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Victim Compensation in India: From Statutory Promise to Institutional Failure

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ABSTRACT

Victim compensation in India represents a significant yet inadequately realised promise of contemporary criminal justice reform. The Indian criminal process has traditionally conceptualised crime as an offence against the State, placing the accused, the prosecution and the court at the centre of criminal adjudication while the victim remains procedurally marginal. To redress this imbalance, statutory provisions such as Sections 357, 357A, 357B and 357C of the Code of Criminal Procedure, 1973, and their reframing in Sections 395, 396 and 397 of the Bharatiya Nagarik Suraksha Sanhita, 2023, introduce compensation, rehabilitation and immediate medical treatment as elements of victim justice, while a series of landmark judgments has further enriched the normative framework. This paper contends that victim compensation in India is failing not because of legislative silence but because of administrative invisibility, judicial inconsistency, lack of awareness, delayed disbursement, the unevenness of State schemes, poor hospital compliance and the absence of a rights-based rehabilitative model. It concludes that victim compensation must be understood not as an act of discretionary financial support but as an integral, victim-centred and enforceable component of the criminal justice system.

Keywords: *victim compensation, criminal justice, victim rights, CrPC, BNSS, restorative justice, legal aid, institutional failure, India.*

I. INTRODUCTION

A criminal justice system is often judged by the fairness it extends to the accused and the severity with which it punishes the offender. Yet this is only one dimension of evaluation, and it cannot be allowed to eclipse the position of the victim. A crime offends not only public order but also the body, dignity, security, livelihood and social life of the victim. The customary police procedure inherited from the colonial era reduced the victim of a crime to an informer or witness and denied that person any role as a rights holder. The victim's suffering remained incidental to the legal dispute as the State prosecuted, the accused defended, and the court rendered a decision.

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The aim of victim compensation is to fill this structural overshadowing. It accepts that punishment must be inflicted on the wrongdoer, but recognises that punishment alone is not always sufficient to heal the victim's wounds. A conviction satisfies the retributive needs of the State, yet it does not meet the cost of medical attention, lost wages, counselling or relocation. Victimological scholarship has accordingly insisted that victims must be recognised and included in the criminal process, treated with dignity and provided with material assistance.¹ Indian law has adopted this stance. Sections 357, 357A, 357B and 357C of the Code of Criminal Procedure, 1973, together with Sections 395, 396 and 397 of the Bharatiya Nagarik Suraksha Sanhita, 2023, provide statutory backing for compensation, rehabilitation and immediate medical aid.² Judicial decisions have repeatedly reaffirmed that compensation is not a charitable act but an integral part of criminal justice. The way victim compensation operates in practice, however, is markedly different. Victims are frequently unaware of their rights, courts are not always mindful of the compensation to be awarded, the District Legal Services Authorities take too long to process claims, schemes vary across States, and emergency medical or rehabilitative assistance is not always linked to monetary compensation.

The central argument of this paper is that the failure of victim compensation in India is not merely a deficit of legal creativity. It is an institutional translation failure: although the victim is named in the statute, the victim often disappears in the course of the procedure.

II. VICTIM COMPENSATION AS A COMPONENT OF CRIMINAL JUSTICE

Victim compensation should not be regarded as a welfare benefit. The concept rests on the principle that crime causes harm that can persist long after the formal trial has ended. An acid-attack victim may need multiple surgeries, a survivor of sexual violence may need counselling and relocation, a trafficking survivor may need livelihood support, and the family of a deceased victim may need immediate financial assistance. In each instance, punishment alone cannot address the victim's needs.

Much of the literature on restorative justice has consistently maintained that justice should respond to harm rather than to legal guilt. Examining the use of restorative justice, Shapland and colleagues observe that it concerns the place of the victim in the criminal process and what can be done to repair the situation.³ Wemmers and Cyr likewise indicate that the victim seeks

¹ Jonathan Doak, *Victims' Rights in Criminal Trials: Prospects for Participation*, 32 J. L. & Soc'y 294 (2005); Jo-Anne Wemmers, *Victims' Rights Are Human Rights: The Importance of Recognizing Victims as Persons*, 15 TEMIDA 71 (2012).

