



Victim Compensation Laws and Restorative Justice

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Abstract— The traditional criminal justice paradigm, oriented primarily toward the identification, prosecution, and punishment of offenders, has historically accorded the victim of crime a marginal role, typically confined to that of witness. Over the past four decades, this orientation has been substantially challenged by the emergence of victimology as a distinct field of inquiry and by the parallel growth of restorative justice as an alternative or complementary model of criminal accountability, one that centres the harm suffered by the victim and seeks reparation, dialogue, and reintegration rather than punishment alone. This paper examines the legal framework for victim compensation in India, tracing its constitutional origins in the Supreme Court's public law compensation jurisprudence, its statutory embodiment in Section 357 and Section 357A of the Code of Criminal Procedure, 1973, and its continuation under the Bharatiya Nagarik Suraksha Sanhita, 2023. It further situates these

developments within the broader international framework established by the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, and examines the theoretical and practical relationship between victim compensation and restorative justice. The paper concludes that while Indian law has made significant strides in recognising victims' entitlement to compensation, the fragmented, state-specific character of compensation schemes and the still-limited institutionalisation of restorative practices constrain the system's capacity to deliver holistic justice to victims of crime.

Keywords— victim compensation, restorative justice, Section 357A CrPC, victimology, reparation, criminal justice reform

Introduction



For much of the history of modern criminal law, the victim of a crime has occupied a curiously peripheral position within the very proceedings initiated to address the harm done to them. The criminal trial, structured as a contest between the state and the accused, has traditionally treated the victim as a source of evidence rather than a party with an independent stake in the outcome or process of justice. This offender-centric orientation, while serving important functions of deterrence and public order, has often left victims without meaningful redress for the physical, psychological, financial, and social harm they have suffered, a gap that has, since the latter half of the twentieth century, given rise to sustained scholarly and policy attention under the rubric of victimology.

movement toward restorative justice, which reconceives the purpose of criminal justice itself around the repair of harm, the involvement of victims in decisions affecting their case, and, where appropriate, reconciliation between victim, offender, and community. In India, these developments have proceeded through a combination of constitutional interpretation, statutory reform, and judicial activism, beginning with the Supreme Court's recognition of a public law remedy of compensation for violations of fundamental rights and culminating in the introduction of a dedicated statutory victim compensation scheme under Section 357A of the Code of Criminal Procedure. This paper examines this legal architecture and considers the extent to which it reflects, or falls short of, the principles of restorative justice.

Objectives of the Study

This study seeks to achieve the following objectives:

To trace the constitutional foundations of victim compensation in India through the Supreme Court's public law compensation jurisprudence.

To examine the statutory framework governing victim compensation under Sections 357 and 357A of the Code of Criminal Procedure, 1973, and its continuation under the Bharatiya Nagarik Suraksha Sanhita, 2023.



Fig. 1: Victim-Centric Criminal Justice System In India

Source: <https://www.iasgyan.in/daily-current-affairs/victim-centric-criminal-justice-system-in-india>

Two related but distinct developments have emerged in response to this gap: the legal institutionalisation of victim compensation, whereby the state or the offender is required to provide monetary redress to victims of crime, and the broader

To analyse landmark judicial pronouncements that have shaped the doctrine of victim compensation in India, particularly *Rudul Sah v. State of Bihar* and *Ankush Shivaji Gaikwad v. State of Maharashtra*.

To situate Indian victim compensation law within the international framework established by the United Nations

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.

To examine the concept and practice of restorative justice, and its relationship to victim compensation as a mode of redress.

To identify the structural and implementation gaps in India's victim compensation regime and to propose directions for reform toward a more comprehensive, restorative model of justice.

instruments, and peer-reviewed and professionally published legal commentary. The study does not involve primary empirical data collection; it synthesises existing legal and institutional material to construct an evaluative account of the current state of victim compensation law and its relationship to restorative justice principles. Case law has been selected for its recognised doctrinal significance in shaping Indian victim compensation jurisprudence, and statutory analysis focuses on provisions directly bearing on victim redress and compensation.

