

● LEGAL REGIME ON VICTIM COMPENSATION IN BRITAIN, USA AND INDIA: A COMPARATIVE HISTORICAL PERSPECTIVE AND WAY FORWARD



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Abstract

Historically, criminologists have ignored the issues related to victims in general and compassion in particular. Originally Criminal Justice system recognised victim as complainants or as witnesses. This perspective is now substantially changed by the transformation of the ideas, philosophy and law. At present, victims have become a substantial area of inquiry and research within criminology and victimology. Moreover, victimology has developed as an independent research-oriented subject. The paper intends to address the compensation mechanism for crime victims in India vis-à-vis in Britain and USA. The study offers an analytical insight and comparative description of victim compensation mechanisms. The comparison points out the convincing ideas that can be adopted for the betterment of the legal regime on victim compensation.

Key words -

Victim, Compensation, Criminal Justice System, Victim Protection.

I. INTRODUCTION

The criminal justice system of the contemporary world is based on 'war on crime model' where focus is concentrated on the criminals. This 'war on Crime model' in itself is the cause of suffering, because under this model the entire focus of the state is to punish the offender only and the position of victim is totally compromised. However, the ultimate purpose of formal and informal rules, laws, legal institutions and criminal justice system as a whole is to reduce the quantum of suffering in the society.

The criminal law in general is offender oriented and the sufferings of victim, often immeasurable, are entirely overlooked in misplaced sympathy for the criminal. The modern criminal law, which is supposed to represent the social spirits and norms, is designed to punish as well as to reform the criminal but it overlooks significant by-product of crime, the victim¹.

The criminal justice system today is excessively loaded in the favour of the accused. The fundamental principle on which the legal system is based is to let ninety-nine persons get away free than to have one innocent person punished. The principle while

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¹S.P. SINGH MAKKAR AND PAUL C. FRIDAY, GLOBAL PERSPECTIVES IN VICTIMOLOGY (ABS Publications, 1993 first edition) at 147

preventing injustice to one innocent denies justice to ninety-nine victims of crime. The rights of offenders are statutorily protected for instance the offender has a constitutional right to be informed of ground of arrest and has the right to consult and to be defended by a legal practitioner of his choice². The benefit of doubt always goes to the accused where the case fails on prosecutions inability to prove the case beyond reasonable doubt. However, the victim in spite of having suffered victimization³ remains neglected.

The crime victims were neglected in the criminal justice system for several decades and continued to be the 'forgotten entity' resultantly losing a sense of belongingness to this kind of system⁴. The neglect, apathy and indifference of the laws and institutions only added to the plight of victims leading to secondary victimisation⁵. 'Forgotten entity', 'marginalised persons' and 'subject of secondary victimisation' are some of the common expressions that a crime victim is associated with in the criminal justice system⁶. The legislative and judicial endeavours have brought about significant changes in the criminal justice system catering the needs of victim.

The concept of victim justice is an aspiration of a progressive society. Victim justice is the coincidence of criminal justice focusing on rights, participation, protection and assistance to the victims of crime. Victim justice is about the arrival of the victim to the core of criminal justice system. In the same context, the present paper explores the different dimensions of the legal regime on victim compensation, including comparative historical evolution of law from International and national perspectives. A comprehensive, comparative and critical analysis of the legal regime on victim compensation in Britain, USA and India is also presented in the paper.

²Article 22(1) of the Constitution of India, 1950, guarantees the right of an arrested person to be informed of the reasons for their arrest and to consult and be defended by a legal practitioner of their choice.

³Victimization is a process of being victimized or becoming a victim. There are different theories of victimization which are - Primary victimization, Secondary victimization, Re-victimization and Self-victimization. See generally, Stephen Schafer, *The Victim & his Criminal* (1968), where he gave the concept of "functional responsibility" according to the concept, the victimization occurs as a result of the functional interplay of causative elements. He believed that the responsibility of the victim is a critical issue in the problem of crime, some victims often contribute to crime by their acts of negligence, precipitation or provocation.

⁴See generally Tim New burn, *Criminology* Routledge publication (2017), Chapter 18, Victim, Victimization and Victimology, p.366, "It is now the standard practice to observe that the 'victim' has long been the forgotten party in criminal justice. Occasionally victims would appear on the scene as complainant and applicants for the compensation, or as a witness in the Court, but thereafter they were often largely neglected." also see, Adv. Amit Bhaskar, "Analysing Indian Criminal Justice Administration from Victims' Perspective", *Bharati Law Review*, Oct.-Dec., 2013, available at: <http://docs.manupatra.in/newsline/articles/Upload/D4A9C7F0-8A98-4E34-B88E-0145775149D7.pdf> (last visited 6th July, 2024) "Unfortunately, in India, after the crime is reported and the criminal motion is brought into force, the entire focus tilts towards the accused, forgetting completely the victims' rights and perspectives. As a result, the victims are sometime termed as "forgotten entity" or "marginalized entity" in the Indian criminal justice administration."

⁵Secondary victimisation refers to the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim. Institutionalized secondary victimisation is most apparent within the criminal justice system. See generally, *Handbook on Justice for Victims UNODCCP*, 1999, p.132.

