right to life under the constitution.

### Judicial Interpretation of State Responsibility

The judiciary has had a central function in defining state responsibility regarding aspects of compensation to these victims. The courts have ruled that where the state has borne in its constitutional responsibility of protecting the life and liberty of any person, the innocent party is bound to compensation. For example, in the case of *Sebastian M. Hongray v. Union of India*<sup>11</sup>, it may be noted that it has placed a direct burden on the state for the negligence that has led to such violations by paying compensation to the victim or his family members. This stance is an important declaration that if a state cannot protect or cannot seek justice, then compensation has to be paid as a fundamental right. While all these judgments stress compensation as an aspect of corrective justice to punish the state, it is also called on to redress its shortcomings and the harm done to the victim.

### Statutory Provisions on Victim Compensation

---

<sup>5</sup> AIR 2015 SC 3662.

<sup>6</sup> AIR 1983 SC 108.

<sup>7</sup> AIR 1996 SC 922.

<sup>8</sup> Dr. Preeti Misra, “Compensatory Justice Jurisprudence in India With Reference To Criminal Law: An Evaluation”, available at: <https://www.bbau.ac.in/dept/HR/TM/LL.M.203%20Unit%204.Compensatory%20Justice%20Juris.Preeti%20Misra.pdf> (Visited on November 16, 2024).

<sup>9</sup> Justice N. Kotiswar Singh, “Victim Compensation”, available at: [https://www.nja.gov.in/Concluded\\_Programmes/2020-21/P-1230\\_PPTs/2.Victim%20Compensation.pdf](https://www.nja.gov.in/Concluded_Programmes/2020-21/P-1230_PPTs/2.Victim%20Compensation.pdf) (Visited on November 19, 2024).

<sup>10</sup> AIR ONLINE 1994 SC 114.

<sup>11</sup> AIR 1984 SC 1026.

Whereas the Constitution provides a framework on the general handling of victims, the statutes provide blueprints on how victims are to be compensated within Indian territories. The "Bharatiya Nyaya Sanhita, 2023," the new criminal code of India as a direct successor to the Indian Penal Code, keeps the sections determining the compensation to the victims. "Section 357 of Bharatiya Nyaya Sanhita, 2023" entitles a court to award compensation to the victim from the amount of noble requisite on the offenders. This provision is mainly aimed at providing compensation for losses or damages arising out of criminal acts, provided that fines are imposed therefor. In this, the court is given the discretion to order that a percentage of the fine paid by the offender be paid to the victim. This is especially the case where the offender has the financial muscle to meet the given fine as a punishment.

However, only a few years later, the actual reform in the statutory victim compensation happened with the introduction of "Section 396" added to the "Bharatiya Nyaya Sanhita." This section requires state governments to establish "Victim Compensation Schemes," meaning states have no option but to compensate victims of crimes, especially where the perpetrator is either unknown or cannot afford it. The statutory schemes provided by the "Section 396" plans are intended to assist victim-shareholders to overcome their losses that they cannot otherwise recover.<sup>12</sup>

---

### Role of the Bharatiya Nagarik Suraksha Sanhita, 2023

The current study reveals that the "Bharatiya Nagarik Suraksha Sanhita, 2023" that did away with the "Code of Criminal Procedure" plays an important role in improving the legal provisions for the compensation to victims. This new code consolidates provisions similar to the erstwhile "Code of Criminal Procedure" to reinforce the judicial approach to compensation for the victim under sections 357 and 357-A of the code. Also, under the "Bharatiya Nagarik Suraksha Sanhita, 2023," the courts elaborated rules for compensation to the victims and the procedure for the quantum of compensation in relation to essential services.