Literature Review

The literature on victim compensation and restorative justice in India converges around several recurring themes: the constitutional origin of compensation as a public law remedy, the statutory evolution of victim compensation schemes, the judicial elaboration of the mandatory character of compensation, and the persistent gap between compensation as a monetary remedy and restorative justice as a more holistic model of redress.

The earliest and most foundational contribution to this literature is *Rudul Sah v. State of Bihar*, reported at (1983) 4 SCC 141, in which the Supreme Court, confronted with a habeas corpus petition filed by a man who had remained in prison for over fourteen years despite his acquittal, directed the State of Bihar to pay interim monetary compensation as an ancillary relief to his release. Commentary on the case, including analysis published by CaseMine, Lawbhoomi, and the ESCR-Net case law database, treats the decision as the origin point of the Indian doctrine of public law compensation, establishing that the Supreme Court's remedial powers under Article 32 extend beyond traditional writs to include monetary compensation for the violation of fundamental rights, notwithstanding the absence of any explicit constitutional text providing for such a



Fig. 2: Compensation to Victims of Crime in India

Source: <https://testbook.com/ugc-net-law/compensation-to-the-victims-of-crime-in-india>

Research Methodology

This paper adopts a doctrinal, descriptive-analytical research methodology, relying on secondary sources including constitutional provisions, statutory texts, reported judicial decisions of the Supreme Court of India, international



remedy. Scholarly commentary further notes that the decision marked a departure from the position taken in *Kasturilal Ralia Ram Jain v. State of Uttar Pradesh*, in which the State had been held immune from tortious liability for the acts of its officials, thereby opening the door to a distinct public law compensation jurisprudence that would later inform decisions such as *Nilabati Behera v. State of Orissa* in the context of custodial death.

Building on this constitutional foundation, statutory reform introduced a dedicated framework for victim compensation through Section 357A of the Code of Criminal Procedure, inserted by the Code of Criminal Procedure (Amendment) Act, 2008. Analysis published in the Jus Corpus legal blog and in the *International Journal of Creative Research Thoughts* (IJCRT) describes this provision as a deliberate legislative shift from a purely retributive model of criminal justice toward a more restorative and victim-inclusive approach, obligating every state government, in coordination with the central government, to prepare a victim compensation scheme funded through a dedicated Victim Compensation Fund. Unlike compensation under Section 357 of the CrPC, which could only be awarded upon conviction and was contingent on the convicted offender's financial capacity, commentary from the Delhi State Legal Services Authority notes that compensation under Section 357A is available irrespective of whether the offender is convicted, acquitted, or never identified, provided that the commission of the offence and the victim's identity can be established, thereby addressing what the literature widely identifies as the central structural limitation of the earlier, offender-dependent compensation model.

The judicial elaboration of this framework reached its most significant articulation in *Ankush Shivaji Gaikwad v. State of Maharashtra*, reported at (2013) 6 SCC 770. In this case, arising from a murder conviction in which neither the trial court

nor the appellate court had considered the question of victim compensation, the Supreme Court, per Justice T.S. Thakur, held that while the actual award of compensation under Section 357 remains a matter of judicial discretion, the consideration of whether to award compensation is a mandatory duty in every criminal case, and that courts are required to record reasons where compensation is not granted, with failure to do so amounting to an error of law. Commentary on the case, including analysis published by the Jus Corpus blog, the Vintage Legal blog, and a scholarly note published by JSS Law College, treats this decision as the central operative precedent transforming victim compensation from a peripheral, largely ignored provision into an obligatory judicial consideration attached to every criminal conviction, a transformation subsequently reinforced in *Suresh v. State of Haryana*, in which the Court characterised compensation as a measure of social justice that, while unable to undo the harm suffered, plays an essential role in the victim's rehabilitation and the restoration of dignity.

Notwithstanding these doctrinal advances, a substantial and recurring theme across the literature concerns significant implementation deficits in the practical operation of victim compensation schemes. A study published on the Vintage Legal platform documents pronounced disparities in the quantum of compensation across Indian states for comparable offences, citing, for example, compensation for rape victims ranging from as low as twenty thousand rupees in Chhattisgarh to as much as ten lakh rupees in Goa, alongside significant variation in procedural requirements and disbursement timelines. The same literature, along with the IJCRT-published study on victimology and the Indian criminal justice system, identifies the absence of a uniform national compensation policy, combined with limited provision for psychological and social





rehabilitation beyond monetary relief, as continuing structural weaknesses in the Indian victim compensation regime, notwithstanding the constitutional and statutory foundation established through *Rudul Sah*, *Nilabati Behera*, and *Ankush Shivaji Gaikwad*.

