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Role of the Judiciary in Victim Compensation in India – With Special Reference to Data Collected from the State of Odisha, India

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Abstract. This study examines the legal and legislative framework for victim compensation in India, focusing on the Code of Criminal Procedure's provisions and their interpretation by the courts, using data collected from lower courts in the state of Odisha. A robust framework to provide financial assistance to victims of crime has now been incorporated into section 357 (newly incorporated Bhartiya Nagarik Suraksha Sanhita, i.e., BNSS, Section 395 of BNSS) of the "Code of Criminal Procedure 1973" (hereinafter CrPC) in accordance with the recommendations of the Law Commission. According to section 357 of the CrPC, the victim may only receive compensation from the court in appropriate cases, and upon conviction, the accused must pay the compensation himself. This provision gives judges extensive authority to decide on compensation based on the specific facts and circumstances of each case. Furthermore, section 357-A CrPC (Section 396 BNSS), introduced in the 2009 amendment, also provides for compensation from state funds. Consequently, victim compensation has become standard practice, regardless of whether section 357 or section 357-A of the CrPC is invoked. Apart from these statutory provisions, there are several cases in which the Supreme Court has emphasised the significance of

victim compensation, further elaborating on when and how the judiciary should use its discretion in granting compensation. This article examines and analyses how the judiciary has applied its discretion in interpreting and using the legislative provisions in the course of rendering victim justice. It examines the situations in which there are no guidelines in the statute to aid the court in assessing the amount payable and explores whether and how this gap has been addressed by the courts. The study also reviews several Supreme Court judgements that remind the criminal courts of the special powers vested in them to ensure complete and effective justice for the parties. Finally, the study assesses the implementation of these decisions by the lower courts in the state of Odisha to evaluate whether the judiciary's intervention has been conducive to providing justice for the victim.

Keywords: Criminal court, criminal procedure; CrPC; Supreme Court; victim; compensation; judiciary; India: Odisha.

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Introduction

Monetary compensation to victims of crime is considered a primary aspect of reparation for the harm or injury suffered by the victim as a crime consequence. Financial aid, while unable to erase the emotional scars that require time to heal, nevertheless mitigates the victim's pain and suffering. "The Code of Criminal Procedure 1973" (CrPC) (now BNSS), "The Probation of Offenders Act 1958," "The Constitution of India," "The Fatal Accident Act 1976," and other significant laws collectively form the basis of India's legal system concerning compensation for victims of crime. The data for this study were collected during the period when the Code of Criminal Procedure, 1973 (CrPC) was in force. However, with the enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), the CrPC was replaced. It is pertinent to note that the content of the relevant section referred to in this study remains substantially unchanged in the BNSS. Therefore for clarity's sake we have referred to CrPC provisions throughout this paper. Among these, section 357 CrPC is the main avenue for compensation for victims, which defines the judges' position as shareholders in awarding compensation and also serves as the focus of our research. Under this section, at the time of passing judgement, the trial court, appellate court, High Court or Court of Session in revision may order that compensation be paid to the victim from the fine amount imposed on the accused. This establishes that the "quantum of compensation" should not be more than the fine amount ordered to be paid by the accused under section 357(1) of the CrPC. Thus, the limit specified in the applicable criminal section of the offence would clearly determine the sum of the fine.

In cases where offences are not punishable by a fine, the court may alternatively order the accused to pay compensation; however, the accused must still have been found guilty and convicted by the court (sec. 357(3) CrPC). Various factors are taken into account by the court before awarding compensation under this provision, such as the paying capacity of the accused, the nature of harm, the manner in which the victim was inflicted etc. When compensation is realized from the fine amount, it is limited to such amount; however, there are no restrictions on the quantum of compensation awardable when the convict is ordered to pay the compensation.¹ Subsection (3) of section 357 empowers the court to compensate the heirs and dependents for losses incurred in the event of a crime victims demise. Therefore, the new section has expanded the criminal court's authority to leniently award compensation to a victim of a crime for his loss or injury, even in situations when the fine is not a component of the sentence—a task that often falls within the purview of a civil court.²

While using its authority of revision, the High Court, Court of Session, or Appellate Court may also issue an order for compensation (sec. 357(4) of the CrPC). A compen-

¹ Barman, S. (2017). Victims' right to appeal under Indian criminal justice. *MSSV Journal of Humanities and Social Science*, 1(2), 87–99.

² Shukla, A. (2020, June 13). *Victim compensation—need of the hour*. Centre for Criminal Justice Administration. <https://ccjarnlnu.wordpress.com/2020/06/13/victim-compensation-need-of-the-hour>

sation order of this kind does not preclude the aggrieved party from seeking further damages in a civil court, enforcing the private law remedies in a tort. Thus, the sum of compensation that can be granted to a victim will rely on the strength of the argument and the manner in which the lawyer presents the client's case; above all, the goal is to win the judge's sympathy.

Consequently, it is clear from the provisions that are outlined under section 357 that (a) compensation can be granted in cases of conviction and where a fine forms a part of the sentence; (b) the court is empowered to grant compensation even when a fine forms a part of the sentence; (c) the provisions give ample power to the court to determine the amount of compensation; and (d) the provisions also empower the appellate courts to grant compensation. The courts' discretion—notably, their ability to award compensation and their failure to document a justification when refusing to do so—is the primary target of the current legislative framework.

