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VICTIM'S RIGHTS- FORGOTTEN SIDE OF CRIMINAL JUSTICE IN INDIA

-Nivedha D. Mudaliar

The Criminal Procedure in India has always asserted and focused on punishing and imposing penalties on the offenders involved in the crime rather than the victims who are sidelined during the procedure and remain the last person in attaining the justice. The term victim was recognised and defined after 2008 in Indian Criminal Procedure, 1973 in section 2(wa) which expresses “victim” as an individual who sustained damage or loss due to direct cause of an act or omission done by accused were, it also proclaims that victim involves legal heir or guardian¹ wherein, the section 2(y) of Bhartiya Nagarik Suraksha Sanhita (BNSS) defines and acknowledge “victim” similar as CrPC.²

The compensation to victims is assured through financial relief and rehabilitation with the aim of restorative justice for the loss occurred by offender through restitution. But compensation given to victims differs among various states; for example, the rape victims are compensated to Rs. 20,000 in Chhattisgarh to Rs. 10 lakhs in Goa which varies from diverse states that becomes foremost failure to compensate the victims of sexual offences, the blame and persecution which becomes the major concern for lack of common unified structure.³ The Central Victim Compensation Fund was introduced by Central Government in 2015 for uniform victim compensation in India were Rs. 200 crore fund which was released to all States and Union Territories for compensating the victims, by providing guidelines for compensation

¹ Code of Criminal Procedure, 1973, § 2(wa), No. 2, Acts of Parliament, 1974 (India) (as inserted by Act 5 of 2009).

² Nancy Roy, *Difference between BNSS and CrPC in the Victim Compensation Scheme*, LAWCTOPUS (Mar. 30, 2026), <https://www.lawctopus.com/academike/difference-between-bnss-and-crpc-in-the-victim-compensation-scheme/>.

³ Vintage Legal, *Study on Victim Compensation Scheme Under Section 357A of the CrPC*, VINTAGE LEGAL (Oct. 14, 2024), <https://www.vintagelegalvl.com/post/study-on-victim-compensation-scheme-under-section-357a-of-the-crpc>.

by fixing Rs. 3 lakhs for acid attack and rape victims and Rs. 1 lakh for rehabilitation of trafficking victim-survivors for reducing disparities among the states.

The provisions of restitution were confined in Criminal Procedure Code, 1898 (in form of section 545) later on, the 41st Report of Law Commission of India constrained a separate provision for compensation of victim which replicates in section 357 of Criminal Procedure Code.⁴ On 31, December 2009 an amendment was added in section 357A of CrPC which states that State Government will provide a compensation to victims who grieved due to damage or injury caused by the offender or when the offender is not traced and the victim's required rehabilitation when the compensation granted under section 357 is incommensurate. The section 357C issues duty for compulsory free-aid treatment for victims. The victim compensation by the legislature under section 396 of BNS (Bhartiya Nagarik Suraksha Sanhita), 2023 replaced section 357A of Code of Criminal Procedure Code, 1973 which implements the compensation to the victims by the State Government with coordination to Central Government.

In *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551⁵ court declares that victim compensation in accordance to section 357(1) of CrPC was a Judicial error were the sub-section (1) specifies that victims would be granted compensation from the penalty or fine imposed on the accused which the courts rarely invoke it. Moreover, when the accused is convicted the court orders the accused to pay some damages to the victim which is the additional authority given to court not ancillary as this was done to assure the victims that they are not disregarded while upholding the justice in court.⁶ It is a way in reacting to crime committed and restoring the victims with lawbreaker. So, it infers a positive approach in criminal justice which the courts should exercise to uphold justice in criminal system. As this provision has rendered inadvertence by the judiciary which led to intrusion after twenty-five years.

In *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770 the Supreme Court held that the question in determining compensation to victims in criminal case is a mandatory duty as the usage of word 'may' in section 357 does not imply a duty of providing compensation to victims by courts but the judge must consider if compensation should be awarded to victim

⁴ JSS Law College, *Power of the Court to Award Compensation in Criminal Cases – Revisited?* JSS LAW COLLEGE (2021), https://jsslawcollege.in/wp-content/uploads/2021/08/POWER-OF-THE-COURT-TO-AWARD-COMPENSATION-IN-CRIMINAL-CASES-REVISITED_.pdf.

