



Victim Compensation And Criminal Jurisdiction

Dr. Indu Bharti Jain¹, Prof. (Dr.) Shipra Gupta^{2*}, Ms. Mehak Rajpal³, Dr. Meenakshi Sharma⁴,
Ms. Trisha Gosain⁵, Ms. Shalini Gupta⁶, Ms. Kunjana Mittal⁷, Mr. Vishant Saini⁸, Dr. Preety Gupta,⁹
Ms. Muskan Singla¹⁰

¹Assistant Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

²Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

³Research Scholar, Pursuing Phd., Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

⁴Assistant Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

⁵Assistant Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

⁶Assistant Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

⁷Assistant Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

⁸Research Scholar (LL.M.), Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

⁹Assistant Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

¹⁰Student, B.Com., LL.B., Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

***Corresponding Author:** Prof. (Dr.) Shipra Gupta², Professor, Department of Law, Maharishi Markandeshwar (Deemed to be University), Mullana- Ambala

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ABSTRACT

Victim's compensation has always been the begging at the criminal justice system's door. Even if the idea is ancient, it has only been developed recently as a field of criminology and along more scientific lines. Numerous nations have implemented various compensation plans for their victims of criminal activity. These are implemented through various legislative actions. The 1958 Probation of Offenders Act, the 1973 Code of Criminal Procedure, and the 1855 Fatal Accident Act are among the various criminal justice statutes in India that allow compensation to be given to victims of crime. The current Code provisions, however, do not establish an encouraging one. The victim must wait for the appellate round to end before receiving any compensation granted under this Section following a typically drawn-out trial that lasts an average of eight to ten years. It is important to remember that trial courts have not always made extensive use of the authority granted to them by Section 357 of the Criminal Procedure Code. This country's statute book has included the requirement for compensation payment for a sizable amount of time. Nevertheless, it doesn't seem that criminal courts have paid any attention to the aforementioned clause or used the authority granted to them by it.

Keywords: Victim, Compensation, Appellate Jurisdiction, Criminal Courts.

Introduction

Victim's compensation has always been the begging at the criminal justice system's door. Even if the idea is ancient, it has only been developed recently as a field of criminology and along more scientific lines. Numerous nations have implemented various compensation plans for their victims of criminal activity. These are implemented through various legislative actions. The 1958 Probation of Offenders Act, the 1973 Code of Criminal Procedure, and the 1855 Fatal Accident Act are among the various criminal justice statutes in India that allow compensation to be given to victims of crime.

Section 357 of the Code of Criminal Procedure, 1973 (hereafter Cr. P.C.) now includes a comprehensive provision for compensation to victims of crime, in accordance with the recommendations made by the Law Commission of India in its report. According to s. 357 subclauses (1) and (3), if the court determines that it is appropriate in a given situation and in the interest of justice, it may provide compensation to the victim of crime at the time of issuing judgment. These laws give trial courts and appellate courts the authority to compensate crime victims only after the offender has been tried and found guilty.

These remuneration-granting rights are additional to other sentences, not a subset of them. The court's decision in each case is left to its own discretion based on the particular facts and circumstances. The current

Code provisions, however, do not establish an encouraging one. The victim must wait for the appellate round to end before receiving any compensation granted under this Section following a typically drawn-out trial that lasts an average of eight to ten years. It is important to remember that trial courts have not always made extensive use of the authority granted to them by Section 357 of the Criminal Procedure Code. This country's statute book has included the requirement for compensation payment for a sizable amount of time. Nevertheless, it doesn't seem that criminal courts have paid any attention to the aforementioned clause or used the authority granted to them by it.

Law Commission

The Law Commission makes reference to this regrettable omission as follows:

Section 545 of the Criminal Procedure Code has a rather extensive provision for paying compensation to the damaged person. It is unfortunate that our courts do not use their legislative authority under this clause to the fullest extent possible. There is no denying the section's limits. Its application first hinges on whether the court determines that a sizable fine is an appropriate penalty for the offense. In the worst-case scenarios, the court can rule that a hefty fine in addition to a lengthy jail sentence is not warranted, particularly if the public prosecutor fails to recognize the victim's suffering and pursue restitution on his behalf. More than three decades back Krishna Iyer J. speaking for the Court in **Maru Ram & Ors. v. Union of India** and Ors. In his unique manner, he stated that although the duration of a jail sentence is not a means of making up for a person's disability or loss, but rather a futile and cruel punishment, it is the criminal's social responsibility to repair the harm or loss. The Court stated that victimology must be fulfilled—not by brutality, but by forcing the wrongdoer to repay the harm they have caused, not by making the criminal feel worse but rather by decreasing the loss of the abandoned.