² The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India), §§ 357, 357A, 357B, 357C; The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), §§ 395, 396, 397.

to be involved, treated with respect and recognised.⁴ Compensation is therefore both material and symbolic. Its material aspect aids recovery; in symbolic terms, it acknowledges the victim as a victim and affirms the legal system's recognition of that status.

When compensation is delayed, inaccessible or unconnected to rehabilitation, however, it means little. A procedural victory secured after years of hard-fought litigation may establish a legal point, but it cannot constitute the meaning of justice. Justice from the victim's perspective involves recognition, validation and the restoration of dignity.⁵ If victims must repeatedly demonstrate their suffering to apathetic bodies in order to obtain compensation, such a system may simply generate further victimisation.

III. STATUTORY ARCHITECTURE UNDER THE CRPC

The trajectory of victim compensation in India began with Section 357 of the Code of Criminal Procedure, 1973. Under Section 357, a criminal court could award compensation out of the fine imposed on the offender, and could also order compensation even where the sentence did not include a fine. The provision nevertheless had two weaknesses. First, it was highly subjective. Secondly, it tended to tie compensation to conviction and to the offender's ability to pay.⁶

A significant change came with Section 357A, inserted by the amendment of 2009. It directed every State Government, in consultation with the Central Government, to establish a victim compensation scheme for victims and dependants who had suffered loss or injury from a crime and required rehabilitation. The provision was important because it acknowledged that a victim's claim to compensation should not depend on conviction or on the economic capacity of the accused. It also permitted compensation where the wrongdoer could not be found or identified, provided the victim was identified.⁷

Section 357B clarified that the State would pay compensation under Section 357A in addition to any fine paid to the victim in certain serious offences. Under Section 357C, all hospitals, whether public or private, were required to provide free first aid or medical treatment to any victim of an offence specified in the section and to notify the police promptly.⁸

³ Joanna Shapland et al., *Situating Restorative Justice within Criminal Justice*, 10 THEORETICAL CRIMINOLOGY 505 (2006).

⁴ Jo-Anne Wemmers & Katie Cyr, *Victims' Perspectives on Restorative Justice: How Much Involvement Are Victims Looking For?*, 11 INT'L REV. VICTIMOLOGY 259 (2004).

⁵ Judith Lewis Herman, *Justice from the Victim's Perspective*, 11 VIOLENCE AGAINST WOMEN 571 (2005).

⁶ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India), § 357.

⁷ *Id.* § 357A.

⁸ *Id.* §§ 357B, 357C.

The structure, however, was under-implemented. Sharma's empirical study illustrates a persistent commitment to delivering compensatory justice in India that remains inequitably fulfilled.⁹ Dube observes that, although victim compensation schemes have been established across States, they are not uniform in design, quantum or accessibility.¹⁰

IV. FROM THE CRPC TO THE BNSS AND THE QUESTION OF REAL REFORM

The basic structure of victim compensation remains largely unchanged under the Bharatiya Nagarik Suraksha Sanhita, 2023. Section 395 of the BNSS deals with the order to pay compensation. Section 396 contains provisions for the victim compensation scheme and, to a large degree, carries forward the logic of Section 357A of the CrPC. It directs the State Governments, in consultation with the Central Government, to prepare a rehabilitation scheme covering the rehabilitation costs of victims or dependants who have suffered loss or injury as a result of the incident. It also allows compensation to be awarded where the guilty party has not been identified or traced, provides for inquiry by the State Legal Services Authority or the District Legal Services Authority, and contemplates immediate first aid, medical benefits or interim relief.¹¹

Section 397 of the BNSS extends the duty of hospitals to offer free and prompt medical treatment to alleged victims of specified sexual and other offences, including acid attacks, and offences under the Protection of Children from Sexual Offences Act, 2012.¹² This is important because compensation unaccompanied by quick access to medical care can be of little value.

The transition from the CrPC to the BNSS cannot, however, remedy all the flaws of the former system. The BNSS adopts the vocabulary of compensation and rehabilitation but does not sufficiently establish a robust apparatus for enforcement against institutional delay. The vocabulary is inadequate if the police do not inform victims, courts do not recommend compensation, hospitals refuse free treatment, or legal services authorities delay disbursement. The question that remains, therefore, is whether the BNSS will develop the institutional capacity needed to honour, and to keep pace with, its statutory commitment.

