

VICTIM COMPENSATION IN SEXUAL OFFENCES: A STUDY OF INDIA'S LEGAL AND POLICY FRAMEWORK

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ABSTRACT

In the pursuit of justice, the indomitable spirit of survivors shines forth, challenging the shadows of adversity and demanding an unwavering commitment to change. In India, where the fight against sexual violence is at the forefront of public discourse, the imperative to provide comprehensive support to survivors of rape has never been more pressing. Central to this endeavor is the concept of victim compensation, a vital lifeline that holds the potential to mend shattered lives and instill hoped for a brighter tomorrow.

Before we traverse through the Indian landscape, we take a panoramic view of the global terrain. Together, we journey across continents, seeking to understand the diverse approaches adopted by nations to compensate survivors of rape. Through the prism of comparative analysis, we unmask the best practices and confront the sobering reality of the worst performers.

As dawn breaks over the Indian subcontinent, we direct our gaze inward to discern the progress made on home soil. From constitutional safeguards to legislative milestones, every facet of India's victim compensation framework is brought under the spotlight. Our exploration extends beyond the statutory real, acknowledging the indelible contributions of civil society and non-governmental organizations (NGOs) in this transformative endeavor.

Yet, we do not shy away from confronting the challenges that persist on this arduous path. The complexities of implementation, cultural stigmas, and the labyrinthine legal procedures demand our attention. Acknowledging these obstacles empowers us to chart a roadmap for change, one that dismantles barriers and builds bridges to healing.

A beacon of hope emerges as we draw from the wisdom of experts, the experiences of survivors, and the triumphs of grassroots initiatives. Armed with knowledge and empathy, we propose concrete solutions that can invigorate India's victim compensation landscape. The synergy of collective effort, harmonizing with global best practices, propels us towards a future where survivors find solace, support, and a reaffirmation of their intrinsic dignity.

As we stand at the crossroads of the present and future, the imperative for change resounds with renewed vigor. In unison, let us strive to redefine victim compensation in India's rape laws, transcending mere legal remedies to foster a culture and resilience. Only through this transformation can we illuminate the path towards healing, empowerment, and the triumph of the human spirit over darkness.

Keywords: Victim compensation, Sexual violence, Justice, Survivors, Legal frameworks

I. INTRODUCTION

As the world's largest democracy grapples with the complex interplay of legal frameworks, government policies, and societal norms. It becomes paramount to assess the efficacy of victim compensation viz-a-viz rape laws. This scholarly exploration embarks on a transformative journey, venturing into the heart of the matter, seeking to illuminate the path towards a more just and empathetic society. With the eyes of the world's watching, this research paper delved into the nuances of victim compensation, uncovering the intricate tapestry that binds legislative intent with ground-level reality.

In the research paper, the primary goal is to analyze the victim compensation framework within the context of rape laws in India. This involves examining the various aspects of victim compensation, including the legal provisions, government schemes, and initiatives taken by NGOs. The objective is to assess the effectiveness of the existing system and identify areas for improvement.

To achieve this goal, the study aims to assess the targets and indicators that have been set for victim compensation in India. This involves analyzing the goals and objectives established by the legal system, government policies, and relevant stakeholders. By evaluating these targets and indicators, the research aims to determine the extent to which they have been achieved and the overall effectiveness of the victim compensation framework.

The assessment of targets and indicators is crucial as it provides a basis for evaluating the success and shortcomings of the victim compensation system. It allows for a comprehensive analysis of the gap between the desired outcomes and the actual outcomes in terms of compensation provided to rape victims. By identifying these gaps, the research can propose recommendations to bridge them and improve the overall effectiveness of victim compensation in India.

Through a thorough examination of the targets and indicators, the research will contribute to a better understanding of the existing victim compensation framework in India and provide insights into areas that require attention and improvement. This analysis will form a significant part of the research paper, shedding light on the achievements, challenges, and potential avenues for enhancing victim compensation in the context of rape laws in India.