he number of cases where s.357 has been used for awarding compensation is like salt in the flour. Courts never took it seriously. So, taking note of the indifferent attitude of subordinate courts, the Apex Court in the Hari Kishan case, directed the attention of all courts to exercise the provisions under s.357 of the Cr. P.C. liberally and to award adequate compensation to the victim, particularly when an accused is release on admonition, probation or when the parties enter into compromise. The court highlighted the importance of s. 357(3) of the Cr. P.C. in the following words: "Section 357 of Cr. P.C. is an important provision but courts have seldom invoked it.

This legal section gives the court the authority to grant compensation in addition to condemning someone, possibly because they were unaware of the purpose of the proceedings. Aside from convicting the accused, the court may also mandate that the accused compensate the victim for losses incurred as a result of the accused's actions. This authority to grant recompense is additional to other sentences, not a subset of them. It is a gauge for both making amends with the perpetrator and reacting to crimes in a proper manner. It is a constructive response to crimes, to a certain extent. It is undoubtedly a positive development for our criminal justice system. Having considered a number of compensation-related cases, the In **Ankush Shivaji Gaikwad v. State**, the honorable Supreme Court made an observation. State of Maharashtra, that the decision to grant or deny compensation in the Court may have discretion over a specific case, there is necessary duty on the Court to apply its attention to the subject in every criminal instance. The best way to reveal application of thought to the subject is through recording the justifications for paying or rejecting compensation. 2008 saw Cr. P.C. was amended and s. A 357 was added to the victim. A compensation plan had been established. However, there are a number of rulings in which the courts provide no justification for not making an award payment and they are giving orders without speaking.

Once more, in 2013, the Cr.P.C. was amended to include new sections 357B and 357C. Under sections 326A and 376D of the Indian Penal Code, victims are entitled to further compensation as per S. 357B. All hospitals, whether they are owned by the government or local authorities, are required under S. 357 C to offer free medical care to victims of Ss. 326A, 376A, 376B, 376C, and 376D of the Indian Penal Code.

In addition, compensatory jurisprudence has developed as a dynamic interpretation of Art. 21 of the Constitution in the context of human rights philosophy. Numerous Supreme Court and High Court rulings have been made public regarding the issue of compensation under Arts. 32 and 226 for violations of public law obligations, careless actions by state officials, wrongful imprisonment, rape, torture, and other crimes, as well as the creation of new rights through constitutional interpretation from a human rights perspective. The judiciary has embraced these novel approaches to imbue human rights and constitutional rights with significance and efficacy, and has surfaced as an ally of the vulnerable, impoverished, and marginalized.

By granting payment of compensation in appropriate cases—but not always—our judiciary is not falling behind in exercising extraordinary constitutional jurisdiction and creating a new humanistic compensatory legal precedent.

This Court held in **Rabindra Nath Ghosal v. University of Calcutta and Ors**:

As part of their duty to fulfill citizens' social aspirations, courts must use this power and award damages in the form of compensation in public law proceedings. As a result, when the Court shapes relief in proceedings under Articles 32 and 226 of the Constitution to seek enforcement or protection of fundamental rights and provides compensation, it does so in accordance with public law by punishing the wrongdoer and placing the burden of proof for the public wrong on the State, which has disregarded its public duty to defend citizens' fundamental

rights. However, it would be incorrect to believe that, by using the public law proceeding concept, every slight violation of public duty by any public servant will be commended by the Court for awarding compensation in a petition under Articles 226 and 32. Therefore, unless there is deliberate abuse or malice, the court exercising extraordinary power under Articles 226 and 32 of the Constitution would not award damages against public authorities for making an order that turns out to be ultra vires or for failing to perform their duties. Prior to the awarding of exemplary damages, it is necessary to demonstrate that an arbitrary or capricious conduct on the part of the victim.