#### State Compensation Schemes

Besides the legal regulation, India has established state-level compensation for victims under the provision of "Section 396." In every state, the persons who work in authority are supposed to set up a fund recovery for the victims. These schemes are available to victims of all sorts of offenses—rape, murder, human trafficking, and assault, including acid attacks—and the idea is to give money towards helping the victim get their life back on track.<sup>13</sup>

A quite remarkable example is the 'Nirbhaya Fund', created in response to "the 2012 Delhi gang rape case"<sup>14</sup>. This fund was meant to be meant for compensation of victims of rape, with special emphasis on compensation and rehabilitation. The experience of the 'Nirbhaya Fund' shows that compensation is being attributed to the state more and more, especially when societal factors are at play, such as gender-based violence.

---

### Landmark Judgments

In this area, judicial activism has become very significant for notifying the features of victim compensation in India, especially in understanding the Constitution in a manner that recognizes and provides for the protection and rights of the victims of crime. Integral to this process is what the Indian Constitution calls the 'right to life and personal liberty' or the Article 21. Over the years, the Supreme Court has evolved the contours of the right to life under Article 21 to include not only the protection of life but also the right to livelihood and the right to quality life, which in its broadest term extends to the right to compensation for the victims of state and/or private-operated violence.

The judiciary has been central to the enlargement of victim compensation as an adjunct of state duties and responsibilities to citizens. This approach was especially established in cases Embracing Cases such as "*Rudal Shah v. State of Bihar*"<sup>15</sup> wherein the Hon'ble Supreme Court quite pointed that it was the duty of the state to compensate any wrongful act even in the absence of any provision of law to this effect. This form of activism is important as courts realize that victims should not be put in a position where the only remedy available must be statutory in nature; hence, it may not suffice or can be inaccessible. However, the current constitution of the court has acknowledged a substantive constitutional right to the payment of compensation, most especially when the constitutional-fundamental fairness rights are infringed.

---

### Expansion of the Right to Compensation under Article 21

Broadening of the right to compensation under 'Article 21' has constitutionalized the right to compensation, thereby eradicating its statutory basis. The judiciary has played a central role in the expansion of "Article 21" to encompass compensation under the guise of remedy for victims of state-sponsored acts of violence or negligence. In *Nilabati Behera v. State of Orissa*<sup>16</sup>, the Supreme Court of India laid down the legal principle that the state has a constitutional duty to provide compensation for the right to life of innocent persons, and death in police custody is a violation of the right to life; compensation other than monetary remedy is not contemplated as an appropriate remedy. To illustrate, the Court said that without remedy, the protection

---

<sup>12</sup> Mahantesh G S and Mamatha Rangaswamy, "Victim Compensation in India - Recent Analysis", March 2024, available at:

[https://www.researchgate.net/publication/79\\_Victim\\_Compensation\\_in\\_India\\_-\\_Recent\\_Analysis](https://www.researchgate.net/publication/79_Victim_Compensation_in_India_-_Recent_Analysis) (Visited on November 17, 2024).

<sup>13</sup> M. Sharma, "Compensatory Justice to the Victim of a Crime and Judicial Practices in India: An Empirical Study", 28 *IRV* 167 (2022)

<sup>14</sup> *Mukesh v. State of NCT Delhi*, AIR 2017 SC 2161.

<sup>15</sup> AIR 1983 SC 1086.

<sup>16</sup> AIR 1993 SC 1960.

of the right to life under what it referred to as “Article 21” would be meaningless because, where there are gross violations, victims cannot seek compensation.

This interpretation of “Article 21” revolutionized the Indian legal climate of victim compensation. It affirmed that compensation is more than a statutory or civil right but a constitutional one. This judicial interpretation provided the basis in which targeting violence or negligence by state actors could aim at seeking compensation from the state as a right rather than purely from the legislative enactments. In that respect, this judicial activism has expanded the law to protect victims when statutory law fails them or is silent all together.