A further important strand of literature situates Indian developments within the broader international framework for victim justice established by the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 on 29 November 1985. As documented on the website of the Office of the United Nations High Commissioner for Human Rights and in the United Nations Office on Drugs and Crime's Handbook on Justice for Victims, the Declaration establishes four principal pillars of victim justice: access to justice and fair treatment, restitution, compensation, and assistance, and expressly recommends that governments review their laws to consider restitution as an available sentencing option and to establish or strengthen national compensation funds. Significantly, the Declaration's text, as reproduced by the UNODC and the Child Rights International Network archive, explicitly endorses the use of informal dispute resolution mechanisms, including mediation, arbitration, and customary or indigenous justice practices, "to facilitate conciliation and redress for victims" where appropriate, a provision that scholars widely regard as an early international articulation of restorative justice principles, predating the more fully developed restorative justice movement that gained prominence in criminological literature during the 1990s. Indian legal scholarship, including the IJCRT study and the IJIRL-published article on victimology, frequently cites the 1985 Declaration as the normative backdrop against which the adequacy of India's domestic compensation framework, including Section 357A,

ought to be assessed, with several commentators noting that Indian compensation schemes remain more oriented toward monetary restitution than toward the fuller restorative and reintegrative processes envisaged in restorative justice theory.

Taken together, this literature reveals a clear trajectory: Indian victim compensation law has moved from an initially judge-made, constitutionally grounded public law remedy confined to violations of fundamental rights, through a general but discretionary statutory compensation power under Section 357 of the CrPC, to a more comprehensive, offender-independent statutory scheme under Section 357A, reinforced by judicial insistence on its mandatory consideration. At the same time, the literature consistently identifies a persistent gap between this legal architecture and the fuller ambitions of restorative justice, both as articulated in the 1985 UN Declaration and in contemporary victimological scholarship, particularly with respect to psychological rehabilitation, victim participation in the justice process, and reconciliatory engagement between victim, offender, and community.

Constitutional and Statutory Framework

The constitutional foundation for victim compensation in India rests on the Supreme Court's interpretation of Articles 21 and 32, which, following *Rudul Sah*, has been understood to permit the award of monetary compensation as a public law remedy for the violation of fundamental rights, independent of any explicit constitutional text providing for such relief. This constitutional remedy was subsequently extended to custodial death cases in *Nilabati Behera v. State of Orissa*, establishing that the State bears strict liability for violations of Article 21 occurring through the actions of its agents.





At the statutory level, Section 357 of the CrPC, retained in substance under the Bharatiya Nagarik Suraksha Sanhita, 2023, empowers courts to direct the payment of compensation to victims out of the fine imposed on a convicted offender, or, where no fine forms part of the sentence, out of a separately ordered sum. Section 357A, inserted by the 2008 amendment, imposes a distinct and independent obligation on state governments, in coordination with the central government, to prepare a victim compensation scheme funded through a dedicated fund, under which compensation may be awarded by the District or State Legal Services Authority irrespective of the outcome of the criminal prosecution, including in cases where the offender is never traced, is acquitted, or is discharged. Section 357B further clarifies that compensation payable under Section 357A is in addition to any fine paid to the victim under Section 326A or Section 376D of the Indian Penal Code, addressing certain offences of acid attack and rape specifically.

Judicial Pronouncements

The judicial architecture of Indian victim compensation law rests on a sequence of landmark decisions. In *Rudul Sah v. State of Bihar*, the Supreme Court, confronted with the case of a man detained for fourteen years beyond his lawful term of imprisonment, awarded interim compensation as an ancillary relief to a habeas corpus petition, establishing that the Court's remedial jurisdiction under Article 32 extends to monetary redress for violations of personal liberty. In *Nilabati Behera v. State of Orissa*, this principle was extended to custodial death, with the Court holding that compensation for violation of the right to life is a public law remedy grounded in the strict liability of the State, distinct from private law tort claims.