II. WHY IS VICTIM COMPENSATION IMPORTANT?

Whenever a crime is committed, it creates three victims on three counts, the society, the primary victim and the dependent of the victim. In India, three statutes are there such as Indian Penal Code, 1860, Code of Criminal Procedure, 1973 to punish the offenders and the Indian Constitution. However, the actual victim who suffers loss because of the crime, has little to no say in the prosecution, as they are left to the mercy of the investigators and the public prosecutors. This article would be dealing particularly with the offence of rape, to make compensation to rape victims, all through a speedy trial with proper safeguards for both the accused and the victim. Basically, in Indian Criminal Justice System, three broad fields of study are involved: Criminology, Penology and Victimology. Victimology is comparatively a newer branch which centers around the measures such as compensation, rehabilitation and the justice to victim.

The idea to compensate victim was emerged in 1950s when it was passed by the British Magistrate and Social Reformer Margery Fry. But later, when the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was unanimously adopted by the UN General assembly on 11.11.1985, Clause 8 of which deals with compensation to the victims of crime.

In 2003, the Justice Malimath Committee observed that, 'Victims of Crime are important players in criminal justice administration both as complainant, informant and as witness for the police prosecution. Despite the system being heavily dependent on the victim, criminal justice has been concerned with the offender and his interests almost subordinating or disregarding the interest of the victim. In civil law system generally, the victims enjoyed better status than in administration of Criminal Justice.

III. GLOBAL STATUS

Countries worldwide face several issues when it comes to providing adequate compensation to rape victims. Understanding these challenges is crucial in identifying areas for improvement and formulating effective solutions.

1. Legal Complexity and Procedural Barriers:

- (a) Complex legal frameworks and procedures can impede the timely and efficient provision of compensation.
- (b) Lengthy legal processes, cumbersome documentation requirements, and bureaucratic hurdles can delay or deter victims from assessing compensation. Inconsistent interpretation and application of laws related to victim compensation can create disparities and hinder justice.

2. Inadequate Funding and Resource Allocation:

- (a) Insufficient funding and resources allocated to victim compensation programs can limit the amount and availability of compensation.
- (b) Limited budgets may result in lower compensation amounts or delayed disbursements, further exacerbating the financial burdens faced by survivors.

3. Lack of Awareness and Information:

- (a) Limited awareness among survivors and the general public about the existence and availability of victim compensation programs can impede access.
- (b) Inadequate dissemination of information about eligibility criteria, application procedures, and support services may prevent survivors from seeking compensation.

4. Stigmatization and Secondary Victimization:

- (a) Deep-rooted societal stigma surrounding sexual violence may discourage survivors from pursuing compensation or reporting their cases.
- (b) Insensitive treatment by authorities, including victim-blaming attitudes and re-traumatization during legal proceedings, can deter survivors from seeking compensation.

5. Burden of Proof and Evidentiary Challenges:

- (a) Stringent evidentiary requirements and high burdens of proof can pose challenges for survivors seeking compensation.
- (b) The focus on corroborative evidence and lack of understanding of the unique nature of sexual violence can lead to under compensation or denial of claims.

IV. STATUS IN INDIA

India is a big country and fast-growing economy in the world. While discussing the concept of victim compensation it is pertinent to discuss various Constitutional and Legal provisions available in India regarding Victim compensation.

A. Legal and Constitutional Provisions

Evaluating the legal and constitutional provisions in place is crucial to understand the framework within which victim compensation operates in India.

1. Constitutional Framework:

The relevant provisions within the Indian Constitution that guarantee fundamental rights and protection for victims of crime.

(a) Fundamental Rights:

- i. **Article 21-** The right to life and personal liberty, which encompasses the right to live with dignity, free from violence, and the right to access justice and compensation in case of harm.
- ii. **Article 14-** The right to equality, ensuring equal protection of the law to all individuals, including victims of rape.

(b) Protection of Victims' Rights:

- i. **Article 39A-** The provision promoting equal justice and free legal aid, emphasizing marginalized and vulnerable sections of society.
- ii. **Article 15(3)-** Empowers the state to make special provisions for the protection of women and children, which includes the provision of victim compensation.