It goes without saying that the entire legislative perspective and the judicial decision-making have revealed many shortcomings in the current legal system regarding compensation; as a result, the entire legal system needs to be redesigned. Sometimes, compensation granted under section 357 CrPC is insufficient for full restoration of a victim. For this reason, various commissions have recommended the enactment of a more comprehensive law on compensation. The Law Commission Report of 1996 clearly states that the state should provide assistance to victim with its own funds in the situations such as acquittal and in situations where the wrongdoer is not traced but the victim is identified, and even when the offence is proved.³ The Malimath Committee further recommended that it is the obligation of the state to provide compensation in all serious crimes and that a separate victim compensation law should be drafted by the parliament. Under this proposal, the compensation law would contain provisions for the establishment of funds such as a "Victim Compensation Fund," which would be administered by the Legal Services Authorities.⁴ Furthermore, the 154th Law Commission Report suggested that the principles relating to compensation needs to be reviewed. It should not be confined to fines, penalties and forfeitures realized from the accused. As a result, section 357A was incorporated into the CrPC where a scheme was established under which all homicide victims or their bereaved relatives, victims of rape, acid attacks and victims of grievous hurt could be compensated from the state fund. Under this scheme, the victim may directly apply for compensation, or the trial court judges may also make a recommendation for compensation to the District Legal Services Authority.⁵

³ Srinivasan, M., & Eyre Mathew, J. (2007). Victims and the criminal justice system in India: Need for a paradigm shift in the justice system. *Temida*, 10(2), 51–62.

⁴ Chockalingam, K. (2010, August). *Measures for crime victims in the Indian criminal justice system* (pp. 97–109). The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI). https://unafei.or.jp/publications/pdf/RS_No81/No81_11VE_Chockalingam.pdf

⁵ Mohanty, A. (2022, March 27). *Detailed analysis of victim compensation in India*. Law Insider. <https://www.lawinsider.in/columns/detailed-analysis-of-victim-compensation-in-india>

Thus, it may be concluded from the discussion above that judges have considerable discretion under these laws: they determine the amount and circumstances under which they wish to provide compensation, as well as the factors that influence their decision. However, the provisions and the rulings of the Supreme Court demand that judges exercise reasonable judgement when considering whether or not a case qualifies for compensation. Further, they must specify the reasons for both granting and declining compensation. However, it is surprising to see that there are a number of cases in which the compensation awarded is significantly less despite this wide discretionary power expressly provided in the letter of the law and that moreover, the court offers no reason for such a low amount of compensation. The considerations of the courts in granting compensation have been diverse and the subsequent section captures some of the decisions and the observations of the courts while granting compensation.

In *Hari Kishan v. Sukhbir Singh*⁶ it was observed that

the trial courts very rarely use the compensation provisions, possible due to their lack of awareness of the object of the provision. Hence, the Supreme Court had to issue a mild reprimand while urging the courts for liberal use of this provision for meeting the end of justice as a measure of responding appropriately to the crime and reconciling the victim with the offender.⁷

Apart from the recommendations of law commissions and the wide discretionary power of judges, the Supreme Court has also given notable decisions on important aspects of compensation, while emphasizing the priority of victims.

The case of *Delhi Domestic Working Women's Forum v. Union of India*⁸ pertained to the rape of seven women in a train by some army personnel. One of the suggestions mooted in this case was to set up a Criminal Injuries Compensation Board having regard to the Directive Principles contained under Article 38(1) of the Constitution of India. Furthermore, it was recommended that compensation for victims be awarded by the Court upon conviction of the offender and by the Criminal Injuries Compensation Board, regardless of whether or not a conviction has taken place. This board would take into account the pain, suffering and shock, as well as any loss of earnings due to pregnancy and the expenses of childbirth resulting from the crime.

In *Abdul Rashid v. State of Odisha & Others*,^{9,10} the Supreme Court expanded the scope of compensation under Article 21¹¹ of the Constitution of India. The Court clarified that compensation is not limited to cases involving state wrongdoings but

⁶ AIR 1988 SC 2127.

⁷ Lakhawat, A. (n.d.). Compensation: A Ray of hope. *Legal Services India*. <http://www.legalservicesindia.com/article/2036/Compensation:-A-Ray-of-Hope>

⁸ AIR 1995 SC 14.

⁹ 2014 (1) ILR 202.

¹⁰ For more info, see, *Abdul Rashid v. State of Odisha & Others* (2014). <https://www.courtktutchehry.com/Judgement/Search/t/434590-abdul-rashid-vs-state-of>

¹¹ Right to life and personal liberty. Indian Kanoon. <https://indiankanoon.org/doc/1199182/>

also applies to victims of crimes committed by private individuals. Through this judgement, the scope of Article 21 was broadened beyond granting compensation only when the state or its functionaries are held responsible for certain act, extending it to ensure rehabilitation of the victims, including their families, even in cases where the crime is committed without the state's role or its functionaries.¹²

In *Ankush Shivaji Gaikwad vs. State of Maharashtra*,¹³ the Court emphasised that compensation may be granted or denied only on solid grounds. The provision not only empowers the court, it also imposes a duty to apply its mind in every case before awarding compensation. Whether the court has applied its mind or not can best be determined by the reasons it records for granting or not granting compensation.¹⁴ These rulings unequivocally show that compensatory justice jurisprudence has developed gradually yet steadily in India and continues to acquire fresh perspectives.¹⁵

In *Laxmi v. Union of India*,¹⁶ the Supreme Court showed particular compassion towards acid attack victims by exceeding the amount of compensation beyond that had been prescribed under the statute, taking into account the gravity of the offence. The Court observed that in some states, compensation for victims of acid attacks was fixed at a very small amount and inadequate for rehabilitation, particularly given the several, costly plastic surgery procedures as well as other therapies these victims often need. To address this, the Court prescribed a minimum amount of compensation and directed that it be increased where necessary. This decision is widely regarded as satisfactory, as it takes into account all aspects of statutory rules relating to acid attacks, while prioritizing victims' rehabilitation needs.¹⁷

Although higher or appellate courts also have the power to grant compensation under section 357(4) CrPC, the present paper analyses the judicial reasoning at the trial court level, where the question of granting compensation first arises before the court. Since the higher courts in India have consistently delivered pro-victim rulings with regard to compensation and the implementation of compensation provisions, lower courts in India are bound by these decisions given by the Supreme Court. Therefore, in order to evaluate whether trial courts are implementing section 357 in a liberal manner consistent with the judicial mandates of the Supreme Court, this

¹² Restitution and rehabilitation of victims of crime. Shodhganga. <https://shodhganga.inflibnet.ac.in/bitstream>

¹³ AIR 2013 SC 770.