⁵ *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551.

⁶ *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

which is discretionary.⁷ The Victimology alludes in attaining justice to victims not by suffering or inflicting pain to the offender through barbarity but by making compulsory compensation for injury inflicted which may reduce the loss and suffering of victim. The court deliberates in granting compensation only after the accused is convicted in court records as this decision in Gaikwad case led to a turning point even after a decade wherein, *Rajendra Bhagwanji Umraniya v. State of Gujarat 2024 (SLP (Crl) Nos 2653-2654 of 2016)* case the court grounded upon Gaikwad case for compensating of Rs. 2.50 lakh each, total of 5.00 lakhs in subject to section 357 of CrPC.⁸

In criminal cases it is often acknowledged that victim require monetary damages after the crime is committed to recoup for damage caused as they cannot wait until the criminal trial ends which may take years as this was recognised in *Suresh v State of Haryana (2015) 2 SCC 227*⁹ which held that the court may grant interim compensation based on the gravity and needs of the victim were the expression “Justice delayed often means relief denied”.

The rights of victims are beyond financial compensation which comprise safeguarding the dignity, privacy and protection from disgrace in society. The Supreme Court in *Nipun Saxena v. Union of India, (2019) 2 SSC 703* accentuated that victim’s identity should be maintained confidential implicated in sexual offenses as the intent of the court was the victims do not grieve any harassment, social exclusion and discrimination when they are identified in the society.¹⁰ So, court prohibits in disclosing the identity of victims by any person or by publication or by printing the victim’s name or any evidence which might disclose the identity of the victim; even the deceased or unsound mind victim’s identity should not be revealed except competent authorization.¹¹ The victims of sexual assault often face the harsh societal stigma and discrimination were concerns of “honour” or reputation that the family and community often lead to countless unreported cases of sexual offences. The victim’s identity without being branded with the offense committed is a right that should be immune.¹²

The cases similar to *Hari Singh v. Sukhbir Singh* and *Ankush Shivaji Gaikwad* represent victim compensation in India still remains inadequate and fragmented which has been recognized by

⁷ Id.

⁸ *Rajendra Bhagwanji Umraniya v. State of Gujarat*, 2024 INSC 413.

⁹ *Suresh v. State of Haryana*, (2015) 2 SCC 227.

¹⁰ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

¹¹ Id.

¹² Sanjana Moses, *Case Commentary: Nipun Saxena & Anr. v. Union of India & Ors.*, INT’L J. LEGAL RSCH. & ANALYSIS (June 17, 2024), <https://www.ijlra.com/public/index.php/details/case-commentary-nipun-saxena-anr-v-union-of-india-ors-by-sanjana-moses>.

Supreme Court on its own regardless of judicial evolution. The different states have considerable variations in procedure, time standards, eligibility, deadlines and especially the damages given to victim which effects and in turn navigates uncertainty and obstacle in bureaucracy to victims emphasizing a major issue of unified national structure. As the social barriers driven by social stigma, dread of being blamed by family or society and reprisal leads to underreporting of cases by victims undermining the compensation to rightful victims under schemes. The National Legal Services Authority' s Compensation Scheme for Women/Survivors of Sexual Assault/Other Crimes, 2018 signifies in conferring compensation to victims through standardisation which originates from uniformity but awareness and implementation if done at state level and victims are conscious about rights given to them.¹³

The Criminal Procedure Code, 1898 where the victim compensation is a restitution clause that was hidden but later on, the court extended the victim's rights after the judgements rendered in *Ankush Shivaji Gaikwad v. State of Maharashtra* and *Nipun Saxena v. Union of India* where it acknowledged the dignity and privacy of victims expands the monetary compensation declaring obligatory duty of courts. Thus, victims in Chhattisgarh receive unequal compensation as compared to victims of Goa as the court rulings and state schemes creates disparities in victim compensation among states as the necessity of unified structure in reclaiming justice to victims refrains to rely on pin code.

¹³ National Legal Services Authority, *Compensation Scheme for Women Victims/Survivors of Sexual Assault and Other Crimes, 2018*, NALSA, <https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/04/202504081255775595.pdf> (last visited June 16, 2026).