The decision in *Delhi Domestic Working Women's Forum & Ors v. Union of India & Ors*<sup>17</sup> also known as the Delhi Domestic Workers' Case is a crucial legal instrument that handles compensation of victims of sexual violence in India. This case concerned women maids who were sexually harassed on board a train. It would be naive to state that the problem of recognizing the criminal act itself and the status of the victims as a vulnerable group failed; the Supreme Court ordered the State to provide full compensation for the damages. The Court associated the concept of compensation with the right to life enshrined in Article 21 of the Constitution pointing out that compensation is not incidental or additional feature of the process but an intrinsic aspect of justice. It emphasised that compensation is a key requisite in the post offense process, aimed at the restoration of the dignity of the victims and their reintegration. The judgment did not only respond to the needs of all the victims involved but also defined the subsequent matters of compensation for the crime of sexual violence, so it strengthened the interrelated doctrines of the right to life, dignity, and justice.

In *Nilabati Behera v. State of Orissa*<sup>18</sup>, the judiciary emboldened the principles of compensation to the victims. The case was custodial death where Suman Behera, a young man was found dead in police custody. Nilabati Behera, the mother of the applicant filed a writ petition before the Supreme Court for compensation for wrongful death contending that it contravenes Article 21 of the Constitution of India. The Supreme Court noted that the state has constitutional responsibility of the safety of life of persons in the state custody. This Court highlighted the point that even negligence causing loss of life, the loss has to be compensated. Having established the right to life provided for under article 21 of the Constitution as including within its purview not only the prohibition of killings by the state and others but also the positive obligations owed to the citizens of the state, the Court held in regard to the present petition that the petitioner was entitled to compensation. This decision restated the principle of the right to life which enshrines in it the right to institute proceedings in order to seek damages where life has been wrongfully terminated by agents of the state. The Court ordered the state to pay compensation to the petitioner and enhanced the principles of legal state responsibility and the protection of victims' rights under Article 21.

In *Rudal Shah v. State of Bihar*<sup>19</sup>, the apex court ruled regarding compensation of unlawful detention. Rudal Shah had been detained extrajudicially for fourteen years after being acquitted of all those charges. The Court had held that his extra-legal jail term was a sheer violation of his fundamental right under “Article 21” since nobody can be deprived of life and liberty without following the requirement of law. For any type of remedy, the individual could approach the court, and the court could grant compensation as a mode of remedy. The case mattered in part for its proposition that structures might be provided even if common law did not specifically supply a statutory code. The Court said that monetary relief was mandatory to maintain the inviolability of fundamental rights in cases where the state turns violator. Since then, Rudal Shah has been mentioned as precedent for cases of wrongful detention or infringement of any of the provisions in Chapter 4 of the Constitution, which nonetheless strengthens the judiciary's resolve to award compensation to the victims under constitutional law.

Other landmark cases have also played a significant role in enlarging the judiciary's role in ensuring compensation for victims. The Supreme Court, in *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>20</sup>, held that criminal trials and civil remedies are not alternatives to each other. The Court emphasized that a victim could receive interim compensation during the course of a criminal trial. This judgment underscores the judiciary's recognition of the need to address victims' needs immediately and efficiently, particularly considering the lengthy duration of criminal trials.

The Court further expanded the scope of victim compensation by saying and holding in *Suresh v. State of Haryana*<sup>21</sup> that the compensation to victims of heinous crimes like rape and acid attack cannot be restricted only to statutory compensation or government notifications. The court acknowledged that the victims of crimes suffered financial as well as other losses as a result of the crimes. That principally underscored the need for compensation to be a comprehensive remedy and extend beyond physical harm to, at the very least, take account of the psychological trauma.

In the *Hari Singh v. Sukhbir Singh & Ors*<sup>22</sup>, the Hon'ble Supreme Court said that measures of compensation have been postulated as an element necessary to prevent victimization of the victims in a criminal justice system. The Court stated that compensation is the measure which restores offenders and victims, and is a progressive approach to crime with humanity. This decision called on the judiciary to apply power to freely award compensations as a way of realizing the objectives of effective justice thereby creating harmony to the restoration of justice within the criminal legal system.

<sup>17</sup> AIR ONLINE 1994 SC 114.

<sup>18</sup> AIR 1993 SC 1960.

<sup>19</sup> AIR 1983 SC 1086.

<sup>20</sup> AIR 1996 SC 922.

<sup>21</sup> AIR 2015 SC 518.