⁶Ranbir Singh, *Victim Justice: A Paradigm Shift in Criminal Justice System in India* (Book Review) (2017). 4(1) *Journal of National Law University Delhi*, 115-117 (2017).



II. HISTORICAL EVOLUTION OF VICTIM CONCERN

The historical evolution of victim concern may be classified broadly in two perspectives, one is concerned with the development of victimological theories justifying the victim concern and the other deals with the legal regime on victim compensation.

Victimology over the year developed and refined with the development of different approaches to victimology. Early research in victimology concentrated on the fact that the victim could be considered responsible for his own victimization⁷. Hans Von Hentig and Benjamin Mendelsohn were key early figures in developing the idea of Positivist Victimology. Hans von Hentig referred to the 'doer-sufferer relationship'⁸ and Mendelsohn discussed the concepts of penal couple⁹, victim precipitation¹⁰ and victimal receptivity¹¹. The positivists began to explore the field of victimology by creating 'typologies'¹².

The Positivist Victimology represented the concept of 'victim blaming' and 'penal couple'. The Radical¹³ and Critical¹⁴ Victimology emerged as a reaction to positivist victimology. The Contemporary debate on Victimology includes the study of Minority Victimology, Female Victimology, Child Victimology, and likewise.

It is an undisputed fact that the idea creates reality. These approaches to victimology serve as an idea that generates reality. The legal regime on victim compensation is the reality, which is rooted in these theories and approaches to victimology. The idea of victim compensation is now being nurtured through the tedious task of translation into an operationally administrative reality¹⁵.

⁷Positivist Victimology or the traditional approach to victimology

⁸Hans von Hentig referred to the victim's contribution to the genesis of crime and the 'causative' role of the victim. It takes for granted that the "doer" is always, and during the whole process which ends in the criminal outcome, active, the "sufferer" always inactive. He insisted that victims may incite, provoke or create a situation conducive to the committing of crime. see generally, HANS VON HENTIG, 'THE CRIMINAL AND HIS VICTIM: STUDIES IN THE SOCIOBIOLOGY OF CRIME' (New Haven: Yale University Press 1948).

⁹Penal couple theory argues that when crime takes place, it has two partners, one the offender and second the victim, who is providing opportunity to the criminal in committing the crime.

¹⁰Victim precipitation theory proposes that certain actions, behaviours, or characteristics of the victim may initiate or escalate the criminal act. It can be divided into two main types: active precipitation and passive precipitation.

¹¹Victimal receptivity is where one unconsciously becomes victim.

¹²Benjamin Mendelsohn for example delineated a typology of victims and their contribution to the criminal act. The typology consists of six categories: (1) completely innocent victims; (2) victims with minor guilt; (3) voluntary victims; (4) victims more guilty than the offender; (5) victims who alone are guilty; and (6) the imaginary victims.

¹³Radical victimology argues that structural inequalities are responsible for victimisation.

¹⁴There was a confusion while defining the victim whether it can be termed as a label or stereotype or conditions or a self-perception or social construction etc. Hence, Quinney (1972) suggested that victim is nothing but a social construction which keeps on changing with the time and societal perception depending on their wisdom towards the understanding of any issue. Labelling theory argues that a person is victim because the state defined such and such person to be victim. See also, Fattah, 2010, Sati, widow remarriage, child marriage are such examples of social construction of victims.

¹⁵Marvin E. Wolfgang, "Victim Compensation in Crimes of Personal Violence", University of Minnesota, Law School Scholarship Repository, MINNESOTA LAW REVIEW 234 (1965)

The positivist approach makes the victim responsible for his own victimisation therefore, the victim would not be entitled to any compensation. The radical and the critical victimology believing in structural inequality and state labelling for the victimisation of a person as a victim respectively, leave room for compensation mechanisms. The law on victim compensation evolved based on justifications laid down by the approaches to victimology.

The development of victim concern at the international level has indeed been shaped significantly by initiatives from the United Nations, aimed at creating a legal framework for victim compensation and support. This evolution reflects a growing recognition of the rights and needs of victims of crime and abuses of power.

The Seventh United Nations Congress on the 'Prevention of Crime and the Treatment of Offenders' was held in Milan in 1985 was a significant milestone in recognizing the rights of victims of crime and abuse of power. The documents prepared for consideration by the Seventh Congress included a "*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*"¹⁶ prepared by the then Attorney-General of South Australia, Chris Sumner. The principles were derived from the report of a Committee of Inquiry into victims of crime in 1981¹⁷, of which one of the findings dealt with compensation for victims. After considerable debate, the declaration was adopted by the Congress and formally approved by the General Assembly of the United Nations in December, 1985.

The UN Declaration¹⁸, defines 'Victims of crime'¹⁹ exhaustively embracing a broad concept of harm. The declaration includes the provisions dealing with Access to justice

¹⁶United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly at its 96th Plenary Meeting, 29th November 1985, A/RES/40/34, available at: <https://www.ohchr.org/sites/default/files/victims.pdf>, (last visited 24th July, 2024).

¹⁷Attorney General's Department South Australia Report of the Committee of Inquiry on Victims of Crime Government Printer Adelaide 1981.