¹⁴ Dube, D. (2018). Victim compensation schemes in India: An analysis. *International Journal of Criminal Justice Sciences*, 13(2), 339–355.

¹⁵ Misra, P., & Chantia, A. (2011). Compensatory jurisprudence in India with special reference to dispensation of justice to the victims of rape: A critical appraisal. *Indian Journal of Human Rights Studies*, 1, 8.

¹⁶ AIR 2014 SC 427.

¹⁷ Bajpai, G. S., & Gauba, S. (2016). *Victim justice: A paradigm shift in the criminal justice system in India*. Thomson Reuters.

study has conducted a qualitative research by interviewing various trial court judges in the state of Odisha. In granting compensation, judges are faced with several key questions, including: (a) what factors should be taken into consideration for granting compensation; (b) whether the court should enquire into the economic background of the offender; (c) whether the principles of natural justice must be strictly followed in such cases while granting compensation and (d) whether courts should adopt a liberal or rigid approach in dealing with this provision.

Victim Compensation under BRICS Nation. It is vital to look at how other developing nations handle this important component of criminal justice in order to obtain a more comprehensive understanding of the efficacy of victim compensation systems. A broad set of countries, including the BRICS nations (Brazil, Russia, India, China and South Africa), face difficulties in ensuring timely and equitable access to justice for victims of crime. Despite variations in legal systems and governance structures, each BRICS nation has developed a distinct framework for victim compensation that reflects a range of socio-legal concerns. Examining these systems would offer insightful comparisons and can assist in locating best practices that could be pertinent to bolstering India's compensation plan.

Several legislative structures in Brazil promote victim compensation. The Federal Constitution, 1988, specifically Articles 5 and 6, explicitly guarantee the right to moral and monetary damages for abuses of individual rights, including offences against honour and privacy. This constitutional recognition elevates compensation to the status of a basic entitlement, reflecting a compassionate and victim-centred approach. In addition, other legislation, such as Articles 186–188 and Articles 927–954 of the Brazilian Civil Code (Law No. 10,406/2002), in particular regulate civil liability and require offenders to reimburse victims for any harm to their person or property. To obtain restitution, victims may participate in criminal proceedings as civil parties under the “Code of Criminal Procedure (Decree-Law No. 3,689/1941).”

In Russia, the Criminal Procedure Code of the Russian Federation (2001) is the main law that deals with victim compensation. It permits victims to seek compensation as civil claimants in criminal cases. Articles 1064–1101 of the Russian Federation's Civil Code, in particular, define general tort responsibility and set out for the payment of material damages as well as, in certain situations, moral damages. Article 52 of the Russian Federation's Constitution protects victims' rights to justice and compensation, while Article 53 permits lawsuits against the government for illegal acts committed by its representatives. The Russian government has also approved some international human rights agreements, such as the “European Convention on Human Rights,” which have an impact on domestic victim rights, particularly through rulings from the European Court of Human Rights (ECHR).

In China, Articles 101–106 of the Criminal Procedure Law of China, which govern victim compensation, permit victims to pursue civil damages as a component of criminal proceedings (referred to as a “collateral civil suit”). In particular, the Tort

Liability section (Arts. 1165 and 1183) of the People's Republic of China's Civil Code 2021 offers compensation for monetary and psychological harm brought on by illegal activities, including crimes. In some circumstances involving personal harm or death, emotional distress damages may be awarded. Both financial and limited non-financial losses are covered by the State Compensation Law of the PRC, which regulates claims against the government for illegal acts such as wrongful detention or mistreatment by state personnel. China does not have a centralised national compensation fund for victims of crime, even though several regions have introduced local pilot programmes for these victims.

In South Africa, there is no comprehensive government fund for compensating the crime victims. However, there are various pieces of legislation in South Africa that address victim. The Republic of South Africa's 1996 Constitution contains provisions which grant some fundamental rights to victims of crime, including the right of the victim to access the courts, which is enumerated in section 34, enabling victims to seek legal remedies. The court has the power to order the criminals to provide compensation to the victim for their loss incurred during the criminal trial (sec. 300 of Criminal Procedure Act 51 of 1977.) The victim also has a right to receive compensation under the Domestic Violence Act. There is also a legal provision for the establishment of a Criminal Assets Recovery Account, into which the state collects and deposits the assets of the offenders, from which victim can then request compensation from that account. The victim can additionally seek compensation through the civil courts, as is the case in India and several other countries. The civil court has the power to grant compensation for the medical expenses, economic losses and emotional suffering of the victim.

1. Research Methods

Thus far, we have examined the Supreme Court's decisions on the aspects in relation to the variables that have been used for the empirical data collection in Odisha concerning victim compensation under CrPC. These variables have been mapped against the decisions (*ratio decidendi*) of the Supreme Courts. The implementation of these variables has been observed based on empirical data collected from various courts in the state of Odisha, as reflected in the descriptive results. Based on the provisions, we have mapped the variables, and in the same vein, identified the Supreme Court cases that have delivered decisions based on those aspects.

