
VICTIM COMPENSATION SCHEMES IN INDIA

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ABSTRACT

Victim compensation is an important part of the criminal justice system and victims' rights. Traditionally, the justice system primarily focuses on punishing the offender, but less importance was given to the suffering experienced by the victim and their loss. Victims may have suffered mental trauma, financial loss, medical expenses, and loss of life also. Providing compensation to victims does not completely reverse the consequences of the offence but may provide assistance for recovery and rehabilitation. The Bharatiya Nagarik Suraksha Sanhita 2023 has strengthened the legal framework for victim compensation, mainly through sections 395 and 396, along with section 397, which provides immediate medical treatment to victims. The article covers the concept and legal framework of victim compensation in India and the international framework for providing compensation to victims, the role of state and district legal service authorities in India, and the major issues and challenges faced in implementing victim compensation schemes. The article also addresses the timely implementation, uniformity, simplified process and proper coordination are vital to make the victim compensation scheme an effective measure to restore the condition of victims.

Keywords: Victim compensation, Victim-centric criminal justice system, Rehabilitation, State and district legal service authority, Compensation schemes.

INTRODUCTION

Whenever any offence is committed, the criminal justice system seeks to deliver justice by punishing the offenders in accordance with the law. But here the main question arises is whether punishing the offender serve justice to the victim or victim's family?

The traditional legal system has been largely offender- and punishment-centric, believing that punishing the offender for the offence would provide justice to the victim. Punishing offenders is essential to establish liability and deter future offences. The offence may have caused the victim and their family not only physical injury but also emotional, mental, financial harm, or even loss of life. So, punishing the offender only would not provide justice to the victim or their family.

Therefore, a completely offender-centric justice system is not effective in serving justice to the victim; the focus should be on developing a victim-centric criminal justice system. One major way to do this is by providing victim compensation.

The main purpose of providing compensation to the victim is not only to provide financial assistance but also to help them recover the loss suffered due to the offence committed by the offender. Although compensation cannot completely reverse the effect of the offence, it can provide financial support to some extent.

LEGAL FRAMEWORK IN INDIA

Under section 2(wa) of the Criminal Procedure Code (CrPC) and section 2(1)(y) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) a "victim" means a person who has suffered any loss or injury caused by the reason of the act of omission of the accused person and includes the guardian or legal heirs of such victim.¹

The BNSS gives the statutory recognition to the concept of the victim compensation. Under section 395 of the BNSS, a sentence of payment of compensation in the form of a fine may be imposed on the person who has actually suffered the loss or injury because of the offence committed by the offender.² Further section 396(1) of the BNSS particularly provides for the victim compensation scheme, according to which the State Government in coordination with

¹ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 2(1)(y).

² Bharatiya Nagarik Suraksha Sanhita, 2023, s. 395.

the Central Government shall prepare scheme for providing funds for the purpose of compensation to the victim or his dependent who have suffered loss or injury as a result of the crime and who requires rehabilitation.

Under section 396 of Bhartiya Nagarik Suraksha Sanhita (2023), (BNSS), the District Legal Services Authority and the State Legal Services Authority also play an important role in the victim compensation scheme in India because they decide the quantum of the compensation to be awarded to the victim when the recommendation is given by the court for providing such compensation. The compensation can also be provided even when the offender is not traced or identified, by making an application to the State or the District Legal Service Authority by the victim or his family to award the compensation. The State or the District Legal Services Authority is required to complete the enquiry process within 2 months of a recommendation from the court or the application received from the victim or his family and award adequate compensation to them. The state or district legal service authority may also order the immediate first aid or medical treatment for the victim free of cost or any other interim relief as the authority deems fit.³

THE INTERNATIONAL LEGAL FRAMEWORK FOR VICTIM COMPENSATION

International legal frameworks have helped many nations develop laws for victim compensation and recognise it as a legal duty. The United Nations Declaration of basic principle of justice for victims of crime and abuse of power 1985 says that the victim of an offence should receive adequate compensation for the loss suffered by them, if the full amount of compensation cannot be availed from the offender then it is the duty of the state to provide financial support to the victim and his family through government-funded schemes.⁴ The Rome Statute of the International Criminal Court 1998 also provides for victim compensation. It empowers the Court to establish principles for compensation and rehabilitation of the victim and also establishes a trust fund for victims, which is maintained by the Assembly of States Parties to benefit them and their families.⁵

³ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 396.

