

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Victim's Compensation: Issues and Challenges

SANGEET SAROHA¹

ABSTRACT

Victims have the right to seek redress for the harm they have grieved as an effect of the crime. This right is distinct from and distinct from the right to retribution, which is the responsibility of the State in a society governed by the Rule of Law. However, if the state fails to fulfil this obligation, the state must still create a mechanism to ensure that the victim's claim to compensation for his injuries is not denied. As a result, the needs and rights of crime victims should be prioritized in the entire response to crime. Victim compensation is a distinguished process of victim protection. This article shall deal with the victim's compensation, its background and some issues and challenges pertaining to the topic.

Keywords: *Victim, Victim Compensation, VCS, Nirbhya Fund, CVCF.*

I. INTRODUCTION

The topic of "victim rights" has risen to the forefront of legislation on both domestic and international levels in recent years. While the criminal justice system has traditionally been viewed as a means for the state to settle its grievances with accused and criminals, it is now widely acknowledged that justice cannot be effectively administered without due regard for the rights and interests of other parties affected by the criminal action.² This transition has had an impact on the extent to which victims' interests are represented in the design of criminal justice policy, since a growing number of initiatives are launched in the name of victims, attempting to strengthen their standing inside the system.

II. COMPENSATION: MEANING AND RATIONALE

One of the most significant rights of victims of crime is compensation. Compensation is money paid to compensate for an injury or loss sustained by victim. The aim of providing compensation is to make up for the loss incurred by a victim of crime or the legal representative of a deceased person who has suffered a monetary or non-monetary loss.³

¹ Author is a Research Scholar at School of Law Justice and Governance, G.B.U, India.

² S.C.Singh, *Compensation and Restitution to the Victims of Crime*, 1992 Cri.L.J. 100 (1992).

³ S.Shali, *Compensatory Jurisprudence in India*, I J I R (2017).

The compensation can be perceived as a special kind of reparation which is given to the victim when there is no possibility of recovery. It is a crucial part for reparation and rehabilitation of victim or his or her legal representatives which is not restricted to monetary restitution. The victims who have suffered injury or losses as a result of violation of their human rights or any crime have the right to get compensation irrespective of their legal status.⁴ Compensation can be granted for medical expenses, loss of wages, medical expenses, mental suffering or trauma undergone and it can be pursued via criminal, administrative or civil procedures. Granting pecuniary assistance to the crime victims help them to mitigate the suffering which they have undergone.

(A) Rationale behind Victim's Compensation

The Rule of law requires that whenever there is a wrong committed a remedy must be provided for it. To put it another way, the law requires that the wrongs should not go un-redressed. A remedy must be given for an injury. A person, who has suffered including the dependents, must be compensated. Though it is the accused that should compensate the victim but it might be that the accused is too poor to pay. In such circumstances, the state whose duty was to protect the life and liberty of its subjects and which failed in performing this duty must compensate the victim for his loss and sufferings.

III. HISTORICAL EVOLUTION OF VICTIMS COMPENSATION

Victims have historically received non uniform treatment at different times and in different ages. There was a time when the rights of victims were at their pinnacle. Victims were the backbone of the criminal justice system in ancient times. Victims had a prominent place and recognition in the criminal justice system during this time period, which is why it is known as the "Golden Age of Victims."⁵ The importance of proper compensation was emphasised, acknowledging his right to physical and economic well-being as a matter of human dignity.

The earliest reference to State Compensation for Crime Victims is found in the ancient Babylonian Hammurabi Code. The theory of restitution for crime victims was prominent in Mosaic Law as well as the Penal Codes of ancient Greece and Rome.⁶ The Roman law stipulated a gradual increase in compensation owed based on the stage of the crime's existence. Apart from stealing, other offences for which restitution was due included assault, libel, and trespass.

⁴ H.S.Rai, *Compensation Jurisprudence and Victims of Crime*, CLJ (2004).

⁵ K.K.Bajpai, *The History of Compensation of the Victims of Crime*, Cr.I.J. 26 (2006).

⁶ Ibid.

The notion of compensation reached its pinnacle of growth in England during the Anglo-Saxon period, which initially precisely granted monetary payments in the form of damages or compensation to wrongdoers. Owing to the rise of royal and ecclesiastical authority, compensation payments started to lose their force by the end of the Middle Ages.

IV. EMERGENCE OF PRINCIPLE OF COMPENSATION TO VICTIM BY STATE

During the 19th century the jurists and sociologist attention was drawn towards the doctrine of State compensation towards victim. Jeremy Bentham who was one of the renowned Jurists of that time stated that the crime victims are to be compensated due to existence of the social contract between the citizen and State, when person or their property was violated. Other Jurists such as Lombrose, Bonneville, and Garofalo were all vocal in their support for the victim's compensation and restitution.⁷ Despite Penologists' advocacy, the recognition of the ideals of victim compensation remained unfulfilled. Afterwards with the rise of victims' rights movements, the modern approach to victimology recognised that, regardless of the identification and prosecution of the offender, a victim of crime has the right to be sufficiently compensated, rehabilitated, and repaired, and that such compensation should be paid by the state.