The primary variables selected for this study are as follows:

- Application of compensation laws in a liberal manner;
- Prioritising of compensation orders;
- Determining the accused's paying capacity;
- Hearing the accused before fixing the quantum of compensation;
- Default sentences in matters of non-payment of compensation;
- Awarding compensation in cases of acquittal.

All of these variables were selected after mapping them against the provisions.

Table 1: **Mapping of variables with the *ratio decidendi* as determined by the courts**

Ratios given by the courts	Variables
Liberal application of compensation laws	1. Number of cases in which compensation has been granted <i>suo motu</i> ?
Prioritising compensation orders	2. Types of cases in which compensation is not awarded 3. Compensation is awarded even when a fine is not part of the sentence
Hearing the accused before fixing the quantum of compensation	4. Accused is heard in accordance with the principles of natural justice before fixing the quantum of compensation
Default sentence for non-payment of compensation	5. Default sentence of imprisonment is imposed on the accused for default of payment of compensation
Adequate amount of compensation received by victims even in cases of compromise between the parties or an acquittal	6. Recommendation to a DLSA for victim compensation in cases where the trial ends in acquittal
Enquiry by the court into the paying capacity of the accused before determining the quantum of compensation	7. Criteria for determining case eligibility for compensation is based on accused's paying capacity

1.1. Data Collection

For the purpose of our study, eight districts were selected, and responses were obtained from 55 judges. All the session courts of these eight districts fell under the purview of this study. For this purpose, the researchers had to obtain permission from the High Court of Odisha, which was granted after reviewing the questions in the interview schedule prepared by the researchers. The data has been collected through personal interviews of the judges using a structured interview schedule.

1.2. Data Analysis

The following methods were employed for the analysis of the data in our study:

1. Qualitative analysis of the judgements of Supreme Courts and High Courts was conducted to identify the factors considered while granting compensation to the victims.

2. Descriptive analysis of the variables was performed using the data collected from courts in the state of Odisha.

3. The variables collected were mapped against the factors identified in Supreme Court judgements.

1.3. Hypothesis

It is hypothesised that compensation laws are implemented in the state of Odisha in accordance with the judicial precedents set by the Supreme Court.

2. Judicial Responses on Victim Compensation

Despite specific provisions in place for victim compensation that grant wide discretion to the courts, the factors guiding the exercise of such discretionary powers have not been addressed much by the statutes. Some of the gaps have been addressed by the higher courts while dealing with the plight of these victims. The judiciary in India has made considerable effort to interpret the relevant laws in accordance with international treaties and agreement.

2.1. Responses of the Judiciary to the Selected Variables

The responses of the judiciary to the selected variables, as evidenced from judicial decisions and empirical data, have been examined and discussed below under the following key factors that influence the exercise of discretionary powers in awarding compensation to victims.

2.1.1. Compensation Provision Applied Liberally

From the provisions enumerated in section 357, it is clearly evident that judges play an extensive role in the process of granting compensation. Firstly, the judges have wide discretion in granting compensation when passing a sentence and can order full or partial payment of the fine. Secondly, judges have discretion to grant compensation to the victim even in cases where a fine is not included in the sentence. Additionally, the judges can also make a recommendation for compensation to the District Legal Services Authority (DLSA) if the trial court finds that the compensation awarded under section 357 is insufficient for the victim's rehabilitation or where the case ends in acquittal or discharge and the victim still requires rehabilitation.

Furthermore, the Supreme Court has expressed disappointment that courts do not apply their legal authority under this section as freely and liberally as could be expected. When the Punjab and Haryana High Court petitioned the Supreme Court of India to rule on the legality and propriety of compensation granted under section 357 of the CrPC, the court urged all courts in India to use their discretionary authority liberally in order to better serve the interests of justice. This authority is designed to reassure victims that they are not forgotten in the criminal justice system and that their right to justice shall be upheld.¹⁸

¹⁸ Vibhute, K. I. (1999). Victims of rape and their right to live with human dignity and to be compensated: Legislative and judicial responses in India. *Journal of the Indian Law Institute*, 41(2), 222–236.

There are various judgements of the Supreme Court and high courts of different states which also give judges wide power to use the compensatory provisions liberally as illustrated in the case below.

In *Ankush Shivaji Gaikwad v. State of Maharashtra*,¹⁹ the Supreme Court emphasised that, although the court has the discretion to award compensation under 357, it is still customary for the court to apply its mind in matters of compensation in every criminal trial and to record its decisions regarding compensation with proper justification. Further, the Supreme Court observed that even though there have been a series of judgements regarding compensation, section 357 has been ignored time and again. The Supreme Court also stressed that the court needs to give a solid reason for denying the compensation. When deciding the quantum of compensation, the court must consider the offender's history and financial situation, then assess the extent of the loss suffered by the victim and only then strike an appropriate balance to grant fair compensation.

From the above case analysis, we may conclude that the Supreme Court demands reason based judgements in every case where compensation is not given, and it also clearly mentions that the provision for liberal use of the compensation law has been often ignored by the trial court. There is no doubt from the above discussion that courts encourage the liberal application of the established provisions in ensuring justice for victims.

2.1.2. Compensation Orders Given Priority

The precedent set by the Supreme Court, as seen in the above case, unambiguously indicates that the Court has accorded primacy to the principle of compensation.

The Supreme Court in *Hari Krishna & State of Haryana v. Sukhbir Singh*²⁰ not only directed all the courts to exercise section 357 liberally but also mandated awarding adequate compensation in cases where the accused is released on admonition, probation or even when parties enter into a compromise. Many of the criminal cases are prematurely concluded due to a compromise between the parties, without adequately considering the suffering of the victim. Therefore, in light of this, the Supreme Court ordered the granting of fair and reasonable compensation, taking into account the facts and circumstances of each case, the nature of the crime, the veracity of the claim and the paying capacity of the accused.