⁴ United Nations, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34 (1985).

⁵ Rome Statute of the International Criminal Court, 1998, arts. 75, 79.

JUDICIAL DECISIONS AND CASELAWS

Judicial decisions played a crucial role in shifting the criminal justice system from offender and punishment centric to victim centric system over time and recognising the importance of compensation schemes for the benefits of the victims and their dependents. Some of the important case laws related to it are as follows:

1. Rudal Sah versus state of Bihar

Facts of the case:

Rudal Shah was convicted in Bihar in a murder case allegation and was sentenced for imprisonment. He was acquitted by the Sessions Court of Muzaffarpur on 3 June 1968. Even after the acquittal, he was not released from prison for more than 14 years. After being released in 1982, he filed a petition in the Supreme Court under Article 32 against the illegal delay in his release from prison.

Issues of the case:

The key issues that rose before the court were the following:

1. Whether compensation can be granted for the violation of the fundamental right under the petition of article 32.
2. Whether the illegal detention after the acquittal amounts to a violation of Article 21 of the Constitution, which is the right to life and personal liberty.

Judgment of the case:

The Supreme Court observed the petition and upheld that the imprisonment of the petitioner after acquittal for 14 years is completely unjustified and amounts to a violation of Article 21 of the Indian Constitution. Court also held that mere releasing him from the prison is not sufficient to deliver justice to him. So, the court ruled that monetary compensation should be awarded to him for the violation of his fundamental right granted under article 21.⁶

⁶ Rudul Sah v. State of Bihar, (1983) 4 SCC 141.

2. *Hari Kishan v. Sukhbir Singh (1988)*

Facts of the case:

In this case a dispute arose between two groups near a tubewell in 1982. The accused who were armed with Spears and sticks attacked the victim. The attack resulted in permanent impairment of power of speech of the victim. The session court convicted the accused. Later, the High Court acquitted some accused and convicted others, then released the convicts on a good conduct probation. The court also provided compensation to the victim.

Issues of the case:

The key issues before the supreme court were the follows-

1. Whether the release of the convicts on probation of good conduct was valid.
2. Whether the compensation provided to the victim was legally valid and whether the amount was adequate.

Judgment of the case:

The supreme court appealed the release of convicts because of the reason that there was no sufficient intention or knowledge to commit the murder.

But the Supreme Court also held that the compensation provided to the victim was not sufficient, so it ruled that the amount of compensation awarded to the victim should be more. It also ruled that the compensation should not be treated only as an option but should be considered as necessary by the courts for the victims.⁷

3. *Laxmi v. Union of India (2014)*

Facts of the case:

Lakshmi was an acid attack survivor who filed a petition in the Supreme Court under a writ petition seeking protection and rehabilitation for the victims of acid attacks. The petition focused on the easy availability of acid in shops in the market, which causes severe damage,

⁷ Hari Kishan v. Sukhbir Singh, AIR 1988 SC 2127.

and also focused on the physical, mental and financial trauma through which victims of acid attack and their families go through.

Issues of the case:

The key issues which were addressed in this case are as follows:

1. Whether there should be regulation on the sale of acid in the market.
2. Whether the victims of the acid attack are entitled to get compensation.
3. Whether there should be uniformity in the compensation granted to the victims of acid attack throughout the nation.

Judgment of the case:

The Supreme Court held that there should be proper regulation in the sale of acid and proper maintenance of transactions related to it. An important principle set in the judgment is that at least rupees 3 lakh should be awarded to the victim of the acid attack by the respective state or union territory government. Rupees 1 lakh should be awarded within 15 days of the act to facilitate the medical expenses of the victim, and the remaining 2 lakh rupees should also be provided as soon as possible and within 2 months.

This is a landmark judgment related to the victim compensation scheme in India, which specifically refers to victims of acid attacks and brought uniformity in the amount of compensation awarded to such victims.⁸

4. *Mukesh & Anr. v. State (NCT of Delhi) & Ors.***Facts of the case:**

In 2012, when a 23 years old woman and her male friend boarded on a private bus in Delhi, she was gang-raped and brutally assaulted by 6 persons which also included a Juvenile. She suffered severe injuries in the incident and lost her life. This incident led to a widespread protest throughout the country.

