

# **Realizing Restorative Justice through Compensation: Bridging the Rights of Victims and the Financial Capacities of the Accused in the Indian Criminal Justice System**

**Aditi Yadav**

## **Abstract**

The Indian Criminal Justice System, while historically rooted in retributive principles, has increasingly acknowledged the significance of victim's rights and restorative justice. Court-ordered compensation to victims stands as a vital mechanism in this evolving context. However, the practical implementation of this right often faces considerable hurdle, notably concerning the financial ability of the accused to provide adequate redress. This paper examines the existing legal framework for victim compensation in India, analyzing its strengths and weakness in achieving restorative justice objectives. It delves into the complexities of reconciling the rights and needs of victims with the reconciling the rights and needs of victims with the economic realities faced by many accused individuals. Through a critical analysis of relevant statutory provisions, judicial pronouncements, and socio-economic condition, this paper explores potential avenues to enhance the effectiveness of compensation as a tool for restorative justice. It proposes strategies that consider both the victim's entitlement to redress and the accused's capacity to pay, aiming to foster a more equitable and restorative criminal justice system in India.

**Keywords:** Restorative Justice, Compensatory Justice, Victims' Rights, Accused Rights, Financial Capacity, Indian Criminal Justice System, Human Rights Law.

## **1. Introduction: The Evolving Paradigm of Criminal Justice**

The conventional approach to criminal justice has predominantly centered on retribution, emphasizing the punishment of offenders for violations against the state. While deterrence and incapacitation remain essential goals, a growing global movement advocates for a more comprehensive approach that addresses the harm inflicted upon the victims and seeks to facilitate reconciliation and healing. This shift has brought restorative justice principles to the forefront, highlighting the necessity of repairing the harm caused by crime, involving victims, and offenders in finding resolutions, and ultimately contributing to the reintegration of offenders into society.

In India, the criminal justice system, while fundamentally based on retributive principles outlined in the IPC, 1860<sup>1</sup> (now, Bharatiya Nyaya Sanhita, 2023) and the CrPC, 1973<sup>2</sup> (now Bharatiya Nagarik Suraksha Sanhita, 2023), has progressively incorporated victim-centric and restorative elements. The judiciary, through progressive interpretations and significant judgments, alongside legislative

---

<sup>1</sup> Indian Penal Code, 1860

<sup>2</sup> Code of Criminal Procedure, 1973

amendments, has increasingly recognized the rights of victims to seek redress for the harm they have endured. Among the various available mechanisms, compensation ordered by criminal courts serves as a significant instrument aimed at providing some measures of relief and acknowledging the victim's suffering.

However, the effectiveness of compensation as a means of achieving restorative justice in India is frequently impeded by practical challenges. A critical obstacle lies in the financial capacity of the accused to provide meaningful compensation. The socio-economic landscape of India reveals a substantial disparity in wealth, with a considerable segment of the population facing economic vulnerability. In such a context, imposing substantial compensation orders on accused individuals who lack the financial means to comply can render the remedy ineffective for victims. This raises fundamental questions about the equilibrium between the rights of victims to receive redress and the practical limitations imposed by the financial circumstances of the accused.

This paper seeks to examine this intricate interaction within the Indian Criminal Justice System. It will analyze the existing legal framework governing victim compensation, scrutinizing the statutory provisions and judicial interpretations that shape its application. Furthermore, it will critically evaluate the challenges posed by the financial incapacity of the accused in realizing the goals of restorative justice through compensation. By exploring these complexities, the paper aims to identify potential pathways and strategies that can bridge the divide between the rights of victims and the financial realities of the accused, ultimately contributing to a more effective and equitable restorative justice framework in India.

## **2. The Legal Framework for Victim Compensation in India**

The Indian legal System provides several avenues for victims of crime to seek compensation. These provisions are distributed across various statutes, reflecting an increasing legislative and judicial awareness of victim rights.

