

Rights of Offence Victims in Perspective of Compensation as Punishable with Imprisonment and Death in India

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ARTICLE DETAILS

Research Paper

Keywords:

*Rights, Victims,
Compensation*

ABSTRACT

In progressive years, the rights of victims of crime have gained significant importance in India. The issue of compensation for victims, particularly in cases where the offender is punishable by imprisonment or death, raises critical concerns regarding justice and fairness. There are various Articles of the Indian Constitution which talked about victims compensation specially Article 21 and 39. This paper should touch upon relevant legal provisions, role of judiciary and whether the current system effectively meets the needs of victims while addressing justice for offenders.

Introduction

The **Indian Constitution and the Bharatiya Nagarik Suraksha Sanhita, 2023** describe various rights for victims. Under the Constitution of India Article 14 and Article 21 incorporate fundamental rights that must be read with the Directive Principles of State Policy listed in articles 39A, 41, 46, and 51C. As per Article 39A, the State provides free legal aid to the persons who are not able to acquire an advocate. Section 397 of BNSS, the Hon'ble Courts has the right to grant compensation to the victim for any loss or injury suffered by him, even in cases where accused is not identified in these cases it is the responsibility of the state to provide compensation to the accused person. A victim is a person who has been harmed physically and mentally. As per Section 2 (1) (Y) of the Bharatiya Nagarik Suraksha Sanhita, 2023 *a victim is a person who has suffered any loss or injury caused because of the act or*

omission for which the accused person has been charged. There are 28 States and 8 Union Territories in India. Many States will initiate the victim compensation scheme in their own state so that compensation is provided to the victims. This paper aims to critically examine the scope of victim compensation in India, focusing on the application of punishment (imprisonment and death) and how the system addresses the needs of victims through legal and monetary compensation.¹ Victims include not only those who have suffered a loss or harm, but also those who are close to the victims i.e. family members. For Example- If Rape is committed against a women then his whole family will suffers. If any person commits an offence against State which is most dangerous offence then his whole family will also suffer.

Legal Framework for Compensation in India

The Indian legal system provides various laws and provisions for victim compensation, though it is often criticized for being inadequate and poorly implemented. The key legal provisions include:

The Constitution of India, 1950 : The Constitution of India gives power to the courts to give reasonable compensation to the victims. There are several provisions and legal frameworks that enable compensation to victims, particularly in cases of crime, violence, or injustice. In **Rural Litigation and Entitlement Kendra v. State of U.P. (1985)**, the Supreme Court interpreted the right to life as including the right to compensation for environmental and social harm.

The Bharatiya Nagarik Suraksha Sanhita, 2023 : Sections 395 and 396 of the BNSS deal with the payment of compensation to victims. Section 395 allows courts to order compensation in cases where the offender is convicted, and Section 396 requires the establishment of victim compensation schemes by state governments. Section 397 is also mentioned about Treatment of Victims, all hospital will provide first aid or medical treatment to the victim free of cost.

The Bharatiya Nyaya Sanhita (BNS) 2023 : While the BNS defines various criminal offenses and their respective punishments, it does not directly address compensation for victims. However, it influences how courts approach the issue of restitution in cases of crime.

The Victim Compensation Schemes: Several states in India have developed victim compensation schemes i.e. Arunachal Pradesh, Karnataka, Punjab, Delhi, Kerala, Tamilnadu and many others, with the most notable being the National Legal Services Authority (NALSA) scheme, which objects to provide compensation to the victim.

The Role of Death Penalty and Imprisonment in Victim Compensation

¹ <https://lawbhoomi.com/rights-of-victims-in-india/>.

In cases where offenders are punished by imprisonment either rigorous/Simple or death, the question arises whether the punishment is sufficient to compensate the victim or their dependants. The death penalty, although rarely applied, is still a part of India's criminal justice system. The relationship between victim compensation and punitive measures is complex, as the primary focus of imprisonment and death is to serve as a deterrent, it will not help the victims. There is a need that some compensation in the form of money will be given to the victims or their family. There are various heinous crimes whose punishment is life imprisonment or death sentence. For Example – If a person commits murder of another person who is only the earning person of the family, then the court will punish him with the life imprisonment, in this case the survival of the family members of the victims is very difficult. So there is a need of compensation in the form of money.

Rights of Offence Victims in India

The rights provided to the victim are aimed at providing protection, compensation, participation in the judicial process and access to various forms of justice. The United Nation Declaration recognizes four key elements of the **rights of victims** of crime, these are access to justice and fair treatment, rehabilitation or restitution, compensation and last but not least is assistance.²

1. **Right to Life and Personal Liberty:** Under **Article 21**, which guarantees the protection of life and personal liberty to all citizens, including victims of crime. This right ensures that victims receive protection from further harm, especially in case of violent crime.
2. **Right to Equality:** Under **Article 14**, victims are entitled to equal treatment before the law.
3. **Right to Fair Trial:** Under **Article 21**, victims can seek justice through a fair trial, which includes the right to be heard in court. There is also a legal Maxim 'Audi Alterem partem'. The **literal meaning** of Audi Alteram Partem is to provide equal opportunity to both the parties in a suit. Each party will give evidences and produce witnesses so that decision comes in his favour.

