

Judicial Introspection Towards Promotion of Victim Compensation Jurisprudence in India: An Analytical Discourse Through a Human Rights Approach

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ABSTRACT

The judicial introspection of the compensation of the victims in India has a significant notion towards achieving the essence of the social and restorative justice. It also carefully examines that how the Indian judiciary gradually implements the constitutional guarantees as expressly enshrined in Articles 21 and 38(1) read with Article 39A to incorporate the right to compensation as the most cardinal part of justice. Because, the Constitution of India, implicitly inculcates the quest for the victim protection and compensation as a matter of rights which is guaranteed under the constitutional purview. By adopting a human rights approach, that necessitates an exploration into the intrinsic value of every individual's dignity and the recognition of the rights of victims considered as the foundational soul of legal conscience. The rationale of victim compensation signifies the state's obligation to restore dignity and to provide an effective mechanism for rehabilitation, thereby aligning with human rights standards as expressly mentioned in the directive principle of state policy under the Part IV of the Constitution of India. The Colonial colonialism has influenced the traditional legal systems that were more concerned with punishing the wrongdoer instead of prioritizing at the interests of the victims. But the present legal systems in the post-colonial era have come to guarantee the rights of victims and compensation has become a 'sine-qua-non' of rights. Therefore, it may be stated that, the concept of compensation should, not only, merely be a symbolic empathy but also should be transformed to a conclusive right that guarantees nourishment and sufficient remedy under the soul of the constitutional morality. Thus, judicial inclination into victim compensation jurisprudence in India magnifies a persistent evaluation of law and human rights as well as a commitment to reform. This philanthropic essence of judiciary is guided by the principles of dignity and justice which is essentially enduring the promise of victim compensation in India by promoting equity, equality, conscience and justice.

Keywords: Constitution of India, Victim Compensation, Human Rights, Judicial Introspection, Social Justice.

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I. Introduction:

Notional concept of the victim compensation in India has gradually evolved its significance from a marginal concern into a core element of the justice delivery process. Anciently, the penal justice delivery system structured by colonial priorities that primarily concentrated on punishing the offenders and leaving the victims without meaningful support or

rehabilitation. In the advent of the promulgation of the constitutional morality and the constitutional values such as dignity, fairness, and access to justice have supported this narrative in aligning with the victim rights in an extended human rights principle (Baxi, 2013). Judicial interpretation has rendered a crucial role in this shift, particularly through the expansion of Article 21, which affirms the protection of 'life and

Judicial Introspection Towards Promotion of Victim Compensation Jurisprudence in India: An Analytical Discourse Through a Human Rights Approach

personal liberty’ as inclusive of rehabilitation and restorative measures (Menon, 2016). At the international platform the human rights standards increasingly emphasise the centrality of victim welfare (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex, of 29 November 1985), India’s legal landscape has progressively acknowledged compensation as a constitutional responsibility rather than a discretionary gesture. This evolving context provides a very pivotal foundation for examining judicial introspection in transforming the jurisprudential plethora of the victim compensation.

II. Concept of Victim Compensation and Its Evolution:

Since the ancient history, society did not view crime as a mere offence against the State, but as a wrong committed against an individual person. The concept of ‘victim compensation’ started to evolve in the mid-twentieth century through a pragmatic approach with the global rise of human rights discourse. International standards such as the ‘*United Nation Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985*’ emphasised the State’s responsibility to ensure compensation, restitution, and rehabilitation (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex, of 29 November 1985). The said developments reinforced the concept that victims possess independent rights and justice. Further, affirming that, justice must not merely punish the offender but also include the rights of the victim to recovery and dignity.

In the Indian context, the evolution of victim compensation is analytically associated to constitutionalism and judicial interpretation. Article 21 and its interpretative study by the Supreme Court-grounded in dignity, fairness, and humane treatment opened the door for recognising compensation as part of the ‘right to life’ (Singh, 2022). Early judicial interventions in cases such as ‘*Rudul Shah*’ (*Rudul Shah v. State of Bihar, AIR 1983 SC 1086*) and ‘*Nilabati Behera*’ (*Nilabati Behera v. State of Orissa, (1993) 2 SCC 746*) Judgment established that compensation is not charity but a constitutional obligation. The Apex Court had also narrated that “*compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place*”. The legislative efficacy of ‘Section 357A of the Code

of Criminal Procedure’1973 institutionalised this vision by mandating the financial aid by the State under the victim-compensation schemes (National Law University, Delhi, 2024, p. 45–58). During the present day, the concept has further evolved with the ‘*Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023*’, which strengthens procedural safeguards and corroborates state responsibility towards victim rehabilitation. Thus, the contemporary understanding of victim compensation reflects a transformation from moral sympathy to enforceable rights, marking the progression of a jurisprudence that rooted in restorative justice, constitutional morality, and human dignity.