Apart from the Hari Krishan case, another relevant precedent is *State of Madhya Pradesh (MP) v. Mehtab*.²¹ In this case the respondent was found guilty of causing death through negligence. The Supreme Court held that the accused must give the deceased person's heirs a compensation payment of Rs 2 lakh as per his financial

¹⁹ AIR 2013 SC 770.

²⁰ AIR 1988 SC 2127.

²¹ AIR 2015 SC 197.

capacity, and if this amount is not paid, the accused would undergo rigorous imprisonment for a period of six months. Furthermore, if the amount fixed is deemed inadequate, the state is obliged to pay an additional amount u/s 357A. Thus, the ultimate responsibility for victim restoration in case the accused is unable to pay rests with the state.²²

*Baldev Singh v. State of Punjab*²³ is another case where compensation was given priority over imprisonment. In this instance, the Supreme Court held that an order of compensation would be more befitting than a sentence of imprisonment.²⁴

From the above case laws, it can be concluded that the Supreme Court has consistently promoted the liberal application of the compensation law. The main intention is that the victim should be rehabilitated for the injury received due to the failure of state machinery to provide protection to its citizens. The court further ordered compensation even in cases of compromise between the parties. However, despite the remarkable judgement of the Supreme Court in the *Hari Krishna* case to compensate the victim of crime under section 357(3), subsequent judgements, such as *Brij Lal v. Prem Chand*,²⁵ *State of U.P. v. Jodh Singh*,²⁶ *State of Mysore v. Tyhappa*,²⁷ *N.B. Panth v. State*²⁸ and *Gur Swami v. State*,²⁹ show a different approach. In these cases, the Court awarded compensation to the victims of crime only out of the fine amount, thereby reflecting a more pro-offender stand rather than a pro-victim stand.

2.1.3. Compensation Based on the Paying Capacity of the Accused

When compensation is ordered at the time of judgement under section 357 CrPC, it is mandatory to assess the paying capacity of the accused. The Supreme Court has emphasised in several cases that an enquiry must precede the granting of compensation.

In *Manohar Singh v. State of Rajasthan and Ors*,³⁰ for instance, the Supreme Court clarified that punishing the accused and compensating the victim are two distinct aspects. While determining compensation, the court must consider certain factors from the victim's perspective, including medical and other expenses borne by

²² Kakkar, J., & Ojha, S. (2009). An analysis of the vanishing point of Indian victim compensation law. *Journal of Indian Law and Society*, 2, 313–340.

²³ AIR 1995 SC 593.

²⁴ *Id.*

²⁵ AIR 1989 SC 1661.

²⁶ AIR 1989 SC 1822.

²⁷ AIR 1962 Mys. 51.

²⁸ AIR 1977 SC 892.

²⁹ AIR 1995 SC 1177.

³⁰ AIR 2015 SC 266.

the victim, pain and suffering and loss of earnings due to the crime, as well as the financial capacity of the accused.

Similarly, in the *Ankush Shivaji Gaikward v. State of Maharashtra*,³¹ the court held that an enquiry must be conducted in order to ascertain the paying capacity of the accused. However, such an enquiry is not required if the accused's financial capacity is clearly evident from other sources at the time of trial. Where such information is not revealed in the trial record, it becomes mandatory for the court to conduct an enquiry.

In *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*,³² the Supreme Court again emphasised the conducting of an enquiry in order to determine the paying capacity of the accused. The court held that the powers under this section must be exercised liberally and fairly. The amount of fine or compensation must not be excessive. Certain factors, such as motivation of the offence, the pecuniary gain likely to have been made by the offender and the means of the accused to pay the fine must be considered before fixing the amount of compensation. In several other civil law countries, the prosecutor or another court-appointed person is assigned to assess the paying capacity of the accused.³³

From the above case law analysis, it can be concluded that the true purpose of section 357 has been recognised by the Supreme Court. Compensation under section 357 is typically collected from the accused, and imposing a fine or compensation without knowing the financial condition of the accused could prove futile. Therefore, knowing the financial capacity of the accused is said to be an important aspect in granting compensation under section 357, which all courts in India must assess and consider so as to fully fulfil the fundamental purpose of section 357.

2.1.4. Compensation Determined After Hearing the Accused

In *Mangilal v. State of Madhya Pradesh*,³⁴ the appellant, who had been found guilty under section 302 IPC,³⁵ filed an appeal before the Supreme Court. The Supreme Court concluded that before awarding compensation under section 357(4), an opportunity should be given to the accused to present his side of the case. The logical conclusion drawn from this ruling is that if the appellate court wants to grant compensation, it must first allow the accused the chance to be heard. This ensures that the necessary factors, including the necessity to grant compensation, the accused's financial ability to pay and other relevant considerations, are duly considered.

³¹ AIR 2013 SC 770.

³² AIR 2007 SC 528.

³³ Srinivasan & Eyre Mathew, 2007.

³⁴ AIR 2004 SC 1280.

³⁵ Section 302 in the Indian Penal Code, 1860, outlines the punishment for murder. Indian Kanoon. <https://indiankanoon.org/doc/1560742/>

Similarly, in *Dharmesh and Anr. v. State of Gujarat*,³⁶ the court firstly held that a judgement should be delivered only after hearing all the arguments and points of law. Secondly, upon conviction of the accused, the judge must hear the accused on the question of sentence, unless the accused is released on probation of good conduct and admonition (sec. 360 CrPC), and only then pass sentence as per the law.