¹⁸Supra note 16

¹⁹"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. See also, Van Dijk, 1999 who views this as general Victimology and Cressey, 1988 as humanistic Victimology.



and fair treatment²⁰, Restitution²¹, Compensation²², Assistance²³ for the crime victims. The declaration also highlights the concept of 'Victims of abuse of power'²⁴ and possible measures of combatting the same.

III. VICTIM COMPENSATION REGIME IN BRITAIN

Historically in England, a criminal court may order restitution if stolen goods can be traced, with some safeguards for innocent holders. Further, the money found in the possession of the thief when arrested may be subject to an order for repayment as compensation. In felony cases, if the application is made shortly after conviction, the court may order compensation for loss of property up to the sum of one hundred pounds²⁵.

Ms. Margery Fry an eminent English magistrate and a pioneering advocate for victims' rights believed that victims of crime needed to be compensated for damages. Fry maintained that victims should not be denied compensation even when offenders were

²⁰Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

²¹Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

²²When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a)Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b)The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

²³Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

²⁴"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

²⁵Supra note 15 at p.229

not able to compensate their victims. Compensation, in these cases then, should come from public funds. In response to her advocacy, Britain established the Criminal Injuries Compensation Scheme in 1964, which provided state-funded compensation programs²⁶.

The Criminal Injuries Compensation Scheme, 1964 was a non-statutory scheme establishing an administrative board to assess and award compensation to victims. The payment of compensation was made *ex-gratia* in the shape of a lump-sum amount arrived at in the same manner as a civil award of damages for personal injury based on tort. Compensation was available from the board for a broad range of crime related injuries ranging from loss or damage, physical harm, loss of earnings, pain and suffering, and to an injury as minimal as loss of clothing provided the injury was personal and directly related to a crime of violence²⁷. Overall, the Criminal Injuries Compensation Scheme marked an important evolution in the approach to victim support in the Britain. The success of this scheme influenced subsequent developments in victim compensation and support services, paving the way for more comprehensive statutory schemes in the years to come.

With a view to giving statutory form to the scheme, the British Government incorporated Part VII of the Criminal Justice Act, 1988 to the Criminal Injuries Compensation Scheme²⁸. According to the provisions the scheme would be administered by a statutory board appointed by the Secretary of State. Here compensation was the most appropriate action only after the conviction of offender and claims for compensation were to be determined and the amounts payable to be assessed on the basis of principles of tortious liability²⁹. Impact of the statutory framework may be summarised as Enhanced Credibility, Broader Access to Justice, by linking compensation to convictions, the scheme aimed to streamline the process for victims, and Increased Support for Victims.

In the interim, the existing Criminal Injuries Compensation Scheme was replaced with a new tariff scheme in 1994 on the recommendation of the Law Commission in the white paper on 'Compensating victims of violent crime: changes to the criminal injuries compensation scheme'³⁰ presented to the parliament in 1993 and the first statutory scheme under Criminal Injuries Compensation Act 1995.

The Criminal Injuries Compensation Act, 1995 has replaced all the other earlier compensation schemes which were based on common law concept of damages. The scheme of 1995 is a tariff-based system for determining injury awards by weighing of loss. Injuries of comparable severity are combined together for which a fixed payment is made and a lump sum award related to the severity of the injuries is paid³¹.

²⁶JANET K. WILSON, THE PRAEGER HANDBOOK OF VICTIMOLOGY 99-100, (Greenwood Publishing Group 2009)

²⁷154th Law Commission Report (1996) at p. 57 para 4.3.2. See generally, Marvin E. Wolfgang, "Victim Compensation in Crimes of Personal Violence", MINNESOTA LAW REVIEW 240 (1965)

²⁸Criminal Justice Act, 1988, Part VII: Compensation by Court and Criminal Injuries Compensation Board, (24th July, 2024) <https://www.legislation.gov.uk/ukpga/1988/33/part/VII>.

²⁹154th Law Commission Report (1996) at p. 58 para 4.3.3

³⁰Compensating victims of violent crime: changes to the criminal injuries' compensation scheme, available at: <https://assets.publishing.service.gov.uk/media/5a74c563e5274a3cb28670bd/2434.pdf> (last visited 24th July, 2024).

³¹Supra note 27 at p.58 para 4.3.4.



The Criminal Injuries Compensation Scheme of 1995 is finally replaced by 'The Criminal Injuries Compensation Scheme 2012' which awards compensation to 'victims of violent crime' who have sustained a 'criminal injury'. One of the changes that resulted in 2012 is an introduction of an explicit definition of a 'crime of violence'³² on the face of the Scheme. The aim was to provide transparency and clarity around the circumstances in which victims of violent crime may be eligible for compensation under the Scheme³³.

The Criminal Injuries Compensation Scheme 2012 is administered by the Criminal Injuries Compensation Authority (CICA), the rules of the Scheme and the value of the payments awarded are set by the Secretary of State and approved by Parliament. To qualify for an award, an injury must be described in the tariff of injuries at Annex E³⁴ of the Scheme. Decisions are made on individual applications by claims officers independently of the Secretary of State³⁵. The Scheme 2012 provides that the applicants should apply for compensation as soon as reasonably practical and within two years of the date of the incident; the time limit can be extended where due to exceptional circumstances the applicant could not have applied earlier. Awards can also be reduced or withheld in circumstances where the applicant's conduct contributed to the injury, or where applicants do not cooperate with the CICA to progress the claim³⁶.