III. Evolution of the Victim Compensation Scheme Through the Indian Constitutional Efficacy:

Being the paramount law of India, the Constitution imposes a moral and legal responsibility upon the State to protect women against all types of evils as well as to rehabilitate victims. Eventually, the Constitution of India caters to two-fold duties: firstly, it delegates the judiciary to uphold the basic right to life and liberty by providing adequate means of compensation for the violation of fundamental human rights; secondly, it directs the State to cherish the eternal values of social justice by establishing an appropriate victim compensation mechanism. While interpreting the expanded scope of Article 21, which provides that “*No person shall be deprived of his life or personal liberty except according to procedure established by law*” (Constitution of India, 1950, Article. 21), it is considered the fundamental rule of law governing life and liberty. As the supreme law of the land, the Constitution of India casts both moral and legal obligations on the State to safeguard women from every form of injustice as well as to ensure the rehabilitation of victims (Malik & Rawal, 2009). Therefore, it may be stated that, the Constitution performs duties such as:

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| ✓ | empowering the judiciary to protect the fundamental ‘right to life and personal liberty’ by providing suitable avenues for compensation when these basic human rights are infringed; and |
| ✓ | directing the State to uphold the enduring principles of social justice by establishing an effective and accessible victim compensation mechanism. |

Judicial Introspection Towards Promotion of Victim Compensation Jurisprudence in India: An Analytical Discourse Through a Human Rights Approach

While interpreting the true essence of Article 21, it is widely formulated as the cornerstone of the right to life and liberty (Jain, 2010). The courts have significantly expanded its scope to ensure fuller protection of human dignity. Post *Maneka Gandhi v. Union of India* (AIR 1978 SC 597), the essence of victim compensation was extensively examined and developed by the Supreme Court in *Bodhisattwa Gautam v. Subhra Chakraborty* (AIR 1996 SC 922), where the Court opined that Article 32 is itself a fundamental right and that the judiciary possesses the authority to grant appropriate compensation to victims whose fundamental rights have been violated. In the landmark judgment of *Delhi Domestic Working Women's Forum v. Union of India* ((1995) 1 SCC 14), the Supreme Court directed for the establishment of the Compensation Board and emphasized the necessity of providing adequate compensation to victims by virtue of the Article 38(1), Constitution of India. Similarly, in *Vishaka v. State of Rajasthan* (AIR 1997 SC 3011), the Court had observed that, compensation is a well-established public law remedy under Article 32 and constitutes "law" within the meaning of Article 141 of the Constitution. While interpreting the significance of the scope of social justice under Articles 38 and 39A, Justice Gajendragadkar opined that "social justice aims to ensure equal opportunity in social and economic activities and to prevent inequalities" (Gajendragadkar, as cited in Lawyers ClubIndia, n.d.). Thus, the progressive aim of social justice is to ensure the socio-economic and political equality inherent in a democratic society, as affirmed by the Apex Court of India in *Consumer Education and Research Centre v. Union of India* (AIR 1995 SC 922). In *Charan Lal Sahu v. Union of India* (AIR 1990 SC 1480), while interpreting the doctrine of '*parens patriae*', the Supreme Court observed that civil liability focuses more on compensation than punishment, although penal redress may involve both compensation and deterrence. The Article 38 (Constitution of India, Article 38), which narrates as "State to secure a social order for the promotion of welfare of the people.

1. *The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.*
2. *The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate*

inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

Therefore, it may be analysed in the following three ways:

- the 'Constitution of India' directed the State to ensure a social order that advances the welfare of the people;
- The 'Constitution of India' mandates that the State should promote the welfare of the people by securing and upholding social, economic, and political justice; and
- The State is also responsible to reduce income inequalities and eliminate disparities in status among individuals.