<sup>22</sup> AIR 1988 SC 2127.

## Compensation Beyond Statutory Duties

For instance, in a case such as *Kewal Pati v. State of U.P.*<sup>23</sup>, the Court directed that the negligent co-prison bars should compensate in the case of a death in the case of the prisoner. Likewise, in *Supreme Court Legal Aid Committee v. State of Bihar*<sup>24</sup>, the courts ordered monetary relief for denying timely medical aid to a prisoner, and thereby an inroad into state accountability.

## Safeguarding Rights of Foreign Nationals

The Supreme Court has opted for compensation to a Bangladeshi rape victim in *Chairman, Railway Board v. Chandrima Das*<sup>25</sup>. It recognized that her rights in public law are known to the State, which must combat the infringement of justice on all, without distinction of nationality.

Custodial death is regarded as a blatant violation of fundamental rights and was adjudicated upon in judgment in *Nilabati Behera v. State of Orissa*<sup>26</sup>. And justice and accountability were equated to include compensation. The Court condemned inhumane acts like prisoner blinding in *Khatri (I) v. State of Bihar*<sup>27</sup>, to say that authorities owe a duty to protect inmates' dignity.

However, compensatory jurisprudential shifts can be sufficiently witnessed after the Bhopal gas tragedy case, i.e., *Union Carbide Corporation v. Union of India*<sup>28</sup>. The Court ruled that victims of environmental disasters were owed massive reparations for having to endure suffering.

Awarding of compensation was emphasized by the Supreme Court in *Manish Jalan v. the State of Karnataka*<sup>29</sup>, when the nature of the crime, the suffering of the victim, and the ability of the convict to pay are looked into. It further argued that the amounts should be adequate but not unreasonable.

In *Ankush Shivaji Gaikwad v. State of Maharashtra*<sup>30</sup>, the Supreme Court, in line with this, said a change of this paradigm has also come about with the focus now being on restitution above retribution and for the victim's right to receive reparation.

The National Legal Services Authority (NALSA) was directed through the case of *Nipun Saxena v. Union of India*<sup>31</sup> to frame the comprehensive schemes for compensation of victims of sexual offenses under the POCSO Act.

The judgment in *S.S. Ahluwalia v. Union of India*<sup>32</sup>, furthered the State's obligation to compensate the families affected by riots and established the duty of the State to protect life and liberty.

In 2020, the Delhi High Court developed the Victim Impact Report to determine the quantum of compensation in *Karan v. State of Delhi*<sup>33</sup>, where compensation was based on the suffering of the victim, prosecution costs, and the convict's income. If the capacity of the convict did not suffice, compensation was paid out of the Delhi Victim Compensation Fund under the Delhi Victim Compensation Scheme, 2018.<sup>34</sup>

Compensatory justice for the victims has always been upheld by the courts through Article 32 or 226 of the Constitution. State accountability for arbitrariness had been reiterated in *Lucknow Development Authority v. M.K. Gupta*<sup>35</sup> and *R. Gandhi v. Union of India*<sup>36</sup> regarding the state's failure during communal riots.

## Challenges in Implementation of Victim Compensation

Among the essential factors, the most massive problem that a state faces while implementing victim compensation schemes in India is that the victims are not aware of their compensation rights. Most of the victims—especially those from the most disadvantaged backgrounds—address themselves with no knowledge of what “Section 396” of the “Bharatiya Nagarik Suraksha Sanhita 2023” requires state governments to establish and implement victim compensation schemes. Further, awareness of the processes to be followed when seeking compensation is usually limited, and this makes these schemes almost redundant. Where legal awareness in most cases is very low, especially in the rural regions, a victim might not even know he or she can request

<sup>23</sup> 1995 AIR SCW 2236.

<sup>24</sup> AIR ONLINE 1991 SC 12.

<sup>25</sup> AIR 2000 SC 988.

<sup>26</sup> AIR 1993 SC 1960.

<sup>27</sup> (1981) 1 SCC 623.

<sup>28</sup> AIR 1992 SC 248.