Victim compensation mechanism in the Britain have evolved over time, with improvements in legal systems and increased consideration and recognition of victim rights. The Code of Practice for Victims of Crime (2020)³⁷ is the major developments relating to victim and his rights. The code describes under the head of 'Right 5' that a victim has right to compensation. The code enumerates that there are three recourses for victim compensation. First being Court ordered compensation in the form of sentence secondly, compensation available under Criminal Injuries Compensation Scheme and lastly, Civil (non-criminal) compensation available from the suspect or offender outside of the criminal justice process by resorting to civil courts³⁸.

³²Annex B of the Criminal Injuries Compensation Scheme, 2012 defines "Crime of violence" is a crime which involves:

- (a) a physical attack;
- (b) any other act or omission of a violent nature which causes physical injury to a person;
- (c) a threat against a person, causing fear of immediate violence in circumstances which would cause a person of reasonable firmness to be put in such fear;
- (d) a sexual assault to which a person did not in fact consent; or
- (e) arson or fire-raising.

³³Ministry of Justice, Criminal Injuries Compensation Scheme Review 2020, page 15 para 45, 46, (15th August, 2024) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901140/cics-review-2020.pdf.

³⁴Annex E deals with Tariff of Injuries which is further divided in Part A and Part B; Part A: Physical and Mental Injuries, Part B: Sexual and Physical Abuse and Other Payments

³⁵Supra note 33 at p. 12 para 34

³⁶Supra note 33 at p. 13 para 38

³⁷Code of Practice for Victims of Crime in England and Wales, November 2020, Presented to Parliament pursuant to section 33 of the Domestic Violence, Crime and Victims Act 2004, available at:

(15th August, 2024) <https://assets.publishing.service.gov.uk/media/60620279d3bf7f5ceaca0d89/victims-code-2020.pdf>.

³⁸Ibid at pp. 20-21

IV. VICTIM COMPENSATION REGIME IN USA

At the beginning of the nineteenth century in the United States, several states implemented laws aimed at addressing the interests of victims in cases of larceny. These laws reflected an early recognition of the need for restitution in addition to criminal punishment, could be required to return to the owner an amount of money twice or three times the value of the stolen goods or, in the case of insolvency, to perform labour for the victim for a certain period of time³⁹.

In the mid-1960s, there was a significant surge in interest regarding victim compensation legislation in the United States, driven by growing awareness of the needs of crime victims. Superior Court Judge Francis McCarty of San Francisco have been credited as the major stimulus for the victim compensation legislation in California. The judge wrote a letter to a state legislator requesting that legislation be developed to provide assistance to victims, Federal legislation was proposed in 1964 by Senator Ralph Yarborough of Texas and a bill was subsequently enacted in 1965⁴⁰. California developed the country's first crime victim compensation program in 1965, and was followed by New York in 1966, Hawaii in 1967, Maryland and Massachusetts in 1968, and New Jersey in 1971⁴¹.

The 1980s was a significant decade for victims' rights in the United States. The victim's rights movement grew out of a widespread sentiment that the legal system did not accord victims the respect or sympathy they deserved, and this lack of support resulted in negative interactions with the criminal justice system. In 1982, President Ronald Reagan appointed a 'Task Force on Victims of Crime', which issued a Final Report⁴² making numerous recommendations⁴³. As a result of the recommendation of the Commission, in 1984, the Victims of Crime Act (VOCA)⁴⁴ was passed which established

³⁹Bruce R. Jacob, "Reparation or Restitution by the Criminal Offender to His Victim: Applicability of an Ancient Concept in the Modern Correctional Process", 61 (2) JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, 155 (1970).

⁴⁰Daniel McGillis and Patricia Smith, "Compensating Victims of Crime: An Analysis of American Programs" U.S. Department of Justice National Institute of Justice Office of Development, Testing, and Dissemination, 28, (16th August, 2024) <https://www.ojp.gov/pdffiles1/Digitization/86442NCJRS.pdf>.

⁴¹Supra note 27 at 58 in para 5.1.

⁴²Final Report Washington DC US Government Printing Office 1982, Final Report of the President's Task Force on Victims of Crime, available at: <https://www.ojp.gov/pdffiles1/ovc/87299.pdf>, Also see: Adv. Amit Bhaskar, "Analysing Indian Criminal Justice Administration from Victims' Perspective", BHARATI LAW REVIEW, 172-173, (Oct.-Dec., 2013). In 1982, the U.S. President Reagan Commissioned the President's Task Force on Victims of Crime under the direction of Assistant Attorney General Lois Haight Harrington.

