

8. Intersection of Human Rights of Women and Children with Victims' Right to Compensation

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8.1 Introduction:

Historically, the right to compensation has been a part of most legal systems. The Hammurabi code of ancient Babylonian makes the earliest reference to State compensation for victims of crime¹ There is sufficient evidence to establish that the idea of State compensation was well accepted in most of the ancient legal systems around the globe. However, over a period of time the criminal justice system was separated from the civil system and the State compensation disappeared and the role of the State limited to punitive measures only. This continued till a very recent time, when modern legal systems witnessed revival of victimology and victimal justice system during the 1950s. Gradually, all legal systems, including American and European jurisdictions, established State compensation programs² and right to compensation evolved as a fundamental human right. In India, the inclusion of section 357 A in the Code of Criminal Procedure (replaced by Section 396 of the Bhartiya Nagarik Suraksha Sanhita, 2023) mandates the State Governments to provide compensation to the victims or their dependents who have suffered loss or injury due to crimes.

Along with all other victims, most of the Victim Compensation Schemes in India have special provisions for woman and child victims of various crimes. Few compensation schemes have provisions specially meant for woman and child victims. For example, the compensation schemes of all Union Territories and State of Haryana, Kerala, West Bengal has a clause which runs as, "if the victim is less than 14 years (18 years for State of Chhattisgarh, Delhi,) the compensation shall be increased by 50% over the amount specified" and the compensation schemes of Andhra Pradesh, Bihar, Chhattisgarh, Delhi, Gujrat, Haryana, Jammu and Kashmir, Meghalaya, Odisha, Puducherry, Sikkim, Tamil Nadu, Telangana, Tripura, and Uttarakhand has a provision which runs as, "if a women victim of sexual assault / acid attack is covered under one or more category of schedule, she shall be entitled to be considered for combined value of compensation." Despite of this the compensation schemes are criticized as these schemes provide compensation to victims and their dependents only in a limited manner.³ There are many challenges in ensuring

¹ Morris Fish, *An Eye for an Eye: Proportionality as a Moral Principle of Punishment*, 28(1) Oxford J. Legal Stud. 57, 58-61 (2008).

² Law Commission of India, *One Hundred and Fifty Fourth Report on the Code of Criminal Procedure*, 1973, 57-58 (1966).

³ Vaishnavi Munot, *Rights of Accused, Suspects and Prisoners as Victim of Crime under Criminal Justice System of India*, 3 Int'l Educ. & Res. J. (2017).

consistent and effective implementation of such schemes across the nation.⁴ This chapter ponder upon some of the challenges posed by the legislative approach analyzing the provisions of the Schemes with special reference to the women and children affected by crimes.

8.2 Compensation as Human Right of Victims:

The compensatory jurisprudence is developed in India at two fronts, *firstly* under the Constitutional Law and *secondly*, under the Criminal Law. Before the progression of victimology in India, while advancing the causes of human rights and giving more teeth to the constitutional guarantee for a right to live with dignity (u/Art. 21 of the Constitution of India) the Supreme Court declared that the Higher Judiciary itself could award compensation in a case of human rights violations. After rising of victimology, the right to compensation is considered a fundamental human right for victims of crime in India. This recognition stems from the Supreme Court's interpretation of the State's duty to protect citizens and provide justice to promote social welfare and equity. Compensation serves as a tool for social justice, particularly for vulnerable populations such as women, children, the elderly, and the economically disadvantaged, who are disproportionately affected by crimes.⁵ This right is embedded within the broader framework of social justice, aiming to address the harm suffered by the victims of crime and to ensure their rehabilitation. The compensation schemes are designed to provide financial support to victims, aiding in their rehabilitation and helping them recover from the economic and emotional impact of crime.⁶ Evolved significantly since the late 1980s, it is now recognized as part of the fundamental right to life as interpreted by the judiciary in a plethora of cases.⁷ The Supreme Court has emphasized the importance of awarding compensation as part of just sentencing in India.⁸ Considering its importance as a human right, the Supreme Court has played a crucial role in expanding the compensatory jurisprudence ensuring that the victims' rights are protected even in the absence of any explicit constitutional provision.⁹ Such upholding of compensation as a human right fulfils a significant economic needs of the victim and ensure justice for victims, restores their dignity, supports their rehabilitation, promotes access to justice and thereby upholds other human rights of the victims.