In this context, the Supreme Court in *Palaniappa Gounder v. State of Tamil Nadu and others*³⁷ further opined that all courts must consider the nature of the crime, the injury the victim has suffered, the justness of the claim, and the paying capacity of the accused etc., when fixing the quantum of fine or compensation. All of these aspects related to the accused can only be properly assessed by the court if the accused is given an opportunity to be heard, which would naturally be post-conviction. Based on the aforementioned case analysis, the Supreme Court noted that a court must hear an accused person before determining the amount of compensation, in accordance with the principles of natural justice.

2.1.5. Default Sentence for Non-Payment of Compensation

When the accused is ordered to pay compensation u/s 357 of CrPC, the provision itself is silent on the consequences of non-payment of compensation by the accused. If the compensation amount is not paid and no default sentence is given for non-payment of compensation, the amount ordered for compensation is of no use and the very purpose of awarding compensation is undermined.

The following case laws illustrate how the Supreme Court has dealt with this issue of non-payment of compensation.

In *Rachhpal Singh v. State of Punjab*,³⁸ the Supreme Court held that the High Court had no material to assess the pecuniary condition of the accused; nevertheless, in keeping with the objective of section 357, the Court considered the case fit for granting compensation. Moreover, upon considering the materials on record, the Court also found the appellants reasonably affluent to pay the compensation, although it reduced the amount from Rs. 2 lakhs to Rs. 1 lakh each. In this case, the Supreme Court held that the High Court had ordered compensation and also a default sentence in lieu of compensation without assessing the financial capacity of the accused. Therefore, the Supreme Court directed that, in such cases, courts must ensure the accused's financial capacity before fixing both the compensation and default sentence.

In the case of *K. A. Abbas H.S.A. v. Sabu Joseph*³⁹ also, the Supreme Court imposed a default sentence in case of non-payment of compensation under section 357(3) of the CrPC. It further observed by the Court that:

³⁶ Criminal Appeal No. 432 of 2021 (arising out of SLP (Crl) No. 673/2021).

³⁷ AIR 1977 SC 1323.

³⁸ AIR 2002 SC 2710.

³⁹ Criminal Appeal No. 1052 of 2010.

The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party can ensure delivery of total justice.

In both *Hari Singh v. Sukhbir Singh*⁴⁰ and *Balraj v. State of UP*,⁴¹ the Supreme Court held that all courts are open to impose a default sentence on non-payment of compensation under section 357(3) of the CrPC after taking into consideration certain factors when passing an order of compensation where a fine is not part of the convict's sentence. First and foremost, the amount of compensation must be reasonable and appropriate, considering the particular facts and circumstances of each instance. Additionally, while calculating the amount of compensation, the type of offence committed, the veracity of the victim's claim and the accused's financial situation might all be taken into account.

When there are multiple accused, they are directed to pay equal amounts of compensation unless there is considerable disparity in their ability to pay. Furthermore, the court may also pass permit making payments on an instalment basis. Lastly, the court has the authority to enforce the order by imposing a penalty for nonpayment.⁴² It is well established that section 357(3) CrPC allows for the imposition of imprisonment for failure to pay reparation. This provision aims to uphold victims' rights within the criminal justice system. In some situations, compensation may better serve the interests of justice than detention, since the accused may still evade payment in the absence of a default sentence, and imposing an additional fine would prove impractical. Therefore, to guarantee meaningful enforcement and to prevent defeating the intent of the provision, courts must take into account the accused's financial situation when granting compensation.

2.1.6. Compensation in Cases of Acquittal

It has been clearly mentioned in section 357A of the CrPC that the victim can receive compensation even in the event of an acquittal. The primary objective of the provision is that the victim should be rehabilitated irrespective of whether there is a discharge or an acquittal.

In the case of *Suresh and Anr. v. State of Haryana*,⁴³ the Supreme Court underlined this objective of section 357A of the CrPC as under:

The object and purpose of Section 357A CrPC is to enable the court to direct the state to pay compensation to the victim where the compensation under

⁴⁰ AIR 1988 SC 2127.

⁴¹ AIR 1995 SC 1935.

⁴² Dattu, H. A. (2010). *K. A. Abbas H. S. A. v. Sabu Joseph Anr., Supreme Court of India* (pp. 1–11). Indian Kanoon.

⁴³ AIR 2015 SC 227, Criminal Appeal No. 420 of 2012.

section 357 of the CrPC is not adequate for where the case ended in acquittal or discharge and the victim is required to be rehabilitated.

As the higher courts in India have delivered a number of landmark decisions with regard to compensation to make the compensation law more effective, the lower courts in India are mandated to follow the decisions given by the Supreme Court; only then, in the true sense, can victim restoration through compensation be realised. To examine the ground realities of whether lower courts are implementing the provisions of compensation in line with the CrPC and following the rules made by the Supreme Court or not, an empirical study was conducted by interviewing various judges in the state of Odisha in the eastern part of India.

3. Practices of the Trial Courts in Awarding Compensation: Evidence from an Empirical Study in the State of Odisha

The Supreme Court and the provisions discussed so far clearly indicate the practices that lower courts are expected to follow while granting compensation to the victims of crime. The frequency distribution below illustrates the practices actually observed by the lower courts in the state of Odisha.

Table 2: **Use of compensation provision set by the Supreme Court**

Ratio given by courts	Variable	Judges' responses	Frequency	Percentage
Court should use the compensation provision liberally	Suo motu compensation granted in the last ten years			
		More than 50% of the cases	4	7.3
		Less than 50% of the cases	16	29.1
		In all cases that ended in conviction	14	25.5
		In no cases	3	5.5
		No case experience	1	1.8
		Never had a relevant case	10	18.2
		Percentage/data not available	2	3.6
		Recommended to the DLSA	5	9.1
		Total	55	100.0

From the above table, we can see that only 29.1% of the judges grant compensation in less than 50% of the cases they have decided. This means that they use the power granted to them by the statute only rarely. In addition, 25.5% of the judges responded that they grant compensation only in cases of conviction, even though the statute allows compensation to be granted at the time of judgement even in cases of acquittal. Only 7.3% of the total judges grant compensation in more than 50% of the cases. Furthermore, 5.5% of the judges admitted having tried such cases but did not grant compensation at the time of judgement. It is therefore clear that, contrary to the intention of the legislature and the mandates of the Supreme Court, this provision is used by the judges only in a limited number of cases.