⁴³Njeri Mathis Rutledge, "Looking a Gift Horse in the Mouth-The Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims" 19:223 DUKE JOURNAL OF GENDER LAW & POLICY, 230 (2011)

⁴⁴In 1984, after a sustained campaign of nearly 200 years the congress enacted Victim of Crime Act, 1984 the purpose of this Act was to provide: a) Compensation to the crime victims b) To establish a Fund described as Crime Victims Fund within the US Treasury comprising of the collections from fine, penalties and forfeiture. The Fund to be administered and allocated by the Attorney General, half of the fund shall be strictly allocated for the state victim compensation programmes and the rest half goes for the payment of the victim assistance programme, victim service and his compensation, See generally 154th Law Commission Report (1996) at p.58 para 5.1.



the Crime Victims Fund (CVF)⁴⁵. It was 1986 when VOCA grants first went State Victim Compensation Programs. While victim compensation in America is definitely a State-Federal partnership, states pay for about two-thirds of the costs, and the federal government covers about 30%⁴⁶. In 1975 as a national umbrella organization, National Organization for Victim Assistance (NOVA) was established. It dedicated to expanding current victim services, developing new programmes and supporting passage of victims' rights legislation. In addition to this, NOVA also serves as a conduit of information and technical assistance for local and regional victim assistance programme⁴⁷.

In April 2004, the U.S. Congress enacted the Crime Victims' Rights Act. The Act deals with the rights of crime victims⁴⁸ in federal proceedings that generally included, and even expanded the rights of the crime victims⁴⁹. This federal Act was the basis for many states in U.S. to enact state legislation for the victims' protection⁵⁰. The current encouragement is for victim integration in the system through the use of a Victim Impact Statement (VIS)⁵¹, a statement made by the victim and addressed to the judge for consideration while sentencing. It usually includes a description of the harm done in

⁴⁵One of the Final Report's most significant recommendations proposed federal funding for existing state victim compensation programs. See generally Ad. Amit Bhaskar, "Analysing Indian Criminal Justice Administration from Victims' Perspective", *Bharati Law Review*, Oct.-Dec., 2013, at page 172-173, The Fund is supported by money collected through criminal fines, forfeited bail bonds, penalties and special assessments. Victims can apply to this fund to cover crime related medical costs, funeral costs, mental health counselling, or lost wages that are beyond the insurance coverage. Generally, victims are required to report to crime within 3 days and file claim within 2 years. Maximum awards generally range from \$10,000 to \$25,000. See generally: 154th Law Commission Report (1996), p.58 para 5.2. Compensation is given to only innocent victims. If the Board finds evidences which suggests that the victim also had the role or played significantly in the commission of the crime the compensation amount shall be reduced or disallowed in its entirety moreover all the states programmes prohibit double recoveries, if any money is received from the insurance policy or other governmental agencies then the same shall be deducted from the Boards determination. A common feature of all these victim compensation schemes is that the compensation programme deals with only most serious crimes, those which result in either death or injury

⁴⁶Victim Compensation in America: The State-Federal Partnership, A Special Report from The National Association of Crime Victim Compensation Boards, (21st August, 2024) <https://assets.publishing.service.gov.uk/media/5a74c563e5274a3cb28670bd/2434.pdf>.

⁴⁷Adv. Amit Bhaskar, "Analysing Indian Criminal Justice Administration from Victims' Perspective", *BHARATI LAW REVIEW*, 172-173, (Oct.-Dec., 2013)

⁴⁸This Act identifies the following rights of the victims:

- a) To be reasonably protected from the accused.
- b) To have reasonable, accurate and timely notice of proceedings.
- c) To not to be excluded from any such public proceedings.
- d) To be reasonably heard.
- e) To confer with an attorney for the government in the case.
- f) To full and timely restitution as provided by law.
- g) To be free from unreasonable delay.

⁴⁹Supra note 26 at pp. 301-302

⁵⁰Supra note 47 at pp.172-173

⁵¹In *Payne v. Tennessee*, 501 U.S. 808 (1991), the United States Supreme Court had ruled that the Eighth Amendment allows the prosecution to introduce a victim impact statement at the sentencing phase of a capital case because it is "relevant evidence" to the determination whether to impose the death penalty or not. See generally Robert C. Davis & Carrie Mulford, "Victims' Rights and New Remedies: Finally Giving Victims Their Due", 24 *J. CONTEMP. CRIM. L.* 198 (May 2008).

terms of physical, psychological, social and financial consequences of the offence. In some jurisdictions, a VIS also includes a statement concerning the victim's feelings about the offence, the offender and a proposed sentence for infliction.

A Special Report from ⁵²The National Association of Crime Victim Compensation Boards¹ outlines the American law on victim compensation. State Crime Victim Compensation Programs operate under detailed state statutory and regulatory frameworks. The State Crime Victim Compensation Program mandates the filing of the application seeking compensation within the time limit of 2 years⁵². Reporting and cooperation with law enforcement agencies⁵³. Contributory conduct, requiring a look at criminal activity on the part of the victim⁵⁴ and to preserve scarce funds for victims not covered by Medicaid, insurance, etc., states must not pay benefits to a victim if a federal benefit program covers those costs⁵⁵.