⁴ Mohit Nagpal, & Chaitanya Rawandale, *Tracing journey of crime victim's position under Indian law with evolutionary insights from the United States' federal code on victims' rights*, 10 Cogent Arts & Human. (2023), <https://doi.org/10.1080/23311983.2023.2286071>.

⁵ Mukesh Yadav, P.S. Thakur, & Pooja Rastogi, *Compensation and Rehabilitation of Rape Survivors a Constitutional Right*, 36 J. Indian Acad. Forensic Med. (2014).

⁶ Sunghoon An, *The Significance of Constitutional Protection of Crime Victims' Rights - Focusing on the Right to Claim Crime Victim Compensation*, Korean J. Victimol. 27 (2024) <https://doi.org/10.36220/kjv.2024.32.2.27>.

⁷ Dhruvo Dube, *Victim Compensation Schemes in India: An Analysis*, Int'l J. Crim. Just. Sci. 339 (2018).

⁸ Gaurav Nath, *Victim Compensation: Understanding the Law to Sensitize Stakeholders*, SSRN (2020) <https://doi.org/10.2139/ssrn.3635598>.

⁹ Vaishnavi Munot, *Rights of Accused, Suspects and Prisoners as Victim of Crime under Criminal Justice System of India*, 3 Int'l Educ. & Res. J. (2017).

Victim Compensation Schemes can be analyzed in different ways to find out its effective administration and implementation. Now a days all States in India have State Compensation Schemes. The critics allege lack of uniformity and clarity,¹⁰ inconsistent delivery of actual compensation,¹¹ slowly progressing,¹² etc. Let's analyze it with respect women and child victims as to the definition of the terms 'victim' and 'applicant', pre-conditions, the offences compensated, disparity in the amount of compensation.

8.3 Definitions of The Term 'Victim', And 'Dependent':

The term victim and dependent plays very important role in the implementation and administration of the victim compensation schemes provided by different States. The inclusion or exclusion of any category of person in the definition of these terms directly affects the beneficiaries of the scheme. The scrutiny of compensation schemes of all State Governments in India shows that there is total nine definitions of the term 'victim' and there are nine definitions for the term 'dependents' which are intrinsically different than each other. A short plight to the definitions will help to understand the journey of the beneficiaries under these schemes.

The definition of the State of Maharashtra, Madhya Pradesh, Mizoram, West Bengal, Manipur, Himachal Pradesh, Uttar Pradesh, Uttarakhand, Jammu and Kashmir, Delhi, Assam, Meghalaya, Sikkim, Tripura, Rajasthan, Chhattisgarh, Kerala, Jharkhand, Nagaland, Odisha, and all Union Territories have clauses saying that the definition of victim includes (1) the guardian or legal heirs of the victim or (2) dependent family members. It increases possibility of compensation to the woman or child who is either guardian or legal heir or dependent family member of the victim.

However, the compensation schemes of the State of Tamil Nadu, Bihar, Punjab and Haryana lacks definition of the term victim in the notified victim compensation schemes. Hence the definition of victim as provided under the existing Criminal Law can be used in interpreting the compensation schemes.

Similarly, surprisingly, the compensation schemes of the State of Goa and Andhra Pradesh has willfully excluded the clause "the expression victim includes his/her guardian or legal heirs or depending family members" and hence the women and children can get compensation under the compensation schemes of these States only if they "have suffered loss or caused injury as a result of crime."

¹⁰ Poonam Gupta, & Nirmal Gupta, *Victim compensation schemes in India (Gujarat, Delhi, Telangana and Kerala)*, Passagens: Rev. Int.l História Política e Cultura Jurídica, (2022), <https://doi.org/10.15175/1984-2503-202214201>.