### **2.1 Code of Criminal Procedure, 1973 (CrPC)**

The CrPC contains significant provisions pertaining to victim compensation, Section 357 empowers criminal courts to order the accused to pay compensation to the victim from the fine imposed<sup>3</sup>. This provision is particularly relevant in cases where a fine is levied a part of the sentences. The compensation can be directed towards covering the loss or injury caused to the victim.

Furthermore, Section 357A, introduced through the 2008 amendment following the recommendation of Malimath Committee<sup>4</sup> established the Victim Compensation Scheme<sup>5</sup>. This provision mandates every State Government, in coordination with the Central Government to formulate a scheme for providing compensation to victims or their dependents who have suffered loss or injury as a result of the crime and who require rehabilitation<sup>6</sup>. This scheme operates independently to the accused's capacity to pay and provides a crucial safety net for victims, especially in cases where the offender is not apprehended or is

---

<sup>3</sup> Code of Criminal Procedure, 1973 Sec. 357 (Sec 396 of Bharatiya Nagarik Suraksha Sanhita, 2023)

<sup>4</sup> Ministry of Home Affairs, Report of the Committee on Reforms of Criminal Justice System (Government of India, 2003).

<sup>5</sup> Code of Criminal Procedure, 1973 Sec. 357A (Sec 396 of Bharatiya Nagarik Suraksha Sanhita, 2023)

<sup>6</sup> Ibid.

indigent. The criteria for determining the quantum of compensation under these schemes vary across states but generally consider the nature of the injury, medical expense, loss of income, and other relevant factors.

Section 357B, inserted in 2013 following the Criminal Law (Amendment) Act<sup>7</sup> specifically addresses compensation to victims of rape and other offences under Section 376 of the IPC<sup>8</sup>. It mandates that the compensation ordered under Section 357A shall be in addition to any fine imposed under Section 376<sup>9</sup>. This provision underscores the particular vulnerability of sexual victims and the need for enhanced compensation.

## **2.2 Indian Penal Code, 1860 (IPC)**

While the IPC primarily defines offences and prescribes punishments, it also indirectly contributes to victims' compensation through the imposition of fines. As mentioned earlier, the fine levied under various sections of the IPC can be utilized by the court under Section 357 of the CrPC to compensate the victim. The quantum of fine varies depending on the nature and the severity of the offence.

## **2.3 Specific Statutes**

Several specific statutes also contain provisions for victim compensation in relation to particular offences. For instance, the Motor Vehicles Act, 1988<sup>10</sup>, provides for compensation to victims of road accidents<sup>11</sup>. Similarly, statutes dealing with environmental pollution<sup>12</sup>, domestic violence<sup>13</sup>, and offences against Scheduled Castes and Scheduled Tribes<sup>14</sup> often include provisions for compensation or relief to the victims.

## **2.4 Judicial Pronouncements**

The Indian judiciary has played a significant role in expanding the scope and application of victim compensation. Landmark judgments have emphasized the state's responsibility to protect victim rights and provide adequate redress. The Supreme Court has, in numerous cases, directed the accused or the state to pay compensation to victims, even in the absence of specific statutory provisions or when the accused lacks the financial capacity<sup>15</sup>. The principle of *parens patriae* has been invoked in certain cases to ensure that the state acts as the guardian of vulnerable victims and provides necessary support, including financial assistance<sup>16</sup>.

---

<sup>7</sup> Criminal Law (Amendment) Act, 2013 No. 13, Acts of Parliament, 2013.

<sup>8</sup> Indian Penal Code, 1860 Sec 376 (Sec 64 of Bharatiya Nyaya Sanhita, 2023)

<sup>9</sup> Code of Criminal Procedure, 1973 Sec. 357B (Sec 396 of Bharatiya Nagarik Suraksha Sanhita, 2023)

<sup>10</sup> Motor Vehicles Act, 1988 ch XII

<sup>11</sup> See generally Environment(Protection) Act, 1986

<sup>12</sup> Protection of Women from Domestic Violence Act, 2005 Sec 22

<sup>13</sup> Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Sec 7

<sup>14</sup> Delhi Domestic Working Women's Forum V. Union of India, (1995) 1 SCC 14