(c) Directive Principles of State Policy:

Directive Principles of State Policy (DPSP)- Principles laid down in Part IV of the Constitution that guide the state in policymaking. DPSPs such as Article 38, Article 39, and Article 42 emphasize the State's responsibility to secure social justice, ensure equal pay for equal work, and provide assistance to the weaker sections of society, including victims of crime.

Article 41 and 51 (a) of the Constitution lays down the duty of the State to secure "the right to public assistance in case of disablement and in case of undeserved want" and to "have compensation for living creatures" and "to develop humanism" respectively. Justice Krishna Iyer in *Maru Ram v. Union of India*, (1981) 1 SCC 107) said that victimology, a burgeoning branch of humane criminal justice, must find fulfilment, not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn. (*Bhim Singh v. State of J.& K.* (1985) 4 SCC 677; *Jacob George v. State of Kerala*, (1994) 3 SCC 430, *Manju Bhatia v. New Delhi Municipal Council*, (1997) 6 SCC 370.)

(d) Judicial Regime of Victim Compensation:

The Law Commission of India observed that, “we have a fairly comprehensive provision for payment of compensation to the injured party under section 545 of the Cr.PC, 1898. It is regrettable that our courts do not exercise their statutory powers under this section as freely and as liberally as could be desired. The section has its limitation also but its application depends, in the first instance, on whether the court considers a substantial fine as proper punishment for the offence. But in heinous crimes, the court may impose heavy fine in addition to imprisonment. Later, in *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551; *Roy Fernandes v. State of Goa*, (2012) 3 SCC 221; *R. Mohan v. A.K. Vijaya Kumar*, (2012) 8 SCC 721.) the Supreme Court noticed the insensitive attitude of subordinate courts and directed the courts to exercise their powers, liberally, observed that Section 357 is an important provision but the courts have seldom invoked it, perhaps due to the ignorance of the object of it.

Thereafter, after long debates, Section 357-A was inserted in Cr.PC, which provides the State to frame a victim compensation scheme. Compensation shall be paid to the victim depending on the facts and circumstances of the case as per such scheme. Under Cr.PC, a number of provisions relating to compensation of victims such as Ss. 357, 357-A, 357-B, 357-C, 358 and 359 are available. One more provision relating to compensation of victims is section 250 Cr.PC, wherein, if the prosecution is flung based on false accusation, and ultimately after trial, if the person is acquitted, then the compensation is to be levied on the complainant under section 250 Cr.PC because of the guilt of the complainant/State, the accused has suffered. Even FIR attaches a stigma in certain cases. Therefore, if an accusation is made without unreasonable cause and if the court feels that a false case is launched, then the court may impose compensation U/S 250 Cr.PC.

The Hon’ble Supreme Court in *Palaniappa Gounder v. State of T.N.* (1977) 2 SCC 634 observed that an order for compensation can be passed U/S 357 (1) (c) only when a court imposes a sentence of fine or a sentence of which fine forms a part. After the insertion of section 357-A and 357-B, the horizons of the victim compensation regime stood broadened.

Before the amendment made in Cr.PC in 2013, it was only the duty of the accused to compensate the victim after the conclusion of the trial, but the State has no duty to pay compensation whatsoever.

The VCS is retrospective in nature. It means if a crime was committed before the scheme was implemented, the victim still cannot be denied compensation if it deserves the compensation.

In *Serina Mondal v. State of W.B.* (2018 SCC online Cal 4238), it was held by Hon’ble Apex Court that “a victim is granted compensation U/S 357-A because the fundamental right to life is violated, and denial or delay of compensation would ‘continue such violation and perpetrate gross inhumanity on the victim in question.’