A comprehensive understanding of social justice also requires analysing Article 39A ('Constitution of India, 1950, Article 39A') as inserted by the '*Constitution (42nd Amendment) Act, 1976*' which mandates that "*Equal justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.*" Therefore, it may be summarized in the following two ways:

- The State must secure 'equal justice and provide free legal aid' through appropriate legislation or schemes; and
- It is further mandated that the State ensure justice for all citizens, irrespective of economic limitations or any other social constraints or disabilities;

Thus, India's constitutional framework imposes a significant duty on the State and the judiciary to protect victims' rights and dignity, especially those of women, by upholding social justice, equality, and compassionate governance. Judicial interpretations of Articles 21, 32, 38, and 39A have expanded victim compensation into an essential public law remedy. The Supreme Court has emphasized procedures that guarantee equal access to justice and *ipso facto* the

Judicial Introspection Towards Promotion of Victim Compensation Jurisprudence in India: An Analytical Discourse Through a Human Rights Approach

victim compensation constitutes a cornerstone of a fair, just, and welfare-oriented democratic society by virtue of the landmark precedents (Pandey 2014).

IV. Post-Colonial Jurisprudential Development of the Victim Compensation Scheme in India.

Etymologically the concept of “victim”, pertains to a person who experiences any legal injury, or loss as a consequence of a wrongful act or criminal conduct. Mere sympathy is not sufficient and the most required procedure is to provide the active financial assistance, encouragement, and adequate rehabilitation schemes to help the victim to reconstruct the fragmented architecture of her life. Hence, the cardinal emphasis needed be emphasised upon the structured rehabilitation of victims. So, this point to be noted that the procedure of rehabilitation is not only confined to the treatment of corporeal injuries but also an emotional and psychological renaissance.

Statutorily the ‘*Bharatiya Nagarik Suraksha Sanhita, 2023*’ adopts a comprehensive definition. Section 2(y) defines a victim as “*a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and includes the guardian or legal heir of such victim*” (‘*Bharatiya Nagarik Suraksha Sanhita, 2023*’). This legislative articulation meaningfully illustrates that the prime objective of the procedural paradigm is to ensure compensation and rehabilitation for victims of crime as elaborated under Section 396 of the ‘*Bharatiya Nagarik Suraksha Sanhita, 2023*’.

Section 396 of the ‘*Bharatiya Nagarik Suraksha Sanhita, 2023*’ promulgates a comprehensive legal philosophy of the victim compensation by emphasizing the co-operative responsibilities between the Central and State Governments. This Section provides for the provisions of “*Victim compensation scheme*” which narrates that:

- 1) “Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
- 2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service

Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

- 3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 395 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
- 4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
- 5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- 6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.
- 7) The compensation payable by the State Government under this section shall be in addition to the payment of fine to the victim under section 65, section 70 and sub-section (1) of section 124 of the *Bharatiya Nyaya Sanhita, 2023*.”

Therefore, from the close perusal of the Section 396 provides that:

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| ✓ (1) State Governments in consultation with the Central Government, to formulate schemes dedicated to providing financial support for the rehabilitation of victims or their dependents affected by criminal acts. Such schemes aim to create a structured mechanism for distributing compensation that addresses rehabilitation requirements. |
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Judicial Introspection Towards Promotion of Victim Compensation Jurisprudence in India: An Analytical Discourse Through a Human Rights Approach

✓ (2) The ‘District Legal Services Authority (DLSA)’ or ‘State Legal Services Authority (SLSA)’ is empowered to determine appropriate compensation amounts upon obtaining recommendations from the court. This establishes a judicial administrative safeguard ensuring that compensation is neither arbitrary nor delayed.
✓ (3) If the trial Court after the completion of the trial is convinced that the compensation granted under part 395 is insufficient to rehabilitate such a victim, or where the cases end in acquittal or discharge and the victim has to be reinstated, it can provide a recommendation regarding compensation.
✓ (4) The scope of protection to victims is expanded under the circumstances where the offender remains unidentified and the victim has died without any commencement of any criminal trial. In such instances the victim's dependents may directly seek compensation from the DLSA or SLSA.
✓ (5) After receiving such applications or recommendations, the concerned Legal Services Authority must conduct the necessary inquiry and disburse <i>adequate compensation</i> within two months.
✓ (6) Immediate relief must be initiated for the victims by directing hospitals to provide free first aid or medical assistance based on certification by a competent police officer or Magistrate. Interim reliefs of other kinds might also be authorized to alleviate immediate suffering.
✓ (7) compensation awarded by the State Government under this section is <i>in addition</i> to any fine payable to the victim under relevant provisions of the ‘Bharatiya Nyaya Sanhita (BNS), 2023’, including Sections 65, 70, and 124(1).