¹¹ Madhusudan Sharma, *Compensatory justice to the victim of a crime and judicial practices in India: An empirical study*, 28 Int.l Rev. Victimol. 167 – 190 (2021), <https://doi.org/10.1177/02697580211051213>.

¹² Mohit Nagpal, & Chaitanya Rawandale, *Tracing journey of crime victim's position under Indian law with evolutionary insights from the United States' federal code on victims' rights*, 10 Cogent Arts & Human. (2023), <https://doi.org/10.1080/23311983.2023.2286071>.

The compensation schemes of the State of Gujrat, Odisha, Karnataka, West Bengal and Goa has a provision saying that the term victim "... includes his dependents who had suffered loss or injury and who require rehabilitation" which means the women or child depending on the victim can get compensation only if the women or child had suffered loss or caused injury as a result of crime and they require rehabilitation. This limits the scope of the definition unnecessarily. This definition also has one more inherent susceptibility as the definition of the term 'dependent' is lacking in the compensation schemes of the State of Odisha as well as Gujrat and the compensation schemes of the State of West Bengal says that the dependent is a person who is fully depending on the earnings of the victim. This decreases the scope of the definition much more excluding the women and children who are not "fully" depending on the earnings of the victim.

The State of Manipur, Chhattisgarh, Jammu and Kashmir, Nagaland, Jharkhand, Uttar Pradesh, and Sikkim defines the term victims as a person who "himself has suffered" and "requires rehabilitation" and this includes "dependent family members," however, surprisingly none of these States defined the term 'dependent' keeping the definition of victim disputable. On the same line of thought the compensation schemes in the State of Madhya Pradesh and Kerala adds a clause saying "... .. includes the guardian or legal heir of victim but does not include a person responsible for injury" and left the ambiguity in the cases of domestic violence where the wife may not get benefits of the compensation scheme. The definition of the State of Bihar is much more critical as it limits the term victim to a person who suffered "substantial loss" to income" making it difficult "to meet their both ends" without the financial aid.... This definition excludes the women or children from the benefits of the compensation if they can meet their ends without financial aid. In comparison with the compensation schemes of other States, this is unnecessary curtailment of the right of compensation because the woman or child is born in the State of Bihar! Similarly, the definition of the term victim in the compensation scheme of the State of Uttarakhand limits the definition to a person suffered by acid attack, human trafficking or serious accident, etc. This compensation scheme is also contrary to the legislative intend of flourishing victimology and victimal justice system in India.

When it comes to the definition of the term 'defendant', as discussed earlier the compensation schemes of the State of Rajasthan, Karnataka, Manipur, Gujrat, Punjab, Jammu and Kashmir, Uttarakhand, Goa, Nagaland, Assam, Jharkhand, Himachal Pradesh, Chhattisgarh, and Sikkim lacks such definition. The definitions given by all the other States can be categorized in nine definitions. The simplest definition is given by the compensation scheme in the State of Delhi, Madhya Pradesh, Kerala and all Union Territories. It includes wife, husband, mother, father, minor children and unmarried daughter. In this definition the term father-in-law and mother-in-law is not included. This dispute may come specifically when the daughter-in-law is the only sole earning member of the family after the death of their son.

The definition of the State of West Bengal is also apparently simple saying the term dependent means a person who is fully depending on the earnings of the victim. But when compared with the other victim compensation schemes, it become vague as it is not limited by any word denoting blood relation or family relation or marital relation and hence any person who may be remote relative or illegitimate child or illegitimate spouse may claim compensation under this scheme keeping the real dependent women and children away from

the compensation amount, they deserve to get under this scheme. The definition provided in the compensation schemes of the State of Tamil Nadu, Maharashtra and Haryana includes wife, mother father, husband, minor children and unmarried daughter and also includes other legal heirs who are found “fully” depending on the victim. This definition is somehow vague as to the clause “who are found fully depending on the victim” because it is not clear whether it is applicable to the legal heirs only or for all relatives like mother, father, husband, wife, etc. as mentioned in the scheme. The definition of the State of Telangana is same as mentioned for the above States, except, the term ‘other legal heir’ is not mentioned in the compensation scheme of the State of Telangana.