⁸ Laxmi v. Union of India, (2014) 4 SCC 427.

Issues of the case:

1. Whether the accused are guilty of rape and murder.
2. Whether the rarity of the offence justifies the death penalty under the doctrine of rarest of rare crime.
3. What reforms should be made to improve the protection of women against sexual offences in the country.

Judgment of the case:

The supreme court upheld the death penalty to the four adult offenders of the offence considering it as the rarest of rare crime rejecting the appeals of the four convicts.

The case also plays a significant role in victim compensation, highlighting the need for financial assistance, medical care, rehabilitation and support for victims of sexual violence. The Government of India also established the Nirbhaya Fund in 2013 to support the safety and protection of women. The scheme reduced massive disparities in the compensation provided to such victims across different states of India.⁹

MINIMUM AMOUNT OF COMPENSATION

The amount of compensation varies depending on the state and offences, but there is a certain category of offences for which the Ministry of Home Affairs has fixed the minimum amount of compensation under the Central Victim Compensation Fund (CVCF) Guidelines 2016. They are the followings:

1. Acid attack - Rs. 3 lakhs
2. Rape - Rs. 3 lakhs
3. Physical abuse of minor - Rs. 2 lakhs
4. Rehabilitation of victim of Human Trafficking - Rs. 1 lakh

⁹ Mukesh & Anr. v. State for NCT of Delhi & Ors., (2017) 6 SCC 1.

5. Sexual assault (Excluding rape) - Rs. 50,000
6. Death - Rs. 2 lakhs
7. Permanent Disability (80% or more)- Rs. 2 lakhs
8. Partial Disability (40% to 80%) - Rs. 1 lakh
9. Burns affecting greater than 25% of the body (excluding Acid Attack cases) - Rs. 2 lakhs
10. Loss of foetus - Rs. 50,000
11. Loss of fertility - Rs. 1.5 lakhs.¹⁰

CONTEMPORARY ISSUES AND CHALLENGES

Victim compensation is not merely a financial payment but it is intended to help the victims to recover from the consequences of crime and to restore their dignity. Though victim compensation is very important and plays a crucial role in supporting the victim and their family for the loss they suffered, the implementation of the scheme is not done effectively across the territory. It faces many issues and challenges. Some of these challenges are listed below.

1. Delay in paying the compensation amount.

This is one of the major challenges in providing compensation to the victim. The amount needed by the victim may be for medical treatment, psychological counselling, temporary accommodation, education or loss of income, which are immediate requirements to be fulfilled for them. However, disbursement may take a long time because of the lengthy administrative process, documentation, and coordination required among different authorities.

Many times, the disbursement process of the compensation takes several years to be provided to the victims. This delay in the process may reduce the effectiveness of the compensation scheme for the victim who required immediate financial assistance for the support.

¹⁰ Ministry of Home Affairs, Government of India, Central Victim Compensation Fund Scheme, 2016.

2. Lack of knowledge or awareness among victims.

The provisions are made by the statute to provide compensation to the victims, but awareness among victims of these provisions is very low. This issue exists mainly among people in the poor section, socially disadvantaged communities and people living in rural areas. Victims may not be aware of the process to apply, the responsible authority, the requirements for documentation and the provisions.

3. Lack of uniformity amount States

There is a lack of uniformity among States in implementing the victim compensation schemes. Victim compensation is provided under section 396 of BNSS in India but the scheme is implemented through state specific schemes. The differences between the states involve the differences in the amount of compensation, the categories of offences that are covered under the scheme, eligibility documentation process, time taken for the process, etc. This is a problem because it creates a geographical inequality in access to justice among victims of different states.

4. Determination of an adequate amount.

The calculation of the loss suffered by the victim is not easy in every case. The cost of medical expenses, treatment and transportation loss of wages can be calculated easily but there are many other losses also which are difficult to calculate like permanent disability, mental trauma, loss of life, damages due to acid attack, educational disruption, etc. Therefore, there is a need for proper care and caution by the respective authorities while deciding the amount of the compensation to be provided to the victims.

5. Procedural difficulties.

The victims may face procedural difficulties for obtaining the compensation. It is a very complex process. It requires a lot of documentation, approval from different authorities and cooperation among them. It becomes an additional burden for the victims to go through these processes to obtain the fund after suffering from a lot of psychological trauma or financial loss.