<sup>29</sup> AIR 2008 SC 3074.

<sup>30</sup> (2013) 4 MPHT 249.

<sup>31</sup> (2019) 2 SCC 703.

<sup>32</sup> AIR 2001 SC 1309.

<sup>33</sup> 277 (2021) DLT 195 (FB).

<sup>34</sup> *Karan v. State NCT of Delhi*, 277 (2021) DLT 195 (FB), available at: <https://judicialacademy.nic.in/sites/default/files/Judgment-Karan.pdf> (Visited on November 13, 2024).

<sup>35</sup> AIR 1994 SC 787.

<sup>36</sup> AIR 1989 MAD 205.

some financial support from the state. This lack of awareness is accompanied by the poor or UT implementation of community sensitization programs that may assist victims about their rights.<sup>37</sup>

Compensation is also restricted by the distribution of legal innovation across physical locations in India. Criminals' victims in other cases live in districts or villages and cannot get access to the authorities in charge or do not have means to go through the long procedure of compensation claiming. The formal justice system remains unaffordable for many victims, especially those whose rights have specifically raised the problem since they are denied justice due to their inability to seek the legal aid they require for recovery and rehabilitation.

---

### Delays in Judicial Processes

Another strong reason for the failure of providing compensation to the victims is the time-consuming court system in India. Remunerations are generally associated with the results of criminal cases; these are cases that may last for years, if not decades. This brings in an aspect makes the victims wait for justice, with compensation being the farther option rather than being provided immediately as a remedy. This has been realized more in situations where the victim is attacked through grievous offenses such as rape, murder, and acid attacks, where the victim requires financial assistance soon after the attack.<sup>38</sup>

---

### Lack of uniformity across states

The diversity of victim compensation schemes in India also constitutes a problem that minimizes the effectiveness of the compensation schemes for the victims. While 'Section 396' of 'The Bharatiya Nyaya Sanhita, 2023', mandates that all state governments are to set up compensation regimes, the sums disbursed and the categories of the beneficiaries differ by a wide measure across the states. For instance, some states have schemes with wider coverage of the crimes for which individuals can claim compensation and a higher limit of compensation than others.

Such disparity means that the victims are not given equal treatment; rather, they are compensated depending on their residence, the most developed state, and the least, the less developed. This disparity is well demonstrated, especially with violence against women and girls, where states with robust gender justice provisions avail better forms of support to victims of rape or domestic violence. At various times, the judiciary has acknowledged the cry for a more consistent formula in the compensation of victims, but this remains a constant topic of discussion.<sup>39</sup>

---

### Insufficient Budgetary Allocation

Many states that furnish them don't fund them sufficiently. Even though the law requires compensation funds to be set up, most states don't fulfill their responsibility to sufficiently fund those accounts, and victims sometimes wait months or don't receive enough in payment. Academics are the biggest beneficiaries of the compensation scheme. In cases like *Laxmi v. Union of India*<sup>40</sup>, the Apex Court directed the state governments to immediately compensate victims of acid attacks. However, this directive has not been well implemented in a few states mainly because of financial constraints.

This, however, is complicated by the fact that compensation schemes are normally underfunded, especially in states with a lean budget. It not only results in delay but also less compensation to the victims; the compensation amount is much less than that needed to meet all their medical expenses, rehabilitation, and other losses incurred out of the victimization. That is why, without the additional section of the budget, it is impossible to speak about effective and generous financial help for the victims.<sup>41</sup>

---

### Bureaucratic Hurdles and Corruption

Other factors that also slow down the compensation process and minimize the efficiency of the compensation schemes are bureaucratic barriers and corruption. Applicants often experience a long process in which they have to provide many and different documents and deal with many offices. This process is particularly difficult whether the victim acts without an attorney or the resources to pursue their claims further. Often victims require several referrals to the government agencies, then at times they find themselves being delayed by bureaucratic procedures.