In this regard, the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power was a significant acknowledgement of the need to establish rules and basic standards in international law to protect crime victims. The UN Declaration proposed that steps be taken at the international, national and regional, systems to support crime victims to have access to justice and equal care, as well as compensation, social assistance and restitution.

Recognizing that victims of crime require redress and rehabilitation, and that it is the duty of the state, the UN Declaration on Victims of Crime and Abuse of Power, 1985, prompted member states to include victim compensation provisions in their laws.

In India we already had a law (the Code of Criminal Procedure of 1973) that permitted courts to pass order of compensation if necessary.⁸ However, the enabling clause of the law (Section 357), which was meant to provide relief, failed to do so for three major reasons:

- The court could not order the accused person to pay a fine or compensation if he lacked the financial means to do so;

⁷ Dr. Preeti Mishra, *Compensatory Justice Jurisprudence in India With Reference To Criminal Law: An Evaluation*, Vol. 1 DULJ (2013).

⁸ The Code of Criminal Procedure, Section 357 (1973).

- If accused was found not guilty, and
- While pendency of the case no interim compensation could be ordered.

In the year 2008, the government revised the Code of Criminal Procedure to improve India's criminal justice system, in compliance with the UN Declaration.⁹ For the first time, the amendment attempted to define the word “victim”¹⁰ and restore obsolete legislation about justice for victims. States were required to pass Crime Victim Compensation Schemes under a new Section 357A (VCS).¹¹

Later on the advice of the Justice J.S.Verma Committee, the Criminal Law Amendment Act 2013 was enacted, and new sections 357 B and 357 C were added into the Cr. P.C.¹² Section 357 B of the Indian Penal Code provides extra compensation to victims who fall under sections 326 A and 376 D.¹³ In addition, in 2015, the central government established the Central Victims Compensation Fund (CVCF) scheme to provide assistance to “victims of rape, acid attacks, human trafficking, and women killed or wounded in cross-border shootings”. It set a minimum amount of compensation that victims would receive. The scheme aims to complement and supplement current state and UT victim compensation programmes in order to minimize the difference in compensation amounts notified by various states and UTs.

Finally in year 2018 National Legal Services Authority (NALSA) in consultation with Centre formulated a scheme named as “Compensation Scheme for Women Victims /Survivors of Sexual Assault/other crimes”. The scheme allows the legal services authority to take suo motu cognizance of cases of sexual assault and acid attacks in order to provide victims with interim relief.

V. VICTIM COMPENSATION SCHEMES (VCS)

The adoption of a victim compensation scheme is a much-desired relief for victims of crimes, and it is thus one of the most progressive pieces of legislation in recent memory.¹⁴ According to the scheme, the state government, in collaboration with the central government, will develop a scheme for allocating funds for victim compensation. The primary purpose of the scheme is

⁹ Jhalak Kakkar & Shruti Ojha , *An Analysis of the Vanishing Point of Indian Victim Compensation Law 2 JILS* 322 (2009).

¹⁰ The Code of Criminal Procedure, Section 2(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal their.

¹¹ The Code of Criminal Procedure (Amendment) Act, 2008, No. 5, Acts of Parliament, 2009 (India).

¹² The Code of Criminal Procedure (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India).

¹³ A.Anusree, *Right to Compensation of Victims of Crime in India: Need for A Comprehensive Legislation*, 2 *IJLDAI* 45 (2016).

¹⁴ Dr. G.S.Sanjeev Gowda, *Compensation to Victims of Crime in India: An Overview*, 3 *IJLMH*, 130 (2020)

to offer payments to recompense victims and their families who have suffered damage or impairment as a result of the crime and require rehabilitation.¹⁵ The states have been tasked with establishing and maintaining a fund for this purpose. The VCS applies in circumstances when the accused's compensation is insufficient or there is no such compensation due to the accused's acquittal or release or the offender's failure to be traced or recognised. In addition to the compensable payments under s. 357 Cr.P.C., such payment may be permitted on the court's recommendation.

The amount of compensation to be granted to victims under the scheme has been delegated to the DLSA¹⁶ or the SLSA¹⁷, subject to the State's government permissible limit. Apart from reimbursing victims, Section 357A strives to provide their instant medical and first-aid needs, along with other temporary relief that may be required.