In *Ankush Shivaji Gaikwad v. State of Maharashtra*, the Supreme Court transformed the statutory compensation power

under Section 357 of the CrPC from a routinely overlooked discretionary provision into a mandatory judicial consideration in every criminal case, holding that courts must apply their mind to the question of compensation and record reasons where it is not awarded. This principle was subsequently reaffirmed and elaborated in *Suresh v. State of Haryana*, in which the Court characterised victim compensation as integral to social justice and directed that it be awarded liberally, and in *State (CBI) v. Sanjiv Bhalla*, which reiterated the legal requirement that courts consider victim compensation in every criminal proceeding conducted before them.

Restorative Justice: Concept and Relationship to Compensation

Restorative justice represents a distinct theoretical and practical framework within criminal justice, oriented toward repairing the harm caused by crime through processes that actively involve the victim, the offender, and, where appropriate, the wider community, rather than focusing exclusively on the punishment of the offender by the state. As reflected in the text of the 1985 UN Declaration's endorsement of informal dispute resolution mechanisms, including mediation and customary justice practices, restorative approaches emphasise dialogue, acknowledgment of harm, and reparative action, which may include but is not limited to monetary compensation.

Within this framework, victim compensation, as institutionalised in Indian law through Section 357A of the CrPC, represents an important but partial realisation of restorative justice principles. It fulfils the "compensation" and, to a more limited extent, "restitution" pillars articulated in the 1985 Declaration, but does not, in its current statutory form, incorporate the participatory and reconciliatory dimensions, such as victim-offender dialogue or community-based





reintegration processes, that characterise fuller restorative justice models as they have developed in comparative criminological practice. The literature's consistent identification of gaps in psychological and social rehabilitation within Indian compensation schemes reflects precisely this limitation: monetary compensation, however mandatory in judicial consideration, addresses only one dimension of the broader restorative ambition embodied in international instruments and contemporary victimological scholarship.

Discussion and Analysis

The trajectory traced in the preceding sections reveals a criminal justice system in transition: Indian law has moved considerably from an offender-centric model, in which the victim's role was largely confined to that of witness, toward a framework that recognises a distinct entitlement to compensation, grounded first in constitutional interpretation and subsequently formalised through dedicated statutory schemes. The judicial insistence, particularly in *Ankush Shivaji Gaikwad*, that compensation be a mandatory consideration in every criminal case reflects a significant doctrinal achievement, addressing what earlier commentary had identified as a systemic judicial tendency to overlook victim compensation altogether.

At the same time, the literature's consistent documentation of disparities in compensation quantum across states, procedural inconsistency, and the persistent gap between monetary compensation and the fuller ambitions of psychological and social rehabilitation suggests that India's victim compensation regime remains, in its current form, closer to a compensation-oriented model than a fully restorative one. The absence of a uniform national compensation policy, despite the Section 357A framework's origin in a central legislative mandate,

points to a continuing implementation gap between statutory design and state-level execution, a pattern that echoes similar implementation deficits identified in other areas of Indian criminal justice reform. Bridging the distance between the current compensation-focused framework and a more fully restorative model of justice would likely require not merely further monetary standardisation, but the institutionalisation of victim participation mechanisms, psychological support services, and, where appropriate and consensual, structured opportunities for victim-offender dialogue, consistent with the broader vision articulated in the 1985 UN Declaration.

Conclusion

Victim compensation law in India has evolved substantially from its origins in the Supreme Court's public law compensation jurisprudence in *Rudul Sah v. State of Bihar* through the statutory formalisation of victim compensation schemes under Section 357A of the Code of Criminal Procedure, reinforced by the judiciary's insistence, most notably in *Ankush Shivaji Gaikwad v. State of Maharashtra*, that compensation be a mandatory consideration in every criminal case. This evolution reflects a meaningful, if partial, shift toward the victim-centred principles articulated in the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. However, persistent disparities in compensation quantum across states, procedural inconsistency, and the continued dominance of monetary compensation over more holistic restorative practices indicate that India's criminal justice system has yet to fully realise the broader ambitions of restorative justice.

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