The compensation scheme of the State of Odisha has a clause saying that the parents of the minor victims can be treated as dependents if the parents are found “affected by the crime” or the crime has “left a scar” on the parents. This definition seems to have unnecessarily limited the scope of the application of the compensation scheme. Because many other compensation schemes, like the scheme of the State of Andhra Pradesh does not require that the spouse or natural parents should be “depending” on the victim.

It is correctly presumed that they are “affected” by the crime committed against the victim. The compensation scheme of the State of Tripura allows the benefits to be given to the children up to the age of 21 years and also includes adopted children which is unique in itself in comparison with the schemes of other States. One more compensation scheme providing similar provision is notified by the State of Mizoram which also includes the dependent daughter of any age and physically and mentally challenged children of any age. Comparatively the widest definition is given by the State of Bihar which include father, mother, husband, wife, brother, sister, son, daughter, grandmother, grandfather, father-in-law, mother-in-law, and every other person leading life on the income of the victim.

In short, the definitions of the term ‘victim’, and ‘dependent’ vary in different victims’ compensation schemes which creates administrative difficulties in implementation of the schemes and also seems to be drafted with intention to decrease the number of beneficiaries under a particular scheme.

It is very surprising that there are nine different definitions of the term ‘victim’ along with the more nine definitions of the term ‘dependent’ are used in the compensation schemes when these terms are already defined and well settled under the existing criminal law. So, the people who migrated to different States for education, employment, tourism, or those who are mere traveling to reach their destination and meet with a crime may face challenges in getting compensation under the State compensation schemes.

8.4 Offences Compensated Under Compensation Schemes:

Few states like the State of Maharashtra, Delhi, Haryana, Karnataka, Kerala, Sikkim, etc. has a special Compensation Scheme for women victims or a dedicated part of general scheme having provisions for women victims. Similarly, few States like the State of Tamil Nadu, Uttar Pradesh, etc. have a dedicated part in a general scheme having provisions for child victims suffered offences under POCSO.

The offences or the injuries compensated under the Schemes, for the women victim and children victims include loss of life (all schemes), disability (all states), dowry related violence (only Kerala), simple loss or injury to child victims (Arunachal Pradesh, Assam, Jharkhand, Nagaland, Rajasthan, Uttar Pradesh), Burning (Andhra Pradesh, Bihar, Chhattisgarh, Delhi, Gujrat, Haryana, Jammu and Kashmir, Karnataka, Kerala, Manipur, Meghalaya, Odisha, Puducherry, Punjab, Sikkim, Tamil Nadu, Telangana, Tripura, Uttarakhand), acid attack (all states, except Nagaland, Mizoram, Meghalaya, Jharkhand), rape (all states), rape of minor (Jharkhand, Karnataka, Madhya Pradesh, Nagaland, Punjab) gang rape (all states, except Arunachal Pradesh, Goa, Himachal Pradesh, Jharkhand, Nagaland, Rajasthan, Uttar Pradesh, West Bengal), pregnancy on account of rape (all states, except Arunachal Pradesh, Assam, Chhattisgarh, Goa, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Nagaland, Punjab, Rajasthan, Uttar Pradesh, West Bengal), Sexual Assault of minor under POCSO (only in Kerala, Maharashtra, Rajasthan, Tamil Nadu, and Uttar Pradesh), physical abuse of minor (only in all Union Territories, Assam, Delhi, Haryana, Himachal Pradesh, Kerala, Punjab, Sikkim, West Bengal), harassment of child for Pornographic purpose (only in Himachal Pradesh, Rajasthan, Tamil Nadu, Uttar Pradesh), women victims of cross border fining (only in Assam, Haryana, Himachal Pradesh and Kerala), loss of fetus and loss of fertility (in all Union Territories, Andhra Pradesh, Assam, Bihar, Delhi, Gujrat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Manipur, Meghalaya, Odisha, Puducherry, Punjab, Sikkim, Tamil Nadu, Telangana, and Tripura).