2. Compensation for Offences against Women Victim of Rape: Rape is one of the most heinous crimes against mankind, as no other crime in itself includes all the costs i.e. transaction cost + social cost + psychological cost. In *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490 the Supreme Court reiterated that: “Rape is not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim’s most cherished of the fundamental rights, namely, the right to life contained in Article 21.” The Criminal Law (Amendment) Act, 2013 was enacted to address the inadequacy in law relating to sexual offences against women and children, which led to the creation of the Nirbhaya Fund. The Central Government also set up the Central Victim Compensation Fund Scheme vide the notification dated 14-10-2015, by the Ministry of Home Affairs. However, last year, it was reported that only 36 per cent of the Nirbhaya Fund had been utilised in the past seven years, which speaks in volumes of the enforcement backdrops apropos India’s bureaucracy. Moreover, 99 per cent of the minor rape victims of sexual assault remained without any compensation. The Supreme Court in *Nipun Saxena v.*

Union of India, (2017 SCC OnLine SC 1776) deemed it appropriate for National Legal Services Authority (NALSA) to set up a Committee to prepare Model Rules for Victim Compensation for sexual offences and acid attacks. Thereafter, the Committee finalised the Compensation Scheme for Women. The following table shows the compensation awarded to the victim in the last one year i.e from April 2022 to February 2023.

NATIONAL LEGAL SERVICES AUTHORITY							
STATISTICAL INFORMATION INR/O VICTIM COMPENSATION SCHEME U/S357-ACR.PC							
DURING THE PERIOD FROM APRIL, 2022 TO FEBRUARY, 2023.							
S.N O	SLSA	Applica tions receive d directly by Legal Service Institut ions (A)	Appli cation s/ orders marke d /Direc ted by any Court (B)	Applic ations receive d includi ngCou rt Orders (A+B)	Appli cation s Decid ed	Appli cation s Pendi ng	Compe nsation Award ed (in Rs.)
1	Andama n &Nicob ar Islands	0	0	0	0	0	0
2	Andhra Pradesh	34	95	129	105	68	156300 00
3	Arunach al Pradesh	75	4	79	49	28	239500 00
4	Assam	268	399	667	527	774	942450 00
5	Bihar	365	553	918	586	411	134305 007
6	Chhattis garh	4919	1414	6333	2557	3675	241864 500
7	Dadra &Nagar Haveli	1	2	3	2	1	470000
8	Daman & Diu	0	18	18	6	0	100000 0
9	Delhi	1783	3940	5723	4451	2313	802306 500
10	Goa	4	0	4	2	0	0
11	Gujarat	430	459	889	780	816	101450 000
12	Haryana	41	549	590	537	122	143527 500

13	Himachal Pradesh	65	108	173	58	0	31160000
14	Jammu & Kashmir	49	21	70	45	5	8435000
15	Jharkhand	226	668	894	476	1357	149527500
16	Karnataka	150	530	680	864	621	98902953
17	Kerala	66	220	286	375	117	50300000
18	Lakshadweep	0	0	0	0	0	0
19	Madhya Pradesh	281	1205	1486	937	868	147676303
20	Maharashtra	90	127	217	166	274	19141000
21	Manipur	0	10	10	13	3	5900000
22	Meghalaya	251	93	344	96	64	15229500
23	Mizoram	165	407	572	62	20	13590000
24	Nagaland	19	0	19	15	30	3050000
25	Odisha	1548	551	2099	1813	2671	369073500
26	Puducherry	1	18	19	0	0	1850000
27	Punjab	416	306	722	664	391	126764918
28	Rajasthan	1111	895	2006	2026	350	312966000
29	Sikkim	0	20	20	20	0	4940000
30	Tamil Nadu	443	141	584	250	837	57183000
31	Telangan	64	128	192	125	120	24319000
32	Tripura	27	32	59	51	45	8180000
33	U.T. Chandigarh	2	36	38	62	27	15100000
34	Uttar Pradesh	132	0	132	132	0	20110000
35	Uttarakhand	318	94	412	291	177	21635000

36	West Bengal	466	235	701	471	766	50698000
37	Ladakh	0	0	0	0	0	0
38	Grand Total	13810	13278	27088	18614	16951	3114480181

From the above table it has been observed that Delhi is the highest compensation paying State/UT with the paying amount of Rs. 80,23,06,500 in India in the last one year and the Dadra & Nagar Haveli is the lowest compensation paying State/UT with the paying amount of Rs. 4,70,000/- whereas, Gao and Lakshadweep are not paying anything to the victims rather no application has been received by the Legal Services Authority in those UTs.