This is made worse by corruption in the system, where health quacks will go through the door to prescribe unneeded procedures to make a quick buck. The examples where bribes are demanded before processing of the compensation claims are evident, and victims of the crimes are left to battle with the employees of the officials to compensate for the trauma they underwent by denying their legitimate rights. The nature of the administration as well as the

---

<sup>37</sup> Smt. M. Sarojanamma, "Victimology & Compensation", Paper Presentation, available at: <https://cdnbbsr.s3.waas.gov.in/s3ec030b6ace9e8971cf36f1782aa982a7/uploads/2024/12/2024121046.pdf> (Visited on November 18, 2024).

<sup>38</sup> Avinash Mishra and Dr. Upendra Natha Tiwari, "Judicial Approach to Protecting the Rights of Crime Victims and Establishing a Compensation Fund for Their Individual Losses", 9 *IJMS* 175 (2021).

<sup>39</sup> Jhalak Kakkar and Shruti Ojha, "An Analysis of the Vanishing Point of Indian Victim Compensation Law", available at: <https://docs.manupatra.in/newsline/articles/Upload/5C770380-C132-4069-A666-41373B4935FB.pdf> (Visited on November 19, 2024).

<sup>40</sup> (2014) 4 SCC 427.

<sup>41</sup> Akanksha Srivastava, Nagesh Sawant, and Ramratan Dhumal, "Protecting The Vulnerable: A Study Of Victim Rights And Compensation In The Indian Criminal Justice System", 13 (3) *FHI* 8031 (2024).

wastage of compensation, lack of accountability, and transparency plunge the administration of compensation schemes into disarray, which hampers the delivery of justice as numerous victims withdraw from their cases or are compensated after years of waiting.

---

### Comparative Analysis with International Victim Compensation Systems

The comparative analysis of victim compensation systems gives a more refined perspective at how various jurisdictions meet the needs of the victims of crime. When looking at the frameworks of different countries such as United States; United Kingdom the role of science and adamant come to learn the comparative advantages of one type of compensation model over the other and how culture, laws and governments shape justice for victims.

---

#### Victim Compensation in the USA

The United States has a well-developed victim compensation program, which exists mainly under the Victims of Crime Act (VOCA) of 1984. Victim compensation for all intents and purposes is statutory, meaning every state has a program as follows, but all are funded federally. Each state runs its own compensation scheme; however, the federal government contributes to the compensation through the VOCA fund that is generated from the monetary fines and/or penalties that convictions of federal offenders pay. Under the U.S. system of justice, the court-inspired compensation for victims is predominantly rehabilitative, with great emphasis on restitution, and a fair percentage of offenders are ordered to compensate their victims. As for the offenders, who cannot pay for the damages, the victims can apply for state compensation. In American courts, it has been seen that the restitution carries out compensation, a main component of restorative justice, and the victims do not remain mere spectators but active members of the justice.

Over the years, the victim compensation program in the U.S. reimburses its victims on an extensive range of expenses by way of covering their medical bills, wages that they have forfeited, burial fees, and therapy charges. Further, the compensation schemes are available to a larger category of victims, such as survivors of sexual assault, domestic violence, or human trafficking. The courts in the U.S. have over and over provided support to the notion that compensation is required in order for victims to stand on their feet again once more as they rebuild their lives after being on the receiving end of heinous crimes. This represents a legal security for financial compensation together with judicial support that guarantees that the processes involved belong to the reparative and rehabilitating framework.

---

#### Victim Compensation in the UK

In the United Kingdom, however, it is up to the state to actually compensate victims through the Criminal Injuries Compensation Authority (CICA). Since its creation by the Criminal Injuries Compensation Act of 1995, the CICA offers compensation to individuals who have been victims of a violent crime. Unlike in the U.S., where compensation is partly offender-based, in the UK, for example, the state pays the compensation; therefore, there is no mandatory restitution that the offender must make as a precondition for the victim receiving the compensation. The UK government provides finances to the CICA as it deals with the claims of the victims. The involvement of the judiciary in the compensation of the victims in the UK is quite passive compared with that of the United States because compensation is viewed as a state responsibility more than as a function of sentencing.