The underlying difficulty is that legal continuity may be mistaken for legal reform. If the shortcomings of the CrPC era persist into the BNSS era, the victim's situation may remain substantially the same.

⁹ Murari Sharma, *Compensatory Justice to the Victim of a Crime and Judicial Practices in India: An Empirical Study*, 28 INT'L REV. VICTIMOLOGY 167 (2022).

¹⁰ Dipa Dube, *Victim Compensation Schemes in India: An Analysis*, 13 INT'L J. CRIM. JUST. SCI. 339 (2018).

¹¹ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), §§ 395, 396.

¹² *Id.* § 397; The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

V. JUDICIAL EXPANSION OF VICTIM COMPENSATION

Indian courts have contributed substantially to the evolution of the jurisprudence of victim compensation. In *Delhi Domestic Working Women's Forum v. Union of India*, the Supreme Court observed that legal aid and assistance must be available to victims of rape at various stages of the criminal process.¹³ The decision concerns not only the provision of assistance but also the need for institutional protection of victims of sexual offences.

In the landmark case of *Bodhisattwa Gautam v. Subhra Chakraborty*, the Supreme Court ordered interim compensation to be paid to the complainant pending further proceedings.¹⁴ This departed from the notion that compensation should follow only upon conviction. The Court recognised that certain forms of victimisation give rise to urgent needs that cannot await a definitive ruling.

In *Hari Singh v. Sukhbir Singh*, the Supreme Court lamented that courts seldom exercised the power to award compensation under Section 357 of the CrPC.¹⁵ Later, in *Ankush Shivaji Gaikwad v. State of Maharashtra*, the Supreme Court held that the question of compensation must be considered by the courts in all criminal cases.¹⁶ The significance of the decision is that the Court established the consideration of compensation as a duty. The institutional implication is clear: where courts fail to consider compensation, this is not an incidental omission but a failure of criminal justice administration.

In *Suresh v. State of Haryana*, the Supreme Court upheld the independent character of victim compensation.¹⁷ The Court stressed that an award of compensation does not rest solely on proven guilt and that relief must not be unduly delayed. This reflected a rehabilitative approach to victim compensation.

In *Laxmi v. Union of India*, the Supreme Court issued directions for the payment of minimum compensation to victims of acid attacks.¹⁸ Acid-attack injuries are particularly significant because they often demand immediate and continuing medical treatment. The ruling recognised that compensation ought to be connected to medical rehabilitation rather than functioning merely as post-trial consolation.

¹³ *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14 (India).

¹⁴ *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490 (India).

¹⁵ *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551 (India).

¹⁶ *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770 (India).

¹⁷ *Suresh v. State of Haryana*, (2015) 2 SCC 227 (India).

¹⁸ *Laxmi v. Union of India*, (2014) 4 SCC 427 (India).

In *Nipun Saxena v. Union of India*, the Supreme Court endorsed the NALSA Compensation Scheme for Women Victims and Survivors of Sexual Assault and Other Crimes, 2018.¹⁹ The decision reaffirmed the importance of a victim-centred, regulated compensation system. Nonetheless, the recurrent need for directions from the Supreme Court demonstrates the persistence of the problem of ordinary institutional non-compliance.

VI. SCHEMES AND POLICY FRAMEWORK

The statutory framework is supplemented by schemes and policy mechanisms. The NALSA Compensation Scheme for Women Victims and Survivors of Sexual Assault and Other Crimes, 2018, framed by the National Legal Services Authority, is among the most important victim-specific schemes. It was formulated pursuant to judicial directions and aims to provide structured compensation for women victims of serious offences such as sexual assault and acid attack.²⁰

To bring uniformity to compensation for serious crimes such as rape, acid attack, human trafficking and crimes against children, the Central Victim Compensation Fund was established to supplement compensation under the State and Union Territory compensation schemes.²¹ Its creation reflects an understanding that State-level compensation schemes cannot operate effectively without financial support and a measure of uniformity.

The principal operational mechanisms for paying compensation to victims are the State Victim Compensation Schemes, administered by the State Legal Services Authorities and the District Legal Services Authorities. This decentralised structure has, however, produced varied results. Gupta and Gupta find that the scope, quantum and clarity of the victim compensation schemes of Gujarat, Delhi, Telangana and Kerala differ considerably.²² Such differences produce geographical injustice in victim justice: the right to a meaningful award should not depend on the State in which the crime occurred.

