

Victim Compensation under Criminal Justice System of India - A Critical Study

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Abstract:

The victim compensation system in India has started after various law commission report and Judicial Pronouncement in the year 2009 through periodical amendment to the CrPC by inserting the sections 357A of CrPC in the year 2009 now replaced with section 396 of BNSS, which mandates and institutionalizes a strong Victim Compensation Scheme, the state government in coordination with the District and State Legal Services Authorities to ensure the rehabilitation and monetary support to the victims and or their dependants/families, irrespective of offenders acquittal or convictions. The scheme empowers the principles of restorative justice facilitating the interim and final compensation, ensuring the victims rejoicing into the society. The state in purview of the provisions of BNSS empowers the competent Magistrates to recommend the state to enhance the compensation amount, if the Magistrates feel that the awarded compensation is inadequate. It also empowers District and State Legal Services Authorities to act suo moto in cases where judicial recommendations are absent. By inserting victim-centric jurisprudence, the BNSS advances the goals of substantive justice, human dignity and social welfare within the criminal justice system. This abstract explores the legal, philosophical and procedural dimensions of victim compensation under the BNSS, highlighting its transformative potential in Indian penal policy and discussed about the various special laws which defines about the victim compensation in various other judicial pronouncements.

Key Words:

Welfare of Victim, compensation, CrPC, BNSS, Criminal Justice System, Special laws, Central Victim Compensation Fund (CVCF)

Introduction:

Generally focusing on the victim welfare and safety, the state and the country measures for the welfare of the victim is deceiving due to the lack sufficient welfare to the victims. Presently, the victim is a neglected party in criminal justice system. The role of the victim of a crime in the present criminal justice system is limited to that of a witness for the prosecution even though he or she is a person who has suffered harm such as physical, mental, emotional, economical or impairment of his/her fundamental rights. The concentration of the State is merely on the offender, to protect his rights, his human rights, fundamental rights, fair trial, the protection from custodial harassment, etc. faced by victims. All the problems of the accused are taken care of by the State ignoring the trouble of the victim. The resources are spent by the State to take care of the accused other than the victim. The accused will have to be treated with dignity as he is deemed to be innocent till he is convicted; but, understanding the fact that the victim, against whom the crime was committed, was put to irreplaceable pain

and sufferings, mental agony and punishment alone was not sub serving the needs of the victim. It is necessary to give a dominant role of the victims of crime, as otherwise, the victim will remain unhappy and may develop a tendency to take law into his own hands in order to seek revenge and pose a serious threat to the maintenance of Rule of Law, essential for survival of democracy. It is flaw of our criminal law jurisprudence that victims of crime and the distress of their dependents of the victim do not attract the attention of law. Indeed, the victim compensation is still the vanishing point of our criminal law. The remedies currently available under the law are limited, uncoordinated and reactive. There is a lacunae in the present system, which must be cured by the legislature and executed by the executive body of the state with involvement of the legislative policies. The present paper attempts to evaluate and examine the law governing victim compensation under criminal justice system of India and the various schemes were introduced by the state and centre. The paper also highlights the need for inclusive law to provide assistance to crime victims including the protection of victims and various judicial pronouncements regarding the victim compensation.

Historical Context and Evolution in India

Victim compensation in India has developed from ancient compensation practices to modern legal frameworks. In modern legal frames the victim compensation has been initiated in New Zealand followed by several countries. The victim compensation system in India has started after various law commission reports such as 154th Law Commission Report suggested a method for Victim Compensation Scheme as an immediate support to the Victim in certain cases suggested to extend the relief to the family members of the Victim. Malimath Committee suggested to establish the victim compensation fund for the welfare of the victims, victim compensation is a state obligation whether the accused is arrested or not, acquitted or convicted. A Victim Compensation Fund can be created under the victim compensation law and the assets impounded in organised crimes can be made part of the fund and various Judicial Pronouncements paved a way to introduced special provisions regarding to victim compensation in the year 2009, through periodical amendment to the CrPC by inserting the sections 357A of CrPC in the year 2009 now replaced with section 396 of BNSS, which mandates the victim compensation scheme.