FINDINGS AND SUGGESTIONS

Based on the above study of victim compensation India the following findings are derived:

1. Victim compensation is essential to deliver justice

It is found from the study that only punishing the offenders cannot completely sell justice to the victim and their family may have suffered physical emotional and financial loss. So, it is important to provide compensation for financial assistance and support their rehabilitation.

2. Ineffective implementation

The legal framework is made to provide compensation to the victim but its effectiveness is still in question because of the delays complicated procedure lack of awareness among victims and lack of coordination between different authorities.

3. Difficulty in deciding the quantum of compensation

The amount of compensation can be easily calculated when the loss suffered by the victim is financial or includes expenses and loss of wages, but when it is about permanent disabilities, psychological trauma and loss of life, then it will be difficult to decide the amount. Therefore, there is a need for proper assessment provide sufficient compensation.

4. Increase in victim centric approach

Earlier, the criminal justice system used to be offender-centric, but it can be seen from the study that there is a change in the approach of the criminal justice system, which is recognising the need to focus on the victim-centric approach, twin justice for the victim, and not only focus on punishing the offenders.

5. Need for uniformity in compensation

Statutes are made to provide compensation, but there is a major problem because of differences in the approach among different states and lack of uniformity in the amount provided as compensation.

Some suggestions for improving the victim compensation in India are the following:

1. The application process should be made simple and easy to understand by reducing unnecessary documentation and process.

2. Interim compensation should be immediately provided to the victim which would help them to meet the medical expenses and fulfil other emergency needs.
3. Systematic analysis should be made to determine the amount of compensation to be awarded to be commensurate with the loss they have suffered, even when the amount is not easy to calculate, as in the case of mental trauma.
4. The compensation scheme should not be treated only as an option but should be given reasonable importance because it is very significant in providing justice to the victims and their families.
5. There should be regular monitoring of the compensation amount provided to the victims based on the inflation rate.
6. The coordination should be improved between the authorities involved in providing the compensation, like police, hospitals, district legal service authorities, and state legal service authorities.
7. The system still lacks transparency, so there is an urgent need to increase transparency in the process and allow the victims to track the status of their compensation application.
8. Uniformity in the amount provided to the victim and the process associated with the application is required to ease accessibility and reduce discrepancies.
9. Special attention is required to vulnerable victims like children, disabled people, victims of sexual offences and acid attack victims.
10. Free medical treatment and immediate relief should be ensured.

CONCLUSION

Victim compensation is an important part of the fair criminal justice system. The traditional approach of giving importance only to the punishment of the offenders does not fully address the physical, mental and financial loss suffered by the victim and their family. Compensation cannot reverse the damage caused by the offence, but it can surely provide the necessary financial assistance and contribute to the recovery and rehabilitation of the victim and his dignity.

The provisions of Bhartiya Nagarik Suraksha Sanhita 2023 signify the importance of victim compensation. The state and district legal service authorities play a crucial role in providing the appropriate compensation and ensure interim relief. Judicial decisions topics the increasing recognition of the rights and needs of victim. The Nirbhaya case highlighted the need for a strong mechanism for protection, support and rehabilitation of serious sexual offences.

However, the effectiveness of the victim compensation scheme depends on its implementation. There are various challenges like delay in disbursement, lack of awareness, lack of coordination and difficulty in determining the adequate amount. Therefore, these challenges must be addressed to implement the victim compensation scheme effectively in India.

REFERENCES

STATUTES

1. Bharatiya Nagarik Suraksha Sanhita, 2023.
2. Constitution of India, 1950.
3. Code of Criminal Procedure, 1973.

CASES

4. Rudul Sah v. State of Bihar, (1983) 4 SCC 141.
5. Hari Kishan v. Sukhbir Singh, AIR 1988 SC 2127.
6. Laxmi v. Union of India, (2014) 4 SCC 427.
7. Mukesh & Anr. v. State for NCT of Delhi & Ors., (2017) 6 SCC 1.

INTERNATIONAL MATERIALS

8. United Nations, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (1985).
9. Rome Statute of the International Criminal Court, 1998, arts. 75 and 79.

GOVERNMENT MATERIALS

10. Ministry of Home Affairs, Government of India, Central Victim Compensation Fund Scheme/Guidelines, 2016.