The institutional framework also intersects with legal aid, One Stop Centres, hospital obligations and victim assistance mechanisms. These systems, however, often operate in silos. Compensation, medical aid, counselling, legal representation and rehabilitation are rarely integrated into a single victim support pathway. This fragmentation is one of the principal reasons why the existing arrangement proves inadequate.

¹⁹ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703 (India).

²⁰ NALSA Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018 (India).

²¹ Central Victim Compensation Fund Scheme, Ministry of Home Affairs, Government of India.

²² Pallavi Gupta & Neha Gupta, *Victim Compensation Schemes in India: Gujarat, Delhi, Telangana and Kerala*, 14 PASSAGENS 147 (2022).

VII. THE CORE INSTITUTIONAL FAILURES

A. Lack of automatic victim identification

The absence of an automatic victim identification mechanism is the first major flaw. Although there is a legal provision for compensation, it frequently depends on the court's recommendation, on legal assistance, or on the individual's own initiative. In more serious cases, the system should itself detect eligible victims and initiate compensation processes. Instead, a large number of victims fall outside the scheme because no institution takes the lead in starting the process.

B. Lack of awareness

Lack of awareness is the second failure. Victims, who often come from poor, rural, marginalised or traumatised backgrounds, are frequently unaware of compensation schemes. A legal right of which a person is unaware is, in effect, unenforceable. As Wemmers observes, victims' rights have meaning only if they can be enforced.²³ In India the problem is aggravated because many victims are never informed of their rights and never reach the enforcement stage.

C. Delay in disbursal

The third failure is delay. The rehabilitative value of compensation depends on the timeliness of its delivery. A survivor of sexual assault may require immediate relocation and counselling; a person who has suffered an acid attack may need emergency surgery; a trafficking survivor may need shelter and livelihood support. Compensation that is delayed may remain formally within the scope of the scheme yet fall outside its spirit. As Sharma demonstrates, the provision of compensation as a form of justice is irregular, and delay is among the principal challenges.²⁴

D. Uneven State practices

Inequality at the State level is the fourth failure. The quantum of compensation and the procedure for its disbursal depend on the States and Union Territories, which formulate and enact their own compensation schemes. The differences among Indian victim compensation schemes are highlighted by Dube and by Gupta and Gupta.²⁵ This produces injustice, since similar victims may be treated differently according to territorial jurisdiction.

²³ Jo-Anne Wemmers, *Victims' Rights Are Human Rights: The Importance of Recognizing Victims as Persons*, 15 TEMIDA 71 (2012).

²⁴ Murari Sharma, *Compensatory Justice to the Victim of a Crime and Judicial Practices in India: An Empirical Study*, 28 INT'L REV. VICTIMOLOGY 167 (2022).

²⁵ Dipa Dube, *Victim Compensation Schemes in India: An Analysis*, 13 INT'L J. CRIM. JUST. SCI. 339 (2018); Pallavi Gupta & Neha Gupta, *Victim Compensation Schemes in India: Gujarat, Delhi, Telangana and Kerala*, 14 PASSAGENS 147 (2022).

E. Excessive proceduralism

The fifth failure is the burden of procedure. Victims are required to produce First Information Reports, medical records, identity documents, bank details, court records and verification reports. While documentation is essential to guard against abuse, excessive procedural requirements can be onerous. Repeated documentation can lead to secondary victimisation, particularly for victims of trauma such as sexual violence, trafficking and domestic abuse. As Wemmers notes, victims' experiences within the justice system may affect their recovery from crime.²⁶ A poorly designed compensation process can therefore exacerbate trauma.

F. Weak medical integration

Weak integration of medical care and compensation is the sixth failure. Section 357C of the CrPC and Section 397 of the BNSS require free immediate medical treatment in certain circumstances. Obstacles nevertheless remain in obtaining hospital care, certificates, follow-up treatment and reconstructive care. Treatment and compensation must operate together; without medical integration, financial assistance is incomplete.