Compensation Meaning and Definition

The fundamental tenet of tort law is *ubi jus, ibi remedium*, which holds that there can never be a wrong without a cure and that the rule of law mandates that wrongs must be made right. In tort law, damages and compensation are determined according to well-established rules, and compensation is a significant corrective measure. The legal framework pertaining to torts has multiple facets concerning the payment of damages and compensation. These include the measurement, quantity, and evaluation of damages as well as the wrongdoer's purpose and proximity to the cause. According to tort law, the plaintiff must have a tort that will allow them to recover damages in order to be entitled to compensation. Thus, where the case is of the nature in which:

- a) does not result in the defendant's liability or the plaintiff's right to damages, as long as the defendant has not done any wrongs, including torts or breach of contract, or
- b) Does not result in any loss or harm, or gives the plaintiff no basis for action, such as when he is partially to blame, the damages are too little, or he has not attempted to lessen the damages.

Compensation cannot be granted

Therefore, the plaintiff is not entitled to recover the portion of the loss that is either:

- a) attributable to his own contributory negligence;
- b) not caused by the defendant's actions;
- c) outside the purview of the specific contract or tort;
- d) that he should have avoided or mitigated;
- e) that is too uncertain; or
- f) that is past or prospective, meaning it is too remote.

But in this case, "compensation" refers to making up for the loss incurred. Whatever is given in lieu of something else to make things equal is called compensation. It can also be referred to as recompense, payment, or salary. It is an indication of the civilized society's duty, signifying a non-criminal goal and end. In contrast to damages, compensation is utilized in cases when an injury was caused by an unlawful conduct. In its literal sense, compensation refers to money awarded to make up for loss or harm. The goal of compensation is to fully pay victims of crime, their legal representatives, and anybody else who has experienced financial loss or no financial loss for damages incurred. For victims of crime, compensation refers to something provided in exchange for an equivalent service delivered. It should be noted that the entire goal of compensation is to make up for the losses incurred by the victim or the surviving family member of the deceased. Generally speaking, the term "compensation" refers only to monetary compensation that is determined using two categories: non-pecuniary loss and pecuniary loss. For victims of crime, compensation refers to something provided in exchange for an equivalent service delivered. It should be noted that the entire goal of compensation is to make up for the losses incurred by the victim or the surviving family member of the deceased. Generally speaking, the term "compensation" refers only to monetary compensation that is determined using two categories: non-pecuniary loss and pecuniary loss.

The Oxford dictionary defines compensation as "providing something positive to balance or lessen the negative effect of damage, loss, injury, etc."

"Compensation means payment of damages, or any other act that a court orders to be done by a person who has caused injury to another and must therefore make the other whole," According to Black's Law Dictionary. In interactions between criminals and victims, compensation may take the form of making reparations to the victim or, alternatively, it may just cover the costs of any harm or damage brought on by the crime. According to popular understanding, it has nothing to do with benefiting the other party and instead involves making one party whole or providing an equivalent. It is the balance of the losses and sufferings brought about by victimization. It is an indication of accountability with a non-criminal goal and conclusion.

The Hon'ble Orissa High Court stated in **Saraswate Parabhai v. Grid Corp. of Orissa**: "As stated by **Lord Morris in West v. Shephard**, it is true that absolute recompense is not conceivable and money cannot replace a bodily frame that has been beaten and shattered. It must be similar in kind but equal in value in order to be just.

The goal of compensation is to return the claimant to his pre-accident financial situation as much as feasible. In general, the basis for compensation in a death case is the loss of financial advantages to the deceased's dependents, which includes financial losses, expenses, and estate losses. The goal is to lessen the burden that the legal system has experienced. The amount of compensation granted shouldn't be insufficient, nor should it be irrational, extravagant, or lacking. The worth of a human life cannot be precisely calculated, and the amount of damages cannot be determined by a precise mathematical formula; instead, the amount recoverable relies

on the specific facts and circumstances of each case. It shouldn't be used as a means of profit for the person receiving it or as a means of punishment against the claimant.