Table 3: **Compensation orders given priority**

Ratio given by courts	Variable	Judges' responses	Frequency	Percentage
Adequate compensation should be given to the victim even in case of compromise	In what kind of cases do you not award compensation			
		Where the victim contributed to the offence	2	3.6
		In less serious cases and if the victim/witness is hostile	25	45.5
		In cases of acquittal	16	29.1
		In cases of compromise	1	1.8
		When there is inadequate evidence	1	1.8
		Depends on case-specific factors	1	1.8
		Mistake of fact	3	5.5
		Unanswered	5	9.1
		Total	54	98.2
	System		1	1.8
	Total		55	100.0

Most judges (45.5%) stated that the victim turns hostile in the majority of cases, and that in such situations, they do not award compensation. Additionally, in less

serious cases, compensation is usually not given. A number of judges opined that the victim turning hostile is a very common occurrence. Further, 29.1% of the judges reported that they do not grant compensation in cases of acquittal. Some judges mentioned that they do not grant compensation in the event of a compromise between the parties, although this number is very small. However, the Supreme Court has clearly stated several times that even in cases of compromise, the victim is to be compensated, as he or she has suffered a loss due to the act of the accused. In a few cases, compensation is not awarded when there is inadequate evidence or a mistake of fact.

Table 4: **Compensation based on the paying capacity of the accused**

Ratio given by courts	Variable	Sub-variable	Judges' responses	Frequency	Percentage
Paying capacity of the accused to be considered before fixing the quantum of compensation	Cases eligible for compensation	By the impact on the victim			
			Yes	50	90.9
			No	2	3.6
			Situation for granting compensation did not arise	3	5.5
			Total	55	100.0
		By the paying capacity of the accused			
			Yes	16	29.1
			No	36	65.5
			Situation for granting compensation did not arise	3	5.5
			Total	55	100.0
		By the gravity of the offence			

			Yes	50	90.9
			No	2	3.6
			Situation for granting compensation did not arise	3	5.5
			Total	55	100.0
		By the impact on the society	Yes	33	60.0
			No	19	34.5
			Situation for granting compensation did not arise	3	5.5
			Total	55	100.0

According to the above table, the majority of the judges, i.e. 90.9% of the judges, grant compensation based on the impact on the victim. This indicates that the victim is given priority when determining whether the case is eligible for compensation or not.

Furthermore, the table shows that 29.1% of the judges consider the paying capacity of the judges, whereas 65.5% of the total judges do not take it into account. However, the statutory rule is that the paying capacity of the accused should be a considering factor in granting compensation, as the compensation amount is to be collected from the accused. The Supreme Court in various cases, as discussed above, has directed lower courts to make this an important consideration while granting compensation and has even ordered that an enquiry into the paying capacity of the accused must be conducted, particularly when it is not clear at the time of trial. Unfortunately, most judges still ignore this aspect while granting compensation.

It is also concluded that 90.9% of the judges consider the gravity of the offence as a significant factor for granting compensation. Only 3.3% of the judges did not consider it as a factor for granting compensation and also did not provide any specific reason for neglecting to consider it.

An additional 60% of the judges responded that impact on the society is a relevant factor for granting compensation, whereas 34.5% of the judges did not consider this factor in granting compensation.

Table 5: **Compensation determined after hearing the accused**

Ratio given by courts	Variable	Judges' responses	Frequency	Percentage
Accused must be heard before determining the quantum	Whether accused is heard before determining the amount of compensation			
		Yes	31	56.4
		No	24	43.6
		Total	55	100.0

The table above shows that 56.4% of the judges hear the accused before fixing the amount of compensation, while 43.6% of the judges do not hear the accused before fixing the quantum of compensation. The Supreme Court has repeatedly given decisions in this regard that the accused should be heard as per the principles of natural justice before compensation is decided. Yet, the majority of the judges do not hear the accused and are also often ignorant about the decisions given by the Supreme Court in this context.

Some judges also opined that they do not hear the accused directly regarding compensation but instead study the case files to infer whether the accused is able to pay. However, none reported conducting any enquiry into the economic background of the offender, despite explicit directions from the Supreme Court in multiple cases.

Other judges responded that they hear the accused only in warrant cases and not in summons cases. Some judges explained that the accused is usually heard at the time of sentencing which addresses this matter of hearing the accused; however, this hearing typically addresses the overall case rather than the issue of compensation specifically. A few judges reported that in order to ascertain the economic background, they simply ask a few indirect questions.

Table 6: **Default sentence for non-payment of compensation**

Ratio given by courts	Variable		Frequency	Percentage
Imposition of default sentence for non-payment of compensation	Whether imprisonment is imposed on the accused for default in payment of compensation ordered u/s 357(3)			

		Yes	17	30.9
		No	32	10.9
		Never come across such a situation	6	58.2
		Total	55	100.0

The above table reveals that 58.2% of the judges do not impose a default sentence upon non-payment of compensation, while 30.9% of the judges do. Once again, the Supreme Court has clearly mentioned that a default sentence should be given to the accused in cases of non-payment of compensation. However, most of the judges interviewed believed that a default sentence can only be given for non-payment of a fine and not for non-payment of compensation. They were largely ignorant about the decisions of the Supreme Court in connection to this provision.