3. Victims/Survivors of Sexual Assault/other Crimes — 2018. As per the scheme, a victim of gang rape would get a minimum compensation of Rs 5 lakhs and up to a maximum of Rs 10 lakhs. Similarly, in case of rape and unnatural sexual assault, the victim would get a minimum of Rs 4 lakhs and a maximum of Rs 7 lakhs. The victims of acid attacks, in case of disfigurement of face, would get a minimum compensation of Rs 7 lakhs, while the upper limit would be Rs 8 lakhs. The court then accepted the said scheme to be applicable across India, which remains the law of the land.

B. Challenges and Gaps in the Current System

Identifying the challenges and gaps in the current system is crucial for proposing recommendations and reforms that address various issues. By addressing these challenges, India can enhance the victim compensation system and ensure more equitable and accessible support for survivors of rape.

1. Inadequate Compensation Amounts:

- (a) One of the significant challenges is the inadequacy of compensation amounts provided to rape victims.
- (b) Compensation may not cover the full range of financial, medical, and rehabilitative needs of survivors.
- (c) The compensation amounts may not be updated regularly to reflect the changing costs of living, medical expenses, and other necessary support services.

2. Limited Awareness and Accessibility:

- (a) Many rape victims may be unaware of the existence of victim compensation programs or lack information about the application process.
- (b) Limited accessibility to information, especially in rural or marginalized communities, hinders survivors' ability to access compensation.
- (c) Lack of awareness campaigns and outreach programs may contribute to low utilization of the available compensation resources.

3. Procedural Complexity and Delays:

- (a) Complex application procedures, documentation requirements, and lengthy legal processes can be challenging for survivors to navigate.
- (b) Delays in processing claims and disbursing compensation can exacerbate the financial hardships faced by survivors, hindering their recovery.

4. Burden of Proof and Evidentiary Challenges:

- (a) The burden of proof and the requirement for substantial evidence in compensation claims can be daunting for survivors.
- (b) The nature of sexual violence crimes often presents unique evidentiary challenges, leading to difficulties in meeting the necessary standards for compensation.

5. Lack of Standardized Implementation:

- (a) Inconsistent implementation of victim compensation laws and schemes across different states and districts in India pose a challenge.
- (b) Disparities in compensation amounts. Eligibility criteria, and processes create inequities and inconsistencies in accessing compensation.

V. SUGGESTIONS

Based on reports and best practices from grassroots organizations and globally, here are some recommendations to improve the victim compensation system in India.

1. Enhance Compensation Amounts:

- (a) Regularly review and update compensation amounts to ensure they cover the full range of financial, medical, and rehabilitative needs of survivors.
- (b) Consider factors such as inflation, medical expenses, counselling costs, and loss of earning when determining compensation amounts.

2. Simplify and Streamline Application Procedures:

- (1) Simplify the application process for compensation, reducing bureaucratic hurdles and paperwork.
- (2) Provide user-friendly application forms and clear guidelines to assist survivors in submitting their claims.
- (3) Establish dedicated helplines or online portals to offer guidance and support throughout the application process.

3. Strengthen Awareness and Outreach:

- (1) Conduct comprehensive awareness campaigns to educate the public, including survivors, about victim compensation schemes.
- (2) Collaborate with NGOs, community organizations, and local authorities to disseminate information through various channels, including media, social media, and community engagement programs.
- (3) Target marginalized communities and rural areas with specific awareness initiatives to ensure broader reach and accessibility.

4. Establish Support Services:

- (1) Allocate adequate resources to establish and strengthen support services for survivors, including counselling, medical aid, and rehabilitation programs.
- (2) Collaborate with NGOs and healthcare providers to ensure accessible and quality support services are available to survivors across different regions.

In addition to the previous recommendations, here are specific suggestions for legal reforms, policy changes, capacity building, and awareness campaigns. Implementing these suggestions will contribute to a more accessible, efficient, and survivor-centred approach towards compensating victims of rape and sexual violence.

1. Legal Reforms:

- (a) Review and amend existing laws to strengthen victim compensation provisions, ensuring they are victim-centric, rights-based, and aligned with international standards.
- (b) Introduce provisions that simplify the burden of proof and place greater emphasis on survivor testimony and expert evidence in compensation claims.
- (c) Consider establishing specialized courts or fast-track mechanisms to expedite compensation cases and ensure timely justice for survivors.