(A) Issues with Implementation of Section 357A

Regardless of whether the case results in a conviction, the state will provide temporary compensation as set out in section 357-A of the State's victim compensation scheme. However, there were a number of issues that prevent the law from being implemented as intended under Section 357A.

- The inability of states to notify Victim Compensation Scheme under Section 357A is the primary obstacle to achieving nationwide access to victim compensation,
- There is discrepancy in the amount of compensation awarded by various states for different crimes.
- There is a gap in the specificity of compensation grounds that has been left open to interpretation.
- In terms of disbursement, there is little clarification as to when compensation will be awarded, including interim compensation and the need for the victim to attend to recurrent expenses.
- When it comes to states that have notified Victim Compensation Schemes, there is either a lack of knowledge of the schemes' nature or a failure of the state machinery to offer compensation due to poorly designed budgetary allocation.

¹⁵ G.K.Korosha, *Compensation to victims of Crime: Critical Analysis of Indian Legislative Framework*, TWJJP (2018).

¹⁶ District Legal Services Authority

¹⁷ State Legal Services Authority

VI. NIRBHAYA FUND

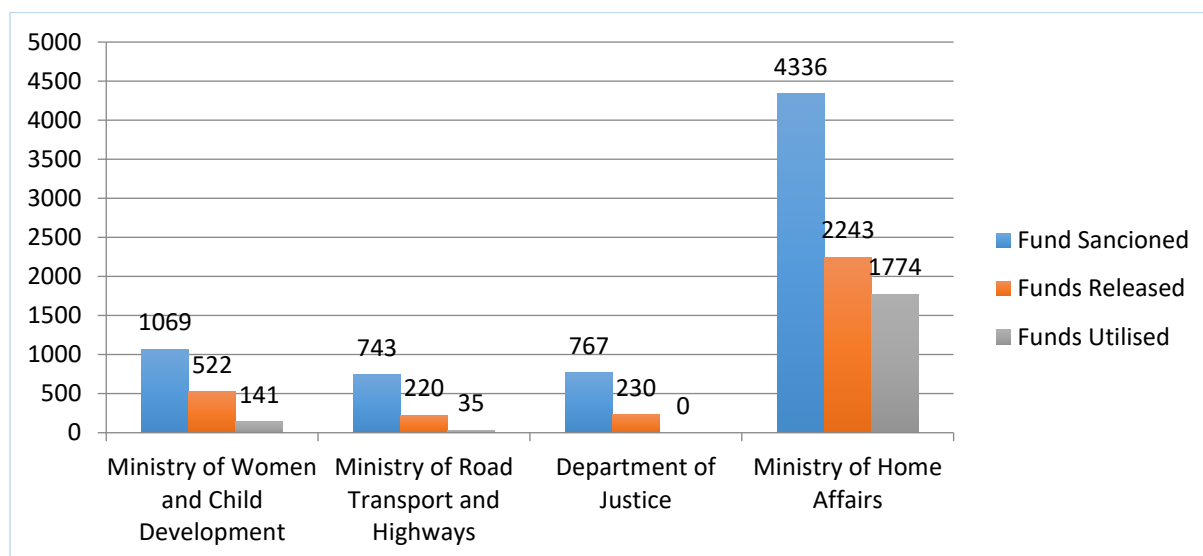
Following the Nirbhaya incident in 2012, the Union government established the Nirbhaya Fund in 2013, with a corpus of Rs 1000 crore. It is a non-lapsable corpus fund under the Ministry of Finance's control. The fund was allocated to support initiatives protecting the dignity and ensuring safety of women in India.

(A) Issues:

Some of the issues with the Nirbhaya fund are:

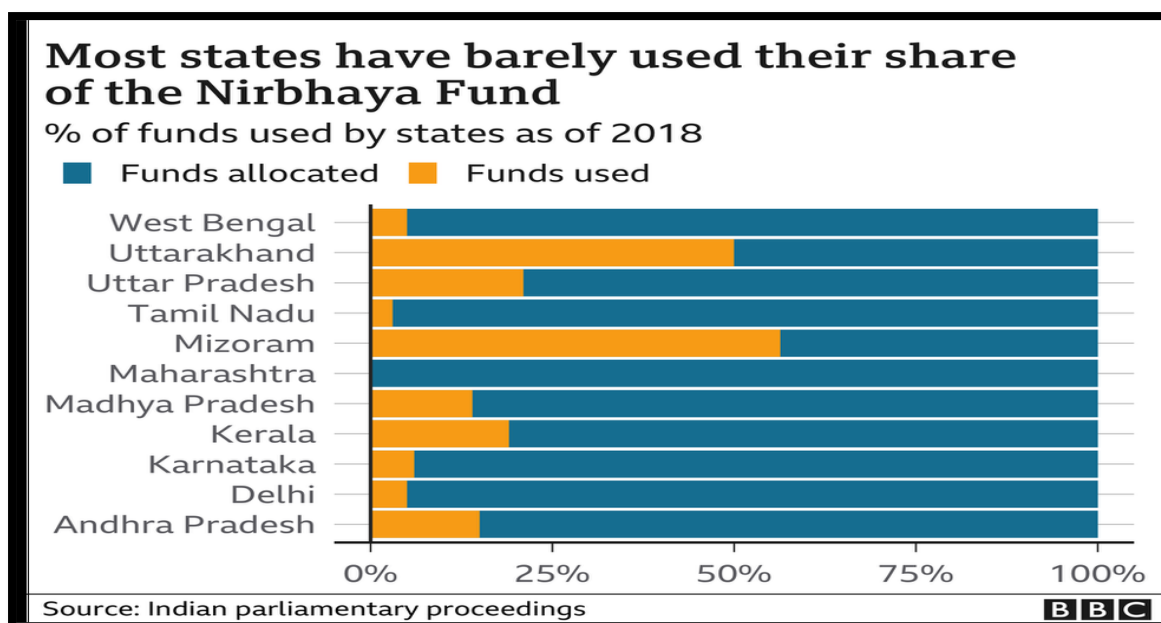
1) Long Term Underutilization

Underutilization of money has been observed in all ministries and departments conducting Nirbhaya Fund initiatives.



¹⁸*Numbers in Rs crore.

¹⁸<https://www.bbc.com/news/world-asia-india-54434160#:~:text=Most%20of%20the%20Nirbhaya%20Fund,don't%20exclusively%20benefit%20women.> (visited on 15/07/21)



19

2) Reduced Allocations

While fund utilisation for Nirbhaya Fund projects has improved in recent years, annual budgetary allocations for several of the schemes have been falling.

Amount of Fund allocated to Nirbhaya Fund in different Financial years are:²⁰

FY	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20*
Allocation In Crore	1000	1000	-	707.62	550	550	550

VII. CENTRAL VICTIMS COMPENSATION FUND

To counter criticism over the Nirbhaya Fund's non-use, the Government of India (GoI) established the Central Victim Compensation Fund in 2015 (CVCF). The CVCF was also established to standardize compensation amounts in various states for various types of crimes. In 2015, the Government of India issued guidelines for the CVCF and donated Rs 200 crore from the Nirbhaya Fund to the initiative. The CVCF attempted to harmonize state schemes by providing victims of various crimes with a minimum fixed sum of compensation. Each state

¹⁹ Ibid.

²⁰ 316th REPORT, DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT ON ISSUES RELATED TO SAFETY OF WOMEN, Rajya Sabha Secretariat, New Delhi March, 2020

was asked to notify new schemes in its compliance. The issue with CVCF is many States has not notified new schemes in its compliance.

VIII. COMPENSATION SCHEME FOR WOMEN VICTIMS /SURVIVORS OF SEXUAL ASSAULT/OTHER CRIMES

Due to non-uniformity in amount of compensation provided to victims under respective compensation scheme the Supreme Court in of India directed the National Legal service Authority to formulate the scheme for addressing this issue.²¹ The scheme allows the legal services authority to assume Suo moto cognizance of sexual assault and acid attack cases in order to provide survivors with interim remedy. Minors who have been the victims of rape or sexual assault will be compensated in the same way as women have been. The monetary assistance provided under the scheme is not contingent on the outcome of the trial, and the survivor can seek compensation from the state or district legal services body as soon as the FIR is filed. This model scheme laid by NALSA provided for enhanced compensation for the victims of sexual offence but does not include non-female victims of other serious crimes to receive enhanced compensation.²²

IX. CONCLUSION

Victim compensation as a framework is still emerging in India and shy of constant evolution. It is yet to gain momentum to assist victims from different backgrounds. The victim compensation scheme has helped victims of crime even when the verdict has not passed and the criminal has not been identified. This helps victims to overcome their adverse misfortunes and cope up with the damages and injuries caused. However, viewing the other side of the coin it shall be noted that there have been several loopholes and drawbacks. Howsoever, VCS is a solid attempt to give recognition to victims and their compensatory rights as well as bridge the gap. What's needed is the creation of victim-centered jurisprudence that goes beyond statutory requirement and allows participating instruments the flexibility to respond to a victim's different needs. Also the issues related to the victim's compensation should be adequately addressed so that the benefits of the schemes are received to the victims so that they can be properly rehabilitated.

²¹ Nipun Saxena & Anr. . Union of India (2019) 2 SCC 703

²² Abhishek Kumar, *An Analysis of Victim Compensation Scheme in India*, EPW Vol. 55, Issue No. 45(2020)