<sup>15</sup> Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490

<sup>16</sup> Chairman, Railway Board v. Chandrima Das, (2000) 2 SCC 465

### 3. The Challenge of Financial Incapacity of the Accused

Despite the existing legal framework, the practical realization of victim compensation often falters due to the financial incapacity of the accused. Several factors contribute to this challenge:

- 3.1 **Socio-economic Realities:** A significant portion of the Indian population belongs to economically weaker sections. Individuals accused of crimes often originate from marginalized communities with limited financial resources. Imposing substantial compensation orders on such individuals is frequently unrealistic and leads to non-compliance.
- 3.2 **Nature of Offences:** Many offences, particularly those committed impulsively or due to socio-economic desperation, are perpetrated by individuals with limited means. In such instance, the likelihood of the accused being able to pay significant compensation is low.
- 3.3 **Prioritization of Punishment:** The primary focus of the criminal justice system often remains on punishing the offenders. Compensation is sometimes viewed as a secondary consideration, and the court may not adequately assess the accused's financial capacity before ordering compensation.
- 3.4 **Enforcement Challenges:** Even when compensation orders are issued, enforcing them against financially weak accused individuals can be arduous. The mechanism for recovery of compensation, such as attachment and sale of property, may prove ineffective if the accused possesses no assets.
- 3.5 **Lack of Awareness and Legal Aid:** Victims from marginalized communities may lack awareness of their right to compensation and may not have access to effective legal aid to pursue their claims.

The financial incapacity of the accused not only frustrates the victim's right to redress but also undermines the very principles of restorative justice. If compensation remains merely a theoretical remedy, it fails to provide the tangible support and acknowledgement of harm that are central to the restorative process.

### 4. Bridging the Gap: Towards a More Effective Framework

To realize the potential of compensation as a tool for restorative justice while addressing the challenge of the accused's financial incapacity, a multi-pronged approach is essential.

#### 4.1 Strengthening Victim Compensation Schemes:

The Victim Compensation Schemes under Section 357A of CrPC need to be strengthened and implemented more effectively across all states. This includes:

- **Uniformity and Adequacy:** Efforts should be made to ensure greater consistency in the criteria and quantum of compensation provided under different state schemes. The compensation amounts should be sufficient to address the diverse needs of victims, including medical expenses, loss of income, psychological support, and rehabilitation.
- **Accessibility and Awareness:** Increased efforts are needed to raise awareness about the existence and provisions of these schemes, particularly among marginalized communities. Simplified application procedures and effective outreach mechanism are crucial.
- **Time Disbursement:** Bureaucratic hurdles that often delay the disbursement of compensation should be minimized. Efficient and transparent processes are essential to ensure that victims receive timely relief.

- **State Funding and Sustainability:** Adequate and sustained funding from the state is crucial for the effective functioning of these schemes. Allocating a dedicated budget for victim compensation is necessary.

#### **4.2 Integrating Financial Capacity Assessment:**

Courts need to adopt a more systematic and thorough approach to assessing the financial capacity of the accused before ordering compensation under Section 357 of the CrPC. This could involve.

- **Mandatory injury:** Making it obligatory for courts to inquire into the accused's financial circumstances during the trial or sentencing phase.
- **Evidence and Disclosure:** Requiring the accused to disclose their financial assets and liabilities.
- **Realistic Orders:** Tailoring the quantum of compensation to the accused's ability to pay, avoiding the imposition of unrealistic burdens that are likely to be met.
- **Instalment Option:** Considering the possibility of allowing the accused to pay compensation in instalments, where feasible.

#### **4.3 Exploring Alternative Funding Mechanism:**

Beyond relying solely on the accused's financial resources or state-funded schemes, exploring alternative funding mechanisms for victim compensation could be beneficial:

- **Victim Fine Funds:** Establishing dedicated funds generated from fines imposed in criminal cases to provide compensation to victims, particularly in cases where the accused is indigent.
- **Restitution Funds:** Creating funds through contributions from offenders as part of their rehabilitation process or through community service initiatives.
- **Public- Private Partnership:** Exploring collaborations with non-governmental organizations and private entities to support victim's compensation and rehabilitation programs.