The Supreme Court of India ruled in the **Shanti Lal case and Smt. P. Ramadevi v. C.B. Saikrishna cases** that compensation is defined as anything provided to make things equal, something offered to make up for loss, recompense, compensation or reward. In order for the person who has been damned to receive equal value for his loss or to be made whole for his injury, the court must order that a certain amount of money be paid by the person whose acts or omissions have caused loss or injury to another. This is known as compensation. The International Covenant on Civil and Political Rights, 1966, states in Article 9(5) that the victim will be entitled to money in an enforceable manner. It was decided in **Baker v. Willoughby** that a man is entitled to compensation for the loss he experiences as a result of his injuries rather than for the physical harm he sustained. incapacity to lead a full life, the incapacity to take advantage of the conveniences that rely on mobility, and the incapacity to make as much money as one could have or used to. The court in *State of M.P. v. Pehlajraj Dwarkadas* noted that the word "compensation" must be interpreted as a synonym for "damages," that it is only a means of making up for the monetary losses incurred by the plaintiffs, and that the terms "compensation" and "damages" have been recognized and used interchangeably in tort law in this particular context. Observations have been made in England that suggest there might be a distinction between the terms "compensation" and "damages." however these names are sometimes used interchangeably in England. However, the Indian Legislature purposefully chose to use the phrase "compensation" rather than the English equivalent "damages."

In the legal context, compensation has been referred to by the terms damages, restitution, and reparation. Reparation is the act of making up for wrongs done and damages sustained. Restitution is the duty an offender bears to the victim by repairing the harm or destruction done to his or her status and rights.

The term "damages" is frequently used to describe the monetary compensation granted as restitution for loss or harm brought about by an unlawful act or omission, as well as the monetary compensation resulting from loss or harm suffered by an individual as a result of the fault or negligence of another.

According to **Klaus Mittelbachert v. East India Hotels Ltd.**, a man is entitled to certain legal protections in his own life. In the event that tortious activities compromise his life's integrity in terms of pain, suffering, or incapacity, but also in terms of his ability to live out his natural lifespan, he has a legal right to file a complaint. A man is legally entitled to the protection that no one else's cruel actions may take away from him. His typical life expectancy is something that has temporal worth, so compensation for its impairment is appropriate.

"Every case depends on its own facts," the court said in **Halbutt's Plasticine Ltd. v. Wayne Tank and Pump Co. Ltd.** Keeping in mind, first, that the plaintiff must act reasonably to limit his loss and, second, that the goal of the damages award is to return the plaintiff to his pre-loss or pre-damage position.

Victim

In a sense, the victim and crime are linked. As a result, the victim of crime must be included in any explanation of the phenomena of crime. Despite being an essential component of crime and a crucial component of the criminal justice system, the victim of crime continued to be marginalized and limited in his ability to report crimes and testify in court. There is a widespread belief that the victim is the party in criminal justice processes that is most ignored. As a result, in suitable circumstances, Indian higher courts have begun to grant compensation using their writ power.

The problem with our current jurisprudence, though, is that while it grants the accused nearly all rights—such as the right to a fair trial, bail, legal assistance, etc.—the victim never receives any sort of socioeconomic relieve. Courts have occasionally ordered state officials to guarantee that convicts' human rights are respected and to provide the amenities that are required.

In addition, the victims of crime are completely disregarded in the misguided compassion for the offender. The State pays for the guilty man's lodging, food, clothing, and confinement in a model cell. Rather than receiving care, the victim helps with the other inmates' needs while he is incarcerated. In *Rattan Singh v. State of Punjab*, Krishana Iyer, J., pointed out what was correctly noted as the legal system's indifference to a victim of crime: The fact that victims of crime and the suffering of the victim's dependents go unnoticed by the legal system is a shortcoming in our body of law. In actuality, our criminal law's disappearing point is still victim restitution. This is the flaw in the system that has to be fixed by legislation.

The concept of victim compensation was embraced by the criminal court system a few decades ago. In the past, it would have been challenging to locate any criminological organization (official, professional, volunteer, or otherwise) or research group that focused on crime victims or that saw crime victims as anything more than depressing byproducts of the criminal activity that was the subject of the study.

The victim was treated as a mere witness in the court case by officials, but she was either completely disregarded or utilized as a source of knowledge on crime and offenders by researchers. On the other hand, in ancient societies, the main character in each criminal situation was the victim of the offense. In our own pre-modern society, the victim or the wounded party played a crucial role in decisions pertaining to compensation or retaliation. But as one culture gradually gives way to another, the victim is utterly forgotten and the perpetrator becomes the prima donna in a system of public justice based on private retaliation, with the government handling the administration of justice. In an effort to provide justifications for criminal acts, criminologists,

psychologists, sociologists, sociopsychologists, psychiatrists, social workers, and members of the government compete with penologists. As a result, they only focus on crime and criminals.