² <https://www.legalserviceindia.com/legal/article-4967-rights-of-victims-under-the-current-criminal-justice-system.html#:~:text=The%20UN%20Declaration%20recognizes%20four%20key%20elements%20of,rehabilitation%20or%20restitution%2C%20thirdly%20compensation%20and%20fourth%20aid%2Fassistance.>

4. **Right to File a Complaint (FIR):** Victims have the right to report crimes and lodge a First Information Report (FIR) under **Section 173 of the BNSS**. Now in BNSS, there is also a provision of e-FIR. Now every person will have access to the mobile phone and internet, so it is easy for him to lodge an e-FIR.
5. **Right to Assistance in Proceedings:** Victims can be represented in court and can request legal assistance. It is the responsibility of the state to provide legal assistance to the victim. This ensures that victims have the opportunity to participate fully in the judicial process.
6. **Right to Protection:** In cases where the victim or their family is at risk due to the crime, victims can request protection under **Section 72 of the BNS** (especially in cases of sexual offenses).
7. **The Victim Compensation Scheme:** This scheme was launched by the **Ministry of Home Affairs** to provide immediate relief to victims of violent crimes. The scheme includes financial compensation for victims or their families, which can be used to cover medical expenses, rehabilitation, loss of earnings, and funeral expenses. This provision is added in Code of Criminal Procedure through an amendment but now in new BNSS Section 396 deals with Victim Compensation Scheme.
8. **Section 396 of the BNSS:** It is the responsibility of the State to provide compensation to the victims in case the offender is not identified. This section empowers courts to direct the state government to award compensation to the victim of a crime if the victim has not been compensated by the offender or through insurance or other resources.
9. **Role of State Governments:** Each state in India is responsible for formulating its own victim compensation schemes, which differ in terms of eligibility, compensation amounts, and procedure. Now every state in India will start the victim compensation scheme in their state.
10. **Right to Timely Justice:** Victims are entitled to a speedy trial under the **Criminal Law (Amendment) Act, 2013**, which emphasizes the timely disposal of cases, particularly those involving offenses like sexual violence. Now in new Criminals also importance is given for the speedy disposal of cases.
11. **Right to Be Heard:** Victims have the right to be heard during the trial, particularly in the case of sentencing. Courts often allow victim impact statements to be presented, which describe the physical, emotional, and financial toll the crime has taken.

Role of Judiciary in Victim Compensation

The constitution of India gives power to Courts to provide compensation to the victims. Indian courts have occasionally emphasized the importance of victim compensation. Landmark cases such as **Union Carbide Corporation Etc v. Union of India**³ Also known as **Bhopal Gas Tragedy Case**. In this famous case, poisonous methyl isocyanate gas leaked out of the Union Carbide India Limited pesticide plant in Bhopal. More than 3000 people had died. The Union Carbide India Limited provided compensation of **Rs. 715 crores** but recently a plea for additional compensation has been filed.

In State of Gujarat v. Hon'ble High Court of Gujarat (2002) In this case, the Supreme Court ordered compensation to be paid to the victims of the 2002 Gujarat riots. The case is significant for establishing that the state must pay compensation to victims of communal violence and human rights abuses, and not merely rely on the judicial process for accountability.

In Bikramjit Singh v. State of Punjab (2013) This case established the principle that the state must compensate victims of crime, even if the accused has not been apprehended or convicted. The Court held that the state has a constitutional obligation under Articles 21 and 39A to provide compensation to the victims of crime.

In Nirbhaya Case (2013) – (Delhi Gang Rape Case) While the main judgment dealt with the punishment of the perpetrators, the case had far-reaching implications for victim compensation. The victim's family was awarded compensation, and it brought attention to the inadequacies in the legal framework for compensating victims of sexual violence. This case led to stronger provisions in victim compensation laws.

In Ravindra Kaur v. Union of India⁴ (2014) have highlighted the need for a victim-centric approach in criminal trials. Courts have also pointed out the importance of providing adequate compensation to victims of serious crimes such as rape, human trafficking, and murder.

SUGGESTIONS

³1992 AIR 248, 1991 SCR Supl. (1) 251.

⁴ W.P. (CrI.) No. 000045/2022.

Because of the research problem described at the outset of this study it has been concluded that being able to make victims' compensation laws more real and more important in providing justice for victims is another important step.

Role of Media: The Media plays an significant role in creating awareness regarding victim compensation. In today's times everyone is on social media i.e. Facebook, Whatsapp, Twitter etc. So it is easy for people to know their rights. No bail will be given to the accused person till he pays the compensation to the victim or his family members. Now the criminal laws are changed into new laws, so it is the responsibility of the state to implement the new criminal laws i.e. Bharatiya Nyaya Sanhita,2023, Bharatiya Nagarik suraksha Sanhita, 2023 and Bharatiya Sakshya Adhiniyam 2023. There is also a need that compensation is given by the accused person or his family members to the victim.

There are various Acts passed by the Indian parliament which talked about compensation i.e. Motor vehicle Act, Consumer protection Act, 2019 etc. In various Labour Laws also compensation is provided to the victim. It is obligation of both Central Government and State Government in case the accused person is not identified then state will provide compensation to the victim.

CONCLUSION

At the end we can conclude under the constitution of India there is various Articles which deals with compensation to the victims will be discussed in this paper. The BNSS also provide definition of victim and various sections of BNSS talked about Victim Compensation. In this paper various rights of victims are also discussed. Each state in India is responsible for formulating its own victim compensation schemes, which differ in terms of eligibility, compensation amounts, and procedure.

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