#### **4.4 Enhancing Enforcement Mechanisms:**

The mechanism for enforcing compensation orders need to be strengthened to ensure that victims actually receive the awarded amounts. This could involve:

- **Proactive Monitoring:** Courts actively monitoring the compliance with compensation.
- **Simplified Recovery Procedure:** Streamlining the procedures for recovering compensation from the accused, including attachment of assets.
- **State Assistance in Recovery:** In cases where the accused is financially weak, the state could provide assistance in recovering compensation, potentially through the Victim Compensation Schemes as a Supplementary measure.

#### **4.5 Promoting Restorative Justice Practices:**

Integrating compensation within a broader restorative justice framework can enhance its effectiveness and promote healing for victims. This includes:

- **Victims-Offender Mediation:** Facilitating dialogue between victims and offenders, where appropriate and with the victim's consent, to determine fair and mutually agreeable ways to address the harm caused, including compensation.
- **Community Reparation:** Exploring community based restorative justice initiatives that involve offenders making amends to the community and indirectly benefiting victims.
- **Support Services for Victims:** Providing comprehensive support services to victims, including legal aid, counselling, and rehabilitation programs, to complement financial compensation.

### **5. Balancing Rights and Capacities: A path Forward**

Realizing restorative justice through compensation necessitates a delicate equilibrium between the rights and needs of victims and the financial capacities of the accused. A system that solely emphasizes without considering the accused's ability to pay risks rendering the remedy ineffective and perpetuating a sense of injustice. Conversely, a system that unduly prioritizes the accused's financial limitations may fail to adequately address the harm suffered by victims.

The way forward lies in adopting a holistic and pragmatic approach that integrates the following principles:

- **Victim-Centricity:** Recognizing the paramount importance of addressing the harm suffered by victims and ensuring their access to justice and redress.
- **Fairness and Equity:** Striving for fairness and equity in the application of compensation orders, considering the financial realities of both victims and accused individuals.
- **Restorative Principles:** Embedding compensation within a broader restorative justice framework that emphasizes repairing harm, promoting reconciliation, and facilitating healing.
- **State Responsibility:** Acknowledging the state's crucial role in ensuring that victims receive adequate support and redress. Particularly when the accused lacks the capacity to pay.
- **Pragmatism and Innovation:** Embracing pragmatic solutions and exploring innovative funding mechanisms and enforcement strategies to enhance the effectiveness of victim compensation.

By embracing these principles, the Indian Criminal Justice system can progress towards a more effective and equitable framework for realizing restorative justice through compensation, ensuring that victims receive meaningful redress while acknowledging the complexities of the socio-economic realities within which the system operates.

### **6. Conclusion: Towards a More Restorative Future**

Compensation to victim of crime holds significant promise as a tool for restorative justice within the Indian Criminal Justice System. However, the practical realization of this promise is often constrained by the financial limitations of the accused. Addressing this challenge requires a concerted effort involving legislative reforms, judicial sensitivity, effective implementation of victim compensation schemes exploration adoption of restorative justice principles.

By strengthening the legal framework, integrating financial capacity assessment, exploring innovative solutions, and prioritizing the needs of victims within a restorative paradigm, India can move towards a

criminal justice system that not only punishes offenders but also effectively addressed the harm caused to victims and fosters a greater sense of justice and healing for all stakeholders. The journey towards a truly restorative criminal justice system is on-going, and ensuring that compensation serves as a meaningful and accessible remedy for victims, irrespective of the crucial step in this transformative process.

## **Bibliography**

### **Statutes**

- Code of Criminal Procedure, 1973
- Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013
- Environmental (Protection) Act, 1986
- Indian Penal Code, 1860
- Motor Vehicle Act, 1988
- Protection of Women from Domestic Violence Act, 2005
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

### **Case Law**

- Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490
- Chairman, Railway Board v. Chandrima Das, (2000) 2 SCC 465
- Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14

### **Report**

- Ministry of Home Affairs, report of the Committee on Reforms of Criminal Justice System (Government of India, 2003)