Victims in the UK are also able to reclaim the physical and psychological harm and pecuniary loss, as well as the general expenses caused by the crime, including medical attention and adaptation of homes. This is true because the UK has a relatively straightforward and easy MC, as the process of applying for the scheme does not involve endless legal procedures. An ineffable contribution from the state is that it intervenes positively in the compensation process because compensation does not require immense legal involvement, therefore those affected are supported accordingly.

---

### Conclusion

Our analysis of the development of the judicial approach to victim compensation in India aims to show that in legal terms we have moved on from punitive justice to a framework that includes restorative justice principles. Exemplars of history, constitutional imperatives, and statutory notice oppose a just system of compensation for victims. The judiciary in India played a very proactive role by delivering a verdict in landmark cases like *Rudal Shah v. State of Bihar*<sup>42</sup>, *Nilabati Behera v. State of Orissa*<sup>43</sup>, and *Laxmi v. Union of India*<sup>44</sup> to provide rights to the victims when failure occurs at a state or systemic level. Being fundamentally important, these rulings have substantially inflated the interpretation of Article 21 to encompass compensation as a constitutional right, thus placing compensation into the context of fundamental rights.

Although progress continues to be made, the compensation schemes are not implemented effectively. Delays in judicial processes, insufficient budgetary allocations, "victims' low awareness, bureaucratic problems, and inter-state disparities, which weaken the effectiveness of the victim compensation mechanism. Although the Bharatiya Nagarik Suraksha Sanhita, 2023, among other statutory provisions, provides for compensation schemes, practical infirmities show the need for systemic reforms.

---

<sup>42</sup> AIR 1983 SC 108.

<sup>43</sup> AIR 1993 SC 1960.

<sup>44</sup> (2014) 4 SCC 427.



Comparative learning from the United States and the United Kingdom showcases best practices such as state-funded schemes and easy processes. One especially suitable model for integrating compensation with rehabilitative justice is presented by U.S. restitution and victim-centered judicial involvement. The UK's Criminal Injuries Compensation Authority also provides an example of an efficient way for state-led compensation frameworks to meet victims' needs.

Finally, the Indian judiciary has created the right foundation for compensating victims, although implementation gaps need to be addressed and best global practices should be adopted to make victims' justice a reality. Once enhanced awareness, uniformity in schemes, and timely disbursement of compensation can be ensured, then victims should not be secondary in the criminal justice process but central to its purpose.

---

## Suggestions

Based on the challenges that hindrance implementation of victim compensation in India, several practical measures aimed at achieving efficiency, uniformity, and fairness in dispensation of justice to victims can be proposed.

- Develop targeted program of awareness aimed at victims, especially in rural and marginalised areas, about their rights under the Bharatiya Nagarik Suraksha Sanhita, 2023 and the way they can seek compensation.
- Reduce documentation needs and bring in single window clearing system to eliminate bureaucratic hurdles simplifying procedural requirements to file compensation claims.
- Allocate sufficient funds at state and central level to ensure timely payment of compensation.
- Set up uniform guidelines on all the states to scrap away the issue of disparities in the amount of compensation or coverage that has seen different victims enjoy differently.
- Install means to make expedient disbursement of interim compensation to victims of heinous crimes (rape, custodial deaths, acid attacks) irrespective of the status of the trial.
- Design digital platforms, which people can use to file and track their compensation claims online, and to provide them with real time update as opposed to physical visits to government offices.
- Create independent oversight bodies who will oversee the implementation of compensation schemes, investigate complaints, and also supervise the fund disbursement.
- Expand the availability of free legal aid for victims and guide them in the compensation process which otherwise would burden that individual, facing with illiteracy or lack of resources.
- Train judicial and administrative personnel about victim 'centered' approaches including empathy in handling compensation cases effectively.
- Compensation rights to foreign nationals victimized in India must be extended and compliance with international human rights standards upheld.
- Victim compensation schemes in India can be made more accessible and equitable, and more impactful, with these measures implemented—a justice system which puts victim's rights and rehabilitation on a pedestal.