2. Policy Changes:

- (a) Develop comprehensive national policies on victim compensation that outlines the rights, entitlements, and processes for survivors.
- (b) Establish clear guidelines for the calculation of compensation amounts, taking into account different categories of harm and the specific needs of survivors.
- (c) Implement policies that prioritize the rights and needs of marginalized and vulnerable groups, ensuring equitable access to compensation.

3. Capacity Building:

- (a) Provide training programs and capacity-building initiatives for legal professionals, judges, and other stakeholders involved in the victim compensation process.
- (b) Offer specialized training on trauma-informed approaches, survivor support, and sensitivity towards victims of sexual violence.
- (c) Develop standardized training modules and provide ongoing professional development opportunities to ensure consistent and updated knowledge among professionals.

4. Awareness Campaigns:

- (a) Launch targeted awareness campaigns to educate the public about victim compensation laws, schemes, and available support services.
- (b) Collaborate with media outlets, community leaders, and influencers to disseminate accurate information and debunk myths surrounding rape and victim compensation.
- (c) Engage with educational institutions to incorporate awareness modules on sexual violence, victim rights, and compensation mechanisms in school and college curricula.

VI. CONCLUSION

Aligning targets with achievements in victim compensation is essential to ensure progress and accountability in providing adequate support to survivors of rape in India. By setting specific and measurable targets for compensation and regularly assessing the extent to which these targets are achieved, the effectiveness of the victim compensation system can be evaluated.

To accelerate action and improve the victim compensation system, attention should be given to the following areas:

1. Policy and Legal Reforms:

- (a) Expedite the process of implementing legal and policy reforms to strengthen victim compensation provisions.
- (b) Address gaps and inconsistencies in the legal framework and ensure alignment with international standards.
- (c) Streamline and simplify procedures to make compensation more accessible and efficient for survivors.

2. Capacity Building and Training:

- (a) Enhance capacity building programs for legal professionals, judges, and other stakeholders involved in victim compensation.
- (b) Promote specialized training on trauma-informed approaches, survivor support, and sensitivity to the needs of rape survivors.
- (c) Continuously update training programs to ensure professionals are equipped with the latest knowledge and skills.

3. Resource Allocation:

- (a) Allocate adequate financial resources to victim compensation programs to ensure timely and sufficient compensation for survivors.
- (b) Increase funding for support services, including counselling, medical aid, and rehabilitation programs, to provide comprehensive care for survivors.

4. Collaboration and Coordination:

- (a) Strengthen collaboration between government agencies, NGOs, and civil society organizations to leverage their expertise and resources in supporting survivors and improving the victim compensation system.
- (b) Foster effective coordination to ensure seamless integration of efforts, avoid duplication, and enhance the overall impact of victim compensation initiatives.

By implementing the proposed recommendations, India can build upon the strengths of its legal and constitutional provisions, government schemes, and NGOs' initiatives. These strengths include the existing legal framework, the commitment to victim compensation, and the dedication of NGOs and civil society organizations in supporting survivors.

In conclusion, the implementation of the proposed recommendations is crucial to establish an effective victim compensation system in India. Aligning targets with achievements, accelerating action in key areas, and building upon existing strengths will lead to a more robust and equitable system that provides survivors of rape with the necessary support and compensation they deserve. The significance of these recommendations lies in ensuring justice, empowering survivors, and fostering a society that recognizes and responds to the needs of rape victims in a compassionate and effective manner. Moreover, while considering the problem of penology the court should not overlook the plight of victimology. Considering the victim compensation scheme under CrPC, along with the NALSA guidelines, it appears that a court must order the specified amount of compensation for the victims of rape. It is submitted that the idea of a victim compensation scheme under the CrPC is complete and ideal on principle, however, the courts have been assigned the greater duty to pass orders for compensation, based on the facts and circumstances of a particular case. Once the order for compensation has been passed, the duty shifts onto the bureaucracy, for grant of compensation to victims.

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