V. VICTIM COMPENSATION REGIME IN INDIA

The concern for victims in Indian society indeed has deep historical roots, reflecting a complex interplay of justice and community support. There was an inbuilt mechanism for restoration and community support for them. The tradition of atonement and restitution existed. According to Manu, punishment by the State was of four kinds - the King was to punish first by gentle admonition, thereafter by a severe scolding, further by a fine and finally by corporal punishment⁵⁶. This historical perspective highlights a tradition of valuing victims and promoting their rights within the community, suggesting that justice is not solely about punishment, but also about healing and

⁵²See generally Victim Compensation in America: The State-Federal Partnership, A Special Report from The National Association of Crime Victim Compensation Boards, at p.3 Prima-facie it may appear that large numbers of claims are denied for failure to file within a specified limit of 2 years; or for not reporting to police and cooperating in an investigation of the crime; or for the victim committing criminal acts that cause the victim's injury or death but the statistics show that extremely small numbers of claims are denied for failure to meet basic eligibility requirements. Those statistics, gathered annually from the states, show the following:

- Less than 0.5% of applications are denied for late filing.
- Less than 1.5% of applications are denied for victims' responsibility for the crime.
- About 2% of applications are denied for non-reporting to police, and 2% are denied for failure to cooperate with law enforcement authorities.

⁵³States must promote cooperation with law enforcement, with allowances for the physical and mental health of victims, their safety, and cultural/linguistic issues, with exceptions and waivers, especially for victims of sexual assault, domestic violence, human trafficking, and child abuse.

⁵⁴criminal activity on the part of the victim that directly causes the injury or death, and reduction and/or denial of benefits if the victim is responsible for their own injury or death.

⁵⁵Supra note 52 at p.3

⁵⁶The fine imposed on the culprit was not to supplement the loss of the offender person, but in order to protect the man from criminality. There is a provision in Hindu Penal Policy to compensate the loss caused by another. Manu has discussed it in detail in Manusmriti. Also see, DAMAYANTHI DOONGAJI, "CRIME AND PUNISHMENT IN ANCIENT HINDU SOCIETY", (New Delhi: Ajentha Publications 154 1986) "If offender has no property, he must work for the victim. If he fails to do manual work, he will be sent to prison. A Brahmin is allowed to pay in instalments. The lowest fine 250 panas and higher 1000 panes."



restoration. In contemporary discussions about victim rights and compensation, these ancient principles continue to resonate, emphasizing the need for a more empathetic and restorative approach to justice.

The law relating to compensation in India can be traced in the law framed during the British regime which provided that courts may order "payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the court, recoverable by such person in a Civil Court."⁵⁷

Section 545 Code of Criminal Procedure (Cr.P.C.), 1898 had the phrase "substantial compensation". It restrained the person for recovering nominal damages only. The 41st Law Commission⁵⁸ discussed Section 545 Cr.P.C. at length and submitted its report in 1969 whereby the commission observed that the significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should be tort. The word "substantial" appears to have been used to exclude cases where only nominal damages would be recoverable. The Commission recommended to omit the word "substantial" from the clause⁵⁹.

The recommendations made by the Law Commission paved the way for the introduction of the Code of Criminal Procedure Bill, 1970 accordingly, Code of Criminal Procedure, 1973 was enacted and 'Section 357' was introduced⁶⁰ but it may be fairly concluded that Section 357 has limited impact in the context of victim welfare in India, because for the application of the section certain prior conditions are required. Firstly, that the accused must be convicted. Secondly, the compensation is recovered in the form of a fine that is when it forms a part of the sentence or a Magistrate may order any amount to be paid to compensate for any loss or injury by reason of the act for which the accused has been sentenced. Lastly, in awarding the compensation, the capacity of the accused has to be taken into account by the Magistrate practically⁶¹.

The biggest flaw of Section 357 is that it is triggered only upon successful conviction. It assumes that the accused must be identified, prosecuted and convicted. Moreover, Section 357(2) further states that no disbursement of compensation shall be made, if the order imposing the fine is subject to an appeal, until either the expiry of the period of limitation or when the appeal is finally disposed of⁶². The provision also does not contemplate a contingency where under emergency situations; interim compensation might be required by the victim. Further, the provision does not outline the timeline for payment of compensation.

⁵⁷Section 545(1)(b), Code of Criminal Procedure, 1898

⁵⁸Forty-First Law Commission Report, 1969 at page 356 para 46.12, (24th July, 2024) <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022082436.pdf>,

⁵⁹Ibid

⁶⁰Now, section 395-Order to pay compensation, The Bharatiya Nagarik Suraksha Sanhita, 2023

⁶¹Bharti Manglani, Judicial Magistrate, Haridwar, "Victim Compensation Scheme- Shortcomings & Recommendations", (24th July, 2024) <https://ujala.uk.gov.in/files/11.pdf>.

⁶²Now, section 395 (2) of The Bharatiya Nagarik Suraksha Sanhita, 2023- If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

⁶³Supra note 16

Midway at the international level in the year 1985⁶³ the 'United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985' was adopted and it defines the term 'victim' in the widest possible sense categorising victims into two heads⁶⁴.