Section 397 further strengthens victim-centric procedural protections by legislatively mandating that, “All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 64, section 65, section 66, section 67, section 68, section 70, section 71 or sub-section (1) of section 124 of the ‘Bharatiya Nyaya Sanhita, 2023’ or under Sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012, and shall immediately

inform the police of such incident.” Therefore, it may be stated that:

➤ All hospitals irrespective of public or private, must and mandatorily provide immediate first-aid or medical treatment to victims.
➤ No hospital may charge any fee for treating victims of the specified offences.
➤ This obligation applies to hospitals run by the Central Government, State Government, local bodies, or any private entity.
➤ The mandate covers offences under ‘Sections 64 to 68, 70, 71, and 124(1) of the Bharatiya Nyaya Sanhita, 2023, and Sections 4, 6, 8, and 10 of the POCSO Act, 2012’.
➤ Hospitals must immediately inform the police after treating such victims.

In furtherance of these enacted principles, the Central Government had established the ‘*Central Victim Compensation Fund (CVCF)*’ in the year of 2016. It primarily aims to provide uniform, adequate, and prompt financial support to the victims of heinous offences, including acid attacks, sexual offenses, and human trafficking etc. The successful implementation of the ‘*Central Victim Compensation Fund (CVCF)*’ is to dispense the compensation benefit through State Governments and the Legal Services Authorities. The fundamental objectives are as follows:

✓ Providing immediate financial support to victims to help them resume their lives with dignity.
✓ Covering medical, psychological, and rehabilitative expenses, recognizing both short-term emergencies and long-term recovery needs.
✓ Ensuring timely and sufficient assistance, thereby preventing delays that may compromise recovery, treatment, or reintegration.
✓ Through this fund, the State acknowledges its constitutional obligation to protect victims’ rights and uphold restorative justice.

Thus, it may be stated that the jurisprudential essence of victim compensation has emerged as a cardinal tool for ensuring justice by concentrating on restoring victims’ dignity and alleviating their suffering, rather

Judicial Introspection Towards Promotion of Victim Compensation Jurisprudence in India: An Analytical Discourse Through a Human Rights Approach

than relying solely on punishment. The notion of compensating victims has evolved within post-colonial legal systems but in the earlier it was influenced by colonialism that largely prioritized punishing offenders over caring for victims. So, the modern jurisprudential essence efficiently proves its philanthropic nature justice in align with growing recognition of victims' rights, compensation and rehabilitation have become the most pivotal components of restorative justice.

V. Judicial Introspection of Victim Compensation towards fostering Socio-legal Justice.

Victim compensation in the modern India has been recognised as a constitutional duty and a human rights necessity. The concept of victim compensation has gradually transformed from a peripheral concern of the criminal justice process into a recognised element of substantive justice as well. The notion of compensation is intrinsically considered as the *sine-qua-non* to the constitutional guarantees of dignity, access to justice under Article 21, as well as the State's obligation to ensure social justice under the Directive Principles in the contemporary legal system. (Srivastava, Sawant, & Dhumal, 2024). The commencement of the 'Bharatiya Nagarik Suraksha Sanhita, 2023' further reinforces this commitment by mandating structured victim-compensation schemes across states, marking enhanced congruence with universal standards on victim rights (Victimology & Compensation, 2024). By treating compensation as a substantive right, Indian jurisprudence acknowledges that restoring the victim's dignity and rehabilitative needs is a fundamental constitutional responsibility (National Law University Delhi, 2024).

The conceptual strengthening of victim compensation is also can be traced its root in the recommendations of the '*Malimath Committee on Reforms of the Criminal Justice System*'. The Committee critically observed that the traditional Indian penal justice paradigm primarily concentrated on the crime and the offender while the victim remained massively marginalized (Committee on Reforms of Criminal Justice System, 2003). The Committee expressly noted the need for statutory reforms to address the victims' rights in harmonizing with the constitutional principles of justice, dignity, and equality (Ray, 2014). The Committee had further recommended that the criminal justice system must incorporate an effective mechanism to ensure adequate compensation and rehabilitation for victims by upholding the true essence

of the penal procedural jurisprudence and the constitutional morality (Committee on Reforms of Criminal Justice System, 2003).