The victim gets no attention at all. He steps through the criminal justice entrance. The system fails to live up to its ideals and serves itself and its minions, not him. He experiences interrogation, delays, postponements, court appearances, insults from people, including police officers and lawyers, loss of earnings, waste of time, and frustration. These experiences lead him to the painful realization that the system does not serve him. The victim's situation is considerably worse if she is a woman. The notion that the victim obtains "justice" by punishing the offender is questionable in light of the criminal justice system's declining success rate in investigations and even lower number of convictions. If the victim is fortunate enough to recover his misplaced belongings, he should give thanks to the stars if the investigation and trial processes do not result in harassment and humiliation. Many victims choose not to disclose crimes and may turn to private retribution due to the horrifying delays, corruption, and technicalities in the evidence. In either case, the criminal justice system suffers from its inability to stop crimes from happening or to punish those who commit them when they do. Indeed, the situation's long-term effects on human rights, public safety, and state accountability are concerning.

Fundamentally, the goal of the criminal justice system is to protect state and individual rights from the deliberate intrusion of criminals who defile society by breaking social standards. Numerous governmental authorities have consistently sought to defend the rights of offenders, with little compensatory remedy given to victims. The concept of compensation for victims of wrongs, however, is linked to the legal system in two ways: first, the legal system must control the victim's relationship with the offender, and second, it must control the victim's relationship with the administration of justice. It becomes essential to comprehend the fundamental idea of a victim.

The protection of victims' rights has been aptly stressed by the Apex Court in *Rattiram & Ors. v. State of M.P.*: "Criminal jurisprudence, with the passage of time, has laid emphasis on victimology, which fundamentally is a perception of a trial from the point of view of both the criminal and the victim." Both are seen in the light of society. In certain cultures, the victim's perspective is accorded the respect and consideration it deserves. The court has an obligation to ensure that the victims' rights are upheld.

154th Law Commission Report

The growing emphasis on victims' rights in criminal trials was covered in detail in the 154th Law Commission Report on the Cr.P.C., which devoted an entire chapter to the topic of "victimology." It stated as follows: "Criminologists, penologists, and reformers of the criminal justice system have been directed to victimology, control of victimization, and protection of victims of crimes." Crimes frequently involve real injury to victims rather than just symbolic disruption of the social order. As a result, in the overall response to crime, the needs and rights of victims of crime should come first. Giving recompense to victims of crime is one accepted way to safeguard victims. The victims' and their families' needs are numerous and diverse.

Indian constitutional law provides a solid basis for the tenets of victimology. The Directive Principles of State Policy (Part IV) and the Fundamental Rights (Part III) provisions serve as the cornerstones of a new social order that would foster social and economic justice in the nation's life (Article 38). The State must, among other things, implement measures to "secure the right to public assistance in cases of disablement and in other cases of undeserved want," according to Article 41. Additionally, Article 51-A declares that "developing humanism" and "having compassion for living creatures" are among the primary duties that every Indian citizen must do. These clauses have the potential to serve as the foundation for victimology inside the constitution if they are liberally and strongly applied.

Nonetheless, the penal code of India only partially compensates victims and their relatives. This idea is partially included by Section 357 of the Code of Criminal Procedure, which gives the Criminal Courts the authority to compensate the victims.

In India, the guidelines for compensating victims of crime should be examined and broadened to include all situations. The amount of compensation shouldn't be restricted to actual fines, penalties, and forfeitures. The idea that the State should help victims with money it owns should be accepted.

Definition of Victim

The word "victim" has multiple meanings depending on the legal, social, psychological, or criminological setting. The victim is described as follows in the former USSR penal legislation.:

1. Those who have directly suffered moral harm from a crime.
2. Those who have attempted an offense and suffered physical, moral, or material harm;
3. Those whose material harm from the crime was repaired after it was committed, either by the offender or with assistance from the military or from an individual action.
4. A close family member of the victim of a crime.

Theoretical Analysis:

"The Victim may be specific such as a physical or moral person (Corporation, State, and Association) or nonspecific and an abstraction," according to Fattah (1966).