Along with the development at international level, at the national level '154th Law Commission Report, 1996' and 'Malimath Committee Report, 2003 on 'reforms of Criminal Justice System in India' were submitted. The 154th Law Commission report recommended for the insertion of section 2(wa)⁶⁵ and Section 357A⁶⁶ in Cr.P.C., 1973 while the Malimath committee recommended for the creation of Victim Compensation Fund (VCF).

The 154th Law Commission Report⁶⁷ devoted an entire chapter to "Victimology"⁶⁸ and observed that the scope for victim compensation afforded in Code of Criminal Procedure, 1973 under section 357 is limited. The Law Commission, in its report in 1996, stated that, The State should accept the principle of providing assistance to victims out of its own funds, in cases of acquittals; or where the offender is not traceable, but the victim is identified; and also, in cases when the offence is not proved⁶⁹.

The Law Commission recommended to incorporate a new Section 357-A in the code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the courts.⁷⁰

The Malimath committee on reforms of Criminal Justice System in India, 2003⁷¹ emphasized on the 'participation' of victims in criminal processes as an inseparable component of justice. Compensating victims of crime is a state obligation whether the offender is apprehended or not, convicted or acquitted. It proposed a 'victim compensation law' providing for the creation of a 'victim compensation fund' to be administered by the Legal Services Authorities created under the Legal Services Authority Act, 1987.

The recommendation of the 154th Law Commission for drafting the new Section 357-A was finally adopted via the Criminal Procedure Code (Amendment) Act, 2008 which came into force in 2009. The relevant insertions are section 2(wa)-victim⁷² and section

⁶⁴'Victim of Crime' (Art 1 & 2 of the Declaration) and 'Victim of Abuse of Power' (Art 18 of the Declaration)

⁶⁵The definition of the term 'victim' s. 2(wa) under Code of Criminal Procedure, 1973 now, S.2(y) under The Bharatiya Nagarik Suraksha Sanhita, 2023

⁶⁶Section 357A- Victim compensation Scheme. Now, S. 396 The Bharatiya Nagarik Suraksha Sanhita, 2023

⁶⁷154th Law Commission Report, 1996 was on the Code of Criminal Procedure, 1973

⁶⁸Ibid Chapter XV, pp. 57-65.

⁶⁹Supra note 67 at p.64 para 17

⁷⁰"In view of the weakness of the existing provisions for compensation to crime victims in the criminal law, it is necessary to incorporate a new section 357-A in the Code", 154th Law Commission Report (1996), chapter XXII Conclusions and Recommendations at p. 121 para 31.

⁷¹Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, Report Volume I, March 2003, (18th August, 2024) https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf

⁷²Supra note 65.



357A-Victim compensation scheme⁷³.

Victim compensation schemes presently under Section 396, The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is divided into various subsections: -

- sub-section (1) of Section 396 BNSS provides that every State Government shall prepare a scheme and provide funds for the compensation of victims for loss or injury as a result of a crime⁷⁴.
- Sub-section(2) of Section 396 BNSS states that whenever the court makes a recommendation for compensation to the District or State legal service Authority, it shall decide the quantum of compensation under the above scheme⁷⁵.
- in sub-section (3) of Section 396 BNSS, the trial Court has been empowered to make recommendation to the Legal service Authority for compensation where the quantum of compensation fixed by the Court under section 395 is found to be inadequate; or where the case ends in acquittal or discharge and the victim has to be rehabilitated⁷⁶.
- Sub-section (4) of Section 396 BNSS states that even where no trial takes place and the offender is not traced or identified but the victim is known, the victim or his dependents can apply to the State or District Legal Services Authority for award of compensation⁷⁷.
- Sub-Section (5) of Section 396 BNSS says that on receipt of the application, the State or District Legal Services Authority shall award adequate compensation within two months. It is pertinent that a time frame of two months will ensure speedy disposal of application and justice to the victim by preventing dilatory measures⁷⁸.
- Further sub-section (6) of Section 396 BNSS states that in order to alleviate the suffering of the victim, the State or District Legal Service Authority may order immediate first-aid facility or medical benefits to be made available free of cost or any other interim relief⁷⁹.

⁷³Supra note 66

⁷⁴S.396 (1) BNSS- Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

⁷⁵S.396 (2) BNSS- Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

⁷⁶S.396 (3) BNSS- If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 395 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

⁷⁷S.396 (4) BNSS- Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

⁷⁸S.396 (5) BNSS- On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

⁷⁹S.396 (6) BNSS- The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

- A new sub-section (7) to section 396 BNSS is introduced. Section 396(7) is further making it clear that the payment of fine to the victim under section 65⁸⁰, section 70⁸¹ and sub-section (1) of section 124⁸² of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) shall be in addition to the compensation payable by the State Government under this section⁸³.

As per the mandate of Section 396 BNSS, the States and UTs made their own victim compensation scheme, but there was huge disparity in the amount of compensation among states for the same offence. To reconcile this disparity the central government came out with the 'Central Victim Compensation Fund (CVCF) guidelines 2016' vide notification dated 14th October, 2015 from the Ministry of Home Affairs⁸⁴.