G. Absence of accountability

The seventh failure is weak accountability. The victim's practical options are limited where a court disregards compensation, the police neglect to notify the victim, a hospital refuses free treatment, or a District Legal Services Authority postpones an investigation. The law imposes obligations but does not always provide for consequences when those obligations are unmet. This is the principal reason why the promise made by the State becomes a failure of the State.

VIII. VICTIM COMPENSATION AND FAIR TRIAL CONCERNS

A victim-based approach must not overlook the rights of the accused. The presumption of innocence and the right to a fair trial may be placed in question by monetary considerations, particularly interim compensation awarded before conviction. Yadav warns that compensation mechanisms must be carefully designed to avoid the danger of victimisation being treated as though it were a finding of guilt.²⁷

This does not, however, justify delaying timely pecuniary assistance. Rehabilitative support, or compensation, is not the same as punishment, which presupposes an assessment of guilt. Interim compensation, medical treatment, counselling and shelter can be provided on a welfare and

²⁶ Jo-Anne Wemmers, *Victims' Experiences in the Criminal Justice System and Their Recovery from Crime*, 19 INT'L REV. VICTIMOLOGY 221 (2013).

²⁷ Bhavesh Yadav, *Compensating Victims or Compromising Fair Trial? A Critical Examination of the Victim Compensation Framework and Judicial Trends in India*, J. VICTIMOLOGY & VICTIM JUST. (advance online publication 2026).

rehabilitation basis without prejudging the accused. The question is not which set of rights is more important, those of the victim or those of the accused, but how to design a model that protects both.

IX. TOWARDS A RIGHTS-BASED REFORM MODEL

In India, the pressing need is to move, in the reform of victim compensation, from relief to entitlement.

First, the identification of victims should be automatic in serious offences. In cases of death, grievous injury, sexual violence, acid attack, trafficking or child abuse, the police should be bound to transmit the victim's particulars to the District Legal Services Authority immediately.

Secondly, compensation should be governed by a time frame. Urgent medical or rehabilitative needs should not be denied on the ground of extended verification.

Thirdly, there should be a national minimum compensation standard to eliminate geographical disparity. States should not pay less than a prescribed minimum, although they may pay more.

Fourthly, compensation needs to be embedded within medical treatment, counselling, shelter, legal assistance and livelihood rehabilitation. Sharma calls for victim support within a trauma-informed approach in India.²⁸ A trauma-informed compensation model would minimise repeated questioning, streamline the process and prioritise immediate needs.

Fifthly, there should be a measure of data transparency. The State Legal Services Authorities and the District Legal Services Authorities should publish annual statistics on applications received, applications allowed, average processing time, amounts disbursed, interim compensation granted and reasons for rejection.

Sixthly, victims should have an effective review mechanism for compensation that is delayed, refused or grossly inadequate. In the absence of an appellate or review remedy, compensation remains dependent on administrative will and discretion.

Lastly, hospital officials, legal aid advocates, pro bono counsel, judges, police and prosecutors should be educated about victim compensation. Because these institutions deliver the victim compensation system, they must be central to it if it is to succeed.

²⁸ Rishabh Sharma, *Integrating Trauma-Informed Victim Support in India's Criminal Justice System: From Policy to Practice*, INT'L REV. VICTIMOLOGY (advance online publication 2025).

X. CONCLUSION

Victim compensation in India stands at a crossroads. Compensation, rehabilitation and immediate medical assistance are now recognised in Sections 357, 357A, 357B and 357C of the CrPC, carried forward in Sections 395, 396 and 397 of the BNSS. Judicial rulings have repeatedly affirmed that the victim is the forgotten person of criminal justice. Documented evidence of formal policy commitment exists in the form of several schemes, including the NALSA Compensation Scheme and the Central Victim Compensation Fund.

Recognition of the right, however, has not been translated into institutions that function. As matters stand, the victim compensation framework is neither automatic nor uniformly and consistently implemented across the country. The right is not widely publicised, does not operate within a time-bound framework, and is not fully rehabilitative. It therefore remains grossly inadequate. Although the word victim appears in the law, its essence and spirit are rarely found in practice.

The difficulty lies in ensuring tangible enforcement rather than creating yet another formal commitment. Victim compensation should be a rights-based, trauma-informed and accountable dimension of criminal justice. In the absence of such reform, India's compensation system will remain a frustrating paradox: a progressive promise undermined by institutional shortcomings.

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