Judicial introspective study is increasingly significant to ascertain that victim compensation becomes a more reality rather than a theoretical commitment. Such reflection strengthens the judiciary's responsibility as a guardian of the constitution to uphold the constitutional values as well as upholding the true spirit of the restorative justice and access to justice (Kumar, 2017). The Supreme Court of India has contributed a pivotal role in influencing and strengthening the victim compensation jurisprudence under the canopy of the constitutional morality. In *Laxmi v. Union of India*, the Court had awarded Rupees 3, 00,000 as compensation to an acid attack victim under the Victim Compensation Scheme (*Laxmi v. Union of India, (2014) 4 SCC 427*). The judgment emphasized the grave physical, and psychological trauma that acid attack victim experienced and also emphasized the need for uniform compensation across all States and Union Territories. The Apex Court further directed that all victims of acid attacks must receive immediate and free medical treatment not only in public hospitals but also in private healthcare institutions.

Similarly, in *Ravada Sashikala v. State of Andhra Pradesh*, the Supreme Court ordered the accused to pay rupees 50,000 as compensation and also directed the State Government to provide an additional compensation of rupees 3,00,000 to the victim (*Ravada Sashikala v. State of Andhra Pradesh, (2017) 2 SCC (Cri.) 436*). The Court opined that compensation directly imposed on the offender served both punitive and restorative functions, holding the offender financially accountable for the harm inflicted. At the same time, the Court further opined that the offender's contribution alone is insufficient given the lifelong physical and psychological challenges faced by acid attack victims. Thus, the State was also held responsible through the Victim Compensation Scheme to ensure full and meaningful rehabilitation. In the *Nipun Saxena v. Union of India* (WRIT PETITION (C) NO.565 OF 2012) judgment of the Supreme Court of India, opined that:

➤ No person may publish (print, electronic, social media, etc.) the name of a sexual-offence victim, or disclose any fact which may lead to her identification.

Judicial Introspection Towards Promotion of Victim Compensation Jurisprudence in India: An Analytical Discourse Through a Human Rights Approach

➤ When the victim is deceased or mentally unsound, her identity cannot be disclosed even with the next-of-kin's permission, unless "circumstances justifying" it exists and a competent authority (Sessions Judge) must record reasons for permitting disclosure.
➤ The FIRs lodged for certain IPC sexual-offence provisions ('Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E') and POCSO offences must not be made publicly accessible.
➤ When a victim files an appeal under 'Section 372 Code of Criminal Procedure', she does not need to reveal her identity.
➤ All documents containing the name of the victim or other identifying information must be kept in sealed cover. Public-facing records should instead use redacted versions where the name is removed.
➤ Authorities (courts, investigating authorities) who receive the victim's identifying details must maintain confidentiality. They must not disclose the name, except in reports-and those reports must be sent in sealed cover to court or investigating agency.
➤ For victims those who are minor by age under the 'POCSO', their identity can only be disclosed by the Special Court, and only if it is in the child's interest.
➤ All State Governments and the Union Territories are requested to set up at least one one-stop centre per district within one year to support victims.

as well as to encourage rehabilitation by enhancing the constitutional morality. The promulgation of organized victim-compensation systems supported by recent changes in penal procedural legislation represents a more advanced and comprehensive legislative framework. Thus it may be analysed that, the genesis of victim compensation cardinally depends on improving a justice system navigated by compassion, fairness, and constitutional principles which guarantees that each victim receives rehabilitation, healing, and the promise that their dignity stays at the heart of the '*rule of law*' in India.

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VI. Conclusion.

The path of victim compensation law in India shows a slow yet significant change in the philosophy of justice. The imperceptible component of the colonial criminal justice framework stressed the State perceived crime primarily as an affront to its power. But in the present age this conservative ideology has modified into a constitutional guarantee that is rooted in dignity, equity, and human rights. The rights as enshrined under Articles 21, 38(1), and 39A have fostered a more profound recognition that justice should equally consider the needs and pain of victims and the need of judicial introspection is extremely essential to this transformation. Judicial systems professes that the procedure of compensation to victims plays a very meaningful and crucial contribution to restore dignity

Judicial Introspection Towards Promotion of Victim Compensation Jurisprudence in India: An Analytical Discourse Through a Human Rights Approach

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