Quinney (1972) asserts that "the victim is both an object of events and a conception of reality." Everyone involved in the sequence of events contributes to the situation's actuality. In the context of larger social interactions, we all contribute to the commonsense construction of the crime, the perpetrator, and the victims. According to Separovic (1975), "We consider a victim to be any physical or moral person who suffers, either accidentally or as a result of ruthless design." Consequently, we have victims of crime or offense in addition to victims of accidents.

1. in violation of national penal laws;
2. considered a crime under international law;
3. creating a breach of internationally recognized human rights, norms, protecting life, liberty, and personal security; or
4. which otherwise amounts to "an abuse of power" by individuals who, whether they be public officials, state agents, corporate entities, or other individuals in positions of authority derived from political, economic, or social power, are beyond the reach of the loss which;
5. causes physical, psychological, or economic harm as severe as that caused by abuses of power constituting a violation of internationally recognized human rights norms, even though it is not authorized by national or international law, and creates needs in victims as serious as those caused by violations of such norms.

A victim is therefore someone who has been harmed by another and may be the target of legal action seeking allied remedy and compensation. In terms of the administration of the criminal justice system, "victim" refers exclusively to those who have been the victims of crime, such as rape, murder, cheating, criminal breach of trust, etc.

Legal Instruments in India and Abroad

Criminal Procedure Code

A 2008 modification to Cr. P.C. s.2(wa) defined "victim" as any anyone who has experienced any loss or harm as a result of the conduct or omission for which the accused person is prosecuted; the term also refers to the victim's legal guardian or heir. This definition ought to be more inclusive.

UN DECLARATION, 1985

"Victims" are people who, either singly or collectively, have experienced harm—such as bodily or mental harm, emotional distress, financial loss, or significant impairment of their fundamental rights—as a result of actions or inactions that contravene criminal laws that are in effect in Member States, particularly those that forbid the criminal abuse of authority.

According to this Declaration, an individual can be classified as a victim irrespective of the perpetrator's identity, apprehending, prosecution, or conviction, as well as the victim's familial link with the offender. When applicable, the term "victim" also refers to the direct victim's immediate family or dependents as well as those who have been harmed while acting to support victims in need or stop victimization.

Victim Definitions in different Countries

Determining the victim's identity is a challenge for researchers and campaigners. The definition of victim as defined by the UN and other nations is shown in the table that follows:

India

"Anyone who has experienced any loss or harm brought on by the commission or omission of an act for which the accused has been prosecuted is considered a victim. It covers the legal heir or guardian of the deceased.

European Union

"A person who has suffered harm—such as physical or mental injury, emotional distress, or financial loss—caused directly by acts or omissions that violate the criminal laws of the member states is referred to as a victim."

United Kingdom

"A victim is a person who has experienced economic loss, emotional, mental, or physical harm that was directly brought on by criminal activity, or a close relative of the person whose death was brought on by criminal activity."

Brazil

"I defined a victim as an individual or an intangible entity that suffers harm as a result of criminal activity that complies with the crime's definition."

United Nations

"People who, either singly or collectively, have experienced harm—such as physical or mental harm, emotional distress, financial loss, or a significant impairment of their fundamental rights—as a result of acts or inactions that contravene applicable criminal laws in Member States, particularly those that forbid the criminal abuse of authority are considered victims."

Conclusion

Victim compensation as a concept in India is still nascent and shy to continuous development. While the courts no longer subscribe to the archaic approach of limiting victim support to monetary penalty imposed on the convict, there is much momentum to be gained so as to adequately assist victims from various backgrounds. The development of victim centric jurisprudence must transcend legislative necessity, and afford participating instruments flexibility to respond to the diverse needs of a victim. Compensation must be actualised in the sense of realising rehabilitation for the victim. Therefore, a holistic Victim Compensation Scheme must encompass assistance through the process of prosecution, psychological support and rehabilitative measures to integrate the victim back into the norm of society. Apart from defining the role of various stakeholders, a successful victim compensation scheme must necessarily provide for transparency in the expenditure of the budget, and a mechanism for accountability. The State exchequer must be prepared for contingencies and be supportive of the expenditure incurred by the victim. There must be a channel for inviting and recording funds received from various international organisations and the public towards this purpose.

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