Victim Compensation Guidelines and Welfare:

After occurrence of a crime, victims are often left with scars that go beyond physical pain. They face psychological trauma, social disgrace and overwhelming financial burdens. In such a situation, justice cannot merely mean punishing the offender it must also mean healing the wounded. The Central Victim Compensation Fund (CVCF), introduced by the Ministry of Home in the year 2015 and revised in 2017, emerged as an effort by the Indian State to identify and uphold this wider vision of justice. It was born out of a pressing need to support the victims of crimes especially children and women, who had long remained marginalised in criminal proceedings.

The guidelines of the CVCF aimed to normalise the compensation amounts across country. It prescribed as minimum amounts for heinous crimes such as rape, acid attacks, human trafficking and child sexual abuse. For instance, rape survivors were to be compensated with a minimum of ₹4–7 lakhs, acid attack victims with ₹5–10 lakhs depending on the extent of injury, and victims of human trafficking and child sexual abuse with a minimum of ₹2 lakhs and ₹1–2 lakhs respectively. The guidelines clearly stated that these are only the minimum amounts, and states are at liberty to enhance the compensation based on the severity of the offence and the particular circumstances of the victim. They could not go below these specified amounts.

Legal Provisions Relating To Victim Compensation under CrPC and BNSS:

The provisions under BNSS i.e., section 396 of BNSS, 2023 resembles section 357A of CrPC mandates the preparation of a scheme by the state government, in coordination with the Central Government, to provide funds for compensation to the victim or his or her dependents who have suffered loss or injury due to a crime and require rehabilitation. The clause also allows trial courts to make compensation recommendations in circumstances where the compensation awarded under clause 357 now 395 of BNSS, 2023 is insufficient or the victim requires rehabilitation. In circumstances when the culprit is not discovered or recognised, and no trial is held, the clause indicates a shift towards a state-funded victim compensation plan, which is a very progressive and appreciating step. The Legal Services Authority is better qualified to calculate a victim's loss and make more appropriate decisions than the courts themselves. The clause also states that the State or the Strict Legal Services Authority.

As the section 397 of BNSS, 2023 resembles the section 357C of Cr PC which mandates the medical treatment to the victims from the private medical practitioners including Hospitals run by Central and State Government shall immediately provide treatment free of cost to the victims of any offences under section 64, 65, 66, 67, 68, 70,71 or (1) of 124 of Bharathiya Nyaya Sanhitha, 2023, or 4,6,8 or 10 of Protection of Children from Sexual Offences Act,2012 and shall immediately inform the Police of such incident.

As per the section 399 of BNSS resembles section 358 of Cr PC illegal arrest without any ground of offence on the arrested person, when produced before the concerned Magistrate, than the Concerned Magistrate shall award the compensation up to Rs.1000/-.

Compensation to Victims under Special Laws:

Probation of Offenders Act, 1958: Section-5 of this Act embodied the idea of compensation and prescribed that while directing the release of an offender on probation for good conduct, the Court may order such person for payment of compensation to the complainant/victim, for the injury or loss caused by his act.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989: Under this Act, compensation to victim of caste-based atrocities is obligatory, apart from several other reliefs which depend upon the condition and kind of atrocity caused. Monetary compensation is decided according to the severity of the offence.

The Protection of Women from Domestic Violence Act, 2005: Section-22 of this Act authorizes the Magistrate to direct the payment of compensation and damages for physical and mental injuries caused by domestic violence. This provision concedes the harm caused upon the victim and provides a mechanism for getting financial redress.

Motor Vehicles Act, 1988: This Act enshrined the idea of compensatory jurisprudence for the benefit of victims of motor vehicle accidents. It mandates the owner of the vehicle to pay exact sum of compensation if his negligent act has caused in the death or permanent disablement of a person and specific provision for such compensation have been included in the Act.

Judicial Response on Victims Compensation:

In *Ankush Shivaji Gaikwad v State of Maharashtra* (2013) 6 SCC 770 and the Supreme Court made obligatory for trial Courts to consider grant of interim compensation and to give reasons for not recommending compensation to the victims of the crime

In *Rudal Sah V State of Bihar* AIR 1983 SC 1086

The petitioner was remained in illegal detention for more than 14 years. After notices were issued and when the petition was taken up for hearing, the Government informed the court that the petitioner has been released from custody. Under the general rule, the writ petition had become infructuous. Though, the Apex Court issued notice on the supplementary relief and after hearing the parties deemed it fit to grant a compensation of Rs. 30,000/-. This was perhaps the first case the writ court in India granted compensation for illegal detention.