The CVCF aims to fulfil the objectives⁸⁵ led down in the notification by supporting and supplementing existing victim compensation schemes notified by states and union territories and reducing the disparity in the quantum of compensation notified thereof. It defines the scope for budgetary allocation⁸⁶ and provides for accounting and audit⁸⁷. The notification also mentions the essential requirements to have access to funds from CVCF⁸⁸ and for that the States/UT Administrations must frame their Victim Compensation Scheme (as mandated by S.396 BNSS) as per the guidelines. The States/UT Administrations must give due regard to the fact that the quantum of

⁸⁰Section 65 Bharatiya Nyaya Sanhita, 2023 provides for 'Punishment for rape in certain cases', its proviso mandates that 'Provided further that any fine imposed under this sub-section shall be paid to the victim'

⁸¹Section 70 Bharatiya Nyaya Sanhita, 2023 provides for 'Gang Rape', its proviso mandates that 'Provided further that any fine imposed under this sub-section shall be paid to the victim'

⁸²Section 124 Bharatiya Nyaya Sanhita, 2023 provides for 'Wrongful restraint'. S.124(2) provides 'Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both'. This fine shall be paid to the victim as per S.396(7) BNSS.

⁸³S.396 (7) BNSS- The compensation payable by the State Government under this section shall be in addition to the payment of fine to the victim under section 65, section 70 and sub-section (1) of section 124 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023).

⁸⁴Central Victim Compensation Fund Scheme (CVCF) Guidelines, No.24013/94/Misc./2014-CSR.III Government of India/ Bharat Sarkar ministry of Home Affairs, Dated 14th October, 2015. Available at: https://www.mha.gov.in/sites/default/files/2024-09/cvcf_13092024.pdf (last visited 4th September, 2024)

⁸⁵Objective of Setting up of the CVCF:

1. To support and supplement the existing Victim Compensation Schemes notified by States/UT Administrations.
2. To reduce disparity in quantum of compensation amount notified by different States/UTs for victims of similar crimes.
3. To encourage States/UTs to effectively implement the Victim Compensation Schemes (VCS) notified by them under the provisions of section 357A of Cr.P.C. and continue financial support to victims of various crimes especially sexual offences including rape, acid attacks, crime against children, human trafficking etc.

⁸⁶The CVCF will be set up with an initial corpus of Rs.200 Crore to be sanctioned by the Ministry of Finance.

⁸⁷To ensure financial accountability, internal Audit shall be carried out by the Chief Controller of Accounts, Ministry of Finance (Department of Economic Affairs) once in every six months. In addition, statutory Audit shall be carried out annually by an Independent Auditor from a Board of Auditors appointed by the CAG. The reports and observations will be brought to the notice of the Central Government. The Chief Controller of Accounts, Ministry of Home Affairs, will maintain the accounts, including Receipts and Payments Accounts.

⁸⁸Essential Requirements to access funds from CVCF

- a. The State/ UT must notify the Victim Compensation Scheme as per provisions of Section 357A of CrPC (now Section 396 BNSS)



compensation notified by them for the kinds of offences should not be less than the amount mentioned in Annexure I⁸⁹.

The Victim Compensation Scheme are not working to its fullest potential. The Victim Compensation Scheme faces significant challenges that hinder its effectiveness. A robust infrastructure and institutional support are essential for its success, including a dedicated national-level body to oversee and implement these initiatives.

Legislation is crucial to establish clear standards and protocols for victims' rights, protection, participation, and assistance. While the principle behind the scheme under the BNSS is commendable, the requirement for courts to mandate compensation creates blocks. This places an undue burden on the judicial system and can delay vital support for victims. To optimize the scheme, it's necessary to streamline processes, ensuring that victims can access compensation more swiftly and efficiently, perhaps through administrative bodies rather than solely relying on court orders. This would not only enhance the responsiveness of the system but also reinforce the commitment to supporting victims in their recovery and reintegration into society.

VI. COMPARATIVE ANALYSIS OF VICTIM COMPENSATION MODELS: USA, BRITAIN, AND INDIA

Each country has its own peculiar characteristics. A comparative study of victim compensation mechanisms in the USA, Britain, and India can be structured around the following key criteria:

1. Administration:

In Britain there are three forums for the administration of victim compensation. Firstly, Court-ordered compensation which provides that if the offender is convicted, the court may order the convict to pay the victim for losses like injury, property damage, or lost income. Secondly, compensation is available under Criminal Injuries Compensation Scheme and administered by Criminal Injuries Compensation Authority (CICA) established under the Criminal Injuries Compensation Scheme, 2012 and third is Civil Court damages (non-criminal compensation) where the injury is in the nature of tort⁹⁰. In USA system varies from state to state, each state has its own victim compensation program, with different eligibility criteria, funding sources, and types of compensation

- b. The quantum of compensation notified should not be less than the amount mentioned in Annexure I.
- c. State/UT must first pay the compensation amount to the eligible victims of crime from its own Victim Compensation Fund and then seek reimbursement of funds from CVCF.
- d. Any expenditure incurred from the State Victim Compensation Fund to assist the victims will be treated to be first spent from the non-budgetary resource available in the State Fund. Budgetary grant received from the state Government/UT Administration will be used only after consuming the non-budgetary resource.
- e. Details of every