Table 7: **Compensation in cases of acquittal**

Ratio given by courts	Variable	Judges' responses	Frequency	Percentage
Adequate amount should be given to the victim in cases of acquittal	Whether recommendation to the DLSA is made in cases of acquittal			
		Mostly	2	3.6
		Sometimes	13	23.6
		Never	31	56.4
		Not tried	2	3.6
		Never recommended	7	12.7
		Total	55	100.0

From the above table, it is revealed that 56.4% of the judges never recommend compensation in cases of acquittal. The field investigation conducted further reveals that in practice, judges generally do not recommend the matter to the DLSA either in cases of acquittal. Only in cases of conviction is such a matter forwarded to the DLSA for compensation. About 23.6% of the judges recommended the matter for compensation

to the DLSA in cases of acquittal, while 12.7% of the judges reported that they never make such recommendations for compensation in instances of acquittal.

These data clearly demonstrate that despite the explicit provision in section 357A of the CrPC regarding recommending compensation to the DLSA, as well as the reinforcement of this provision by the Supreme Court in its various rulings, judges neglect to recommend compensation to the DLSA in cases of acquittal, even when the trial court determines that the compensation awarded under section 357 is clearly inadequate for the victim's rehabilitation.

Conclusion

Previously the CrPC did not contain any special law for rendering justice to the victims through compensation. However, following the 2009 amendment and the establishment of Victim Compensation Schemes in various states, some solace was extended to the victims. Nevertheless, to date, there is no such special law in India that provides an exhaustive framework on victim compensation. In the absence of such legislation, the Supreme Court has taken various positive actions to protect the rights of the victims. By adopting the concept of restorative justice, the Court has awarded compensation or restitution, leading to a notable increase in the amount of compensation granted to the victims in various cases.

In order for these victim compensation reforms to be truly effective, the judiciary must become more sensitised. While the policy of the criminal justice system is becoming more victim-orientated and some positive steps have been taken through various amendments and judgements, loopholes persist in implementation. The judges must not only be highly efficient in their understanding of the laws in place but also understand the true meaning of providing justice to victims. The victims must not be at the mercy of the judge, rather it is pertinent to convert the compensatory provisions into a legal mandate so that judges cannot misuse their discretionary power in granting justice.

It has been further observed from the above analysis that the judges in the state of Odisha are often not even aware of the decisions of the Supreme Court regarding victim compensation, with a stereotypical approach still prevailing in the justice system. Further, there is no standard technique applied for granting compensation. The judges keep no record or provide reasons in cases where compensation has not been granted. In practice, granting compensation mostly depends upon the paying capacity of the accused, when in fact the unfortunate reality is that there is little scope for ascertaining the economic condition of the accused. The court makes no effort to determine the economic background. Therefore, in this situation, as is common, it is practically not even possible for the accused to pay compensation as prescribed by law, and only a very small number of cases result in successfully enforced compensation orders.

This study also highlighted that judges in Odisha, in the majority of instances, simply conclude that it is not practically possible to know the paying capacity of the accused, nor do they consider conducting an enquiry, as they believe it is not a requirement under the provision. As a result, the Supreme Court's decisions in this regard remain largely unimplemented. Our field observation confirms that section 357 is among the most underutilised provisions. In some instances, rather than granting compensation directly under section 357 CrPC, the courts prefer to recommend the matter to the DLSA, their reason being that in most of the cases they handle, the accused persons come from low economic backgrounds. They claimed that even if they were to order compensation, the amount is often not practically feasible to collect, and there have been several instances where the accused has failed to pay the fine amount as well, which is owed to the government.

On the question of imposing a default sentence for non-payment of compensation, the Supreme Court has clearly stated time and again that a default sentence should be given in cases of non-payment of compensation. Yet, the sad reality is that no court in Odisha consistently imposes default sentences in cases of non-payment of compensation. It can thus be concluded that the judges in Odisha are not following a uniform pattern in granting compensation. Some judges approach the problem from a historical perspective, others from a philosophical viewpoint and still others from the standpoint of social utility. Based on the findings the hypothesis that "Compensation laws are implemented in the state of Odisha in accordance with the judicial precedents set by the Supreme Court of India" is disproved. The study reveals that in practice, the implementation of victim compensation laws in the state of Odisha does not align with the standards or practices established by the Supreme Court.

Based on the findings of the study, the following recommendations are suggested:

1. Amend the CrPC to bring about more clarity on the substantive right of victims to receive compensation. Additionally, judges in the lower judiciary should be more sensitised when handling compensation matters.

2. Clearly outline the legal requirements to standardise the amount of compensation based on the type of crime and its detrimental impact on the victim rather than leaving it entirely to the discretion of the courts.

3. Establish a formal methodology for assessing victim impact so as to ensure consistency, transparency and impartiality in dealing with cases, including awarding compensation.⁴⁴

4. Develop standardised methodologies for determining the appropriate level of compensation or establish electronic databases that can consider and calculate the economic standing of defendants.

⁴⁴ Bajpai & Gauba, 2016.

5. Based on previous court rulings, create and publish compensation tables or charts organized according to the nature and gravity of the offence, financial damage and other such factors that the Supreme Court deems relevant. These can serve as standards to encourage uniformity and certainty in awarding victim compensation.

While the CrPC and Supreme Court rulings provide a robust framework for victim compensation, this study demonstrates that inconsistent practices in lower courts, gaps in implementation and a lack of overall judicial awareness impede the effective restoration of victims. These findings underscore the urgent need for enhanced judicial sensitisation, explicit legislative clarity and greater standardisation of procedures—particularly at the lower court levels—to ensure that victims receive meaningful and timely justice.

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