8.5 Surprising Pre-Conditions for Compensation:

There are many surprising pre-conditions required to be strictly adhered under different victim compensation schemes. These pre-conditions limit the scope and hence the significance of the scheme. Some of the conditions are about the benefits received under other schemes, strict proof of dependency, employment status and income of the victim, etc.

The compensation schemes of the State of Andhra Pradesh, Maharashtra, Rajasthan, West Bengal, Jammu and Kashmir, Delhi, Odisha, Goa, Punjab, Sikkim, as well as all Union Territories requires that the victim should not be compensated under any other scheme of the Central or State Government, even the insurance company or any other institution. There is also a similar condition excluding the beneficiaries of the compensation received under the Motor Vehicle Act, 1988. To some extent, this condition is diluted by the Hon'ble Supreme Court in *Mohini v. State Government of NCT, Delhi*¹³ where the Court held that the compensation schemes are intended to award "adequate" compensation to the victims. The Court specifically said that to deny compensation merely because the victim has received some token compensation under some other law would be unfair and contrary to the very object of the scheme. The same view was adopted by the court in many further cases.¹⁴

¹³ (2015) 09 DEL CK 0170.

¹⁴ *Suresh v. State of Haryana* (2015) 2 SCC 277; *Satyra Prakash v. State* CRL.REV. P. No.338/2009 (Non-reportable); *Sukhdev Yadav v. State*, CRL.A. 145/2012 (non-reportable).

One more condition is about the “substantial loss” making it “difficult to meet their both ends” without the financial aid. This clause is provided in the compensation schemes of the State of Andhra Pradesh, Maharashtra, Punjab, Bihar, Chhattisgarh, Assam, Sikkim, and Goa. Similar condition is found in the compensation scheme of the State of Tripura which requires “the victim is unable to take care of the medical expenses” as well as the State of Rajasthan, Odisha, and Sikkim which requires “... making it difficult to live as before without financial aid” or “... affected dignity or personality” or caused “financial stress” for the family. All these conditions about the “financial impact” of crime need to be presumed specially when the compensation is not given for all kinds of crimes. It is limited to some of the crimes only as discussed earlier.

The compensation schemes of the State of Maharashtra and Telangana has a very surprising and unacceptable conditions which says that the employees of the Central or State Government, Boards, Corporations and Public Undertakings as well as the income tax payees are not eligible to get compensation under the schemes. The compensation scheme of the State of Kerala has similar condition, and it also adds the condition of income less than creamy layer limit as fixed by the State Government. This type of condition excludes a large stratum of society from the benefits of the schemes.

Some compensation schemes have a condition of maximum income, like the scheme of the State of Haryana and Telangana (Rs. 4.5 Lac per annum i.e. Rs. 37,500/- per month). The compensation scheme of the State of Madhya Pradesh decreases the amount of compensation by 50% if the income of the victim is more than Rs. 5 Lacs per annum. On the other hand, the compensation scheme of the State of Mizoram is applicable to BPL families only.

A careful reading of all the above conditions shows that these pre-conditions have no nexus with the aims and objectives of the scheme. Some of the conditions are a direct threat to the idea of restitution and compensation. In short, due to these pre-conditions, the Schemes render the majority of victims of crime ineligible for compensation under these schemes.

8.6 Conclusion:

The intersection of human rights for women and children with victims’ right to compensation is a complex issue that revolves around the terms and conditions of the compensation schemes and the mechanisms developed for the implementation thereof. This chapter developed an idea of the intersection of women and child victims of crime having a human right to compensation with the help of addressing policy failures due to the provisions of the victim compensation schemes in India. To avoid such failure and encourage the effective implementation of all the existing Compensation Schemes, it is immediately necessary that all the schemes should be amended to unify the definitions of some terms like, victim, applicant, dependents, etc., and also to repeal various pre-requisites which makes majority of victims ineligible, for example criteria about income, employment, etc.