In *MC Mehta V Union of India* AIR 1987 SC 965

The apex Court held that the power under Article 32 is not confined to preventive measures when fundamental rights are threatened to be violated or violated, but it also extends to remedial measures including compensation when the rights are already infringed.

Mallikarjun Kodagali v. State of Karnataka (2018)

This judgment expanded on an important legal aspect contending that victims can now appeal against an acquittal or a light sentence. The court said that the law had changed in 2008 to give victims more voice, and compensation must now be actively considered by courts in every case not just when convenient. It was part of a larger effort to treat victims as stakeholders in justice.

Suresh v. State of Haryana (2014)

This was a major reality check on implementation. The court openly questioned that Section 357 just doesn't work well enough in many cases. It's tied to conviction, it depends on the accused's wealth, and most courts weren't gathering enough information to apply it properly. It also brought back the idea of interim compensation, especially when victims need

immediate help. This decision made it clear: the system needs to develop, and victims must be treated as people who need support not just as evidence.

Nipun Saxena v. Union of India Cri MP 16041/2014 pertaining to Apex Court directions NALSA drafted the Grant of Compensation to Women Victims/ Survivor of Sexual Assault/Other Crimes 2018. Important features of the Scheme are, (i) Online application for compensation. (ii) Woman victim eligible for compensation from multiple schemes, (iii) The enquiry to be completed within 60 days & (iv) In Acid Attack case, and in all other deserving cases, the Secretary DLSA to grant interim compensation. Subsequently Supreme Court laid down that NALSA's Compensation Scheme for Women/Victims should function as a guideline to the Special Courts for the award of compensation of victims of child sexual abuse under Rule 7 until the Rules are finalized by the Central Government.

In *Re Alarming Rise in the Number of Reported Child Rape Incidents [Suo Motto Writ (CrI) 1 of 2019]* The Apex Court granted as an interim measure compensation of Rs. 25,00,000 lakhs to the rape victim and called for reports from States and UT as regard payment of compensation including interim compensation to victims of crime.

Challenges

Lack of uniformity in awarding the victim compensation.

State victim compensation schemes are non-uniform, some states fail to comply with the centre's guidelines by providing inadequate compensation comparative to other states and the victims continue to suffer from various other inadequacies, resulting in a grave prejudice to the victims of crimes differing in their nature and gravity. Moreover, there is no systematic method for classification of the victim based on the nature of the crime or the age of the victim. Some states took the age of the victim into account while others did not. There are lacunae in spreading the awareness among the victims about their rights.

Funds & Disbursement: The State treasury must cater for contingencies and be supportive of the expenditure incurred by the victims but failed to adhere to the centre guidelines in timely manner.

Conclusion:

The main object of criminal justice administration was to punish the offender. In accordance with this objective, the victim often got disregarded. The 'victim' -who is the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as an audience. In fact, domestic legislations, several international declarations, and Courts across the globe, recognized the 'victim' and they raised voice together for his right of assistance, representation and compensation. In India, the right of a victim to get compensation has not been clearly mentioned in the highest law of the land, i.e. the Constitution, thereafter, it can be interpreted from various provisions, keeping in line the principles of a welfare state. After much deliberation, as mentioned above, the present legal provisions with regard to the victim's right of compensation have reached an important stage,

wherein, various special laws also recognize this right along with the BNSS as there no modifications taken place according to the present regime. The provisions for the rescue of the victim are restricted relief with the power confined boundaries of the concerned Magistrates. The section 399 of BNSS has excluded the Police from the groundless arrest of a person, as the police plays a vital role in causing arrest of a person, due to which the groundless arrested needs to face the negative consequences which effect his status in the society. The treatment to victim is limited to the first aid but not the complete medication till the recovery of the victim. There are still certain challenges that act as an impediment for the effective realization of this right as enshrined by our judiciary in various cases. Also, in addition to the formation of such policies, their implementation in true spirit is the need of the hour to provide the victims with adequate relief. The compensation to the victims of crime should not be limited to monetary compensation, but extend to rehabilitation measures as well. Therefore, to conclude, it would be appropriate to state that we are on the right track of recognizing the rights of the victim, wherein, the right has been recognized by the Executive, the Legislature, and the Judiciary with the constructive efforts of all three organs of the government, we can endeavour for the actual realization of the essences of our Constitution to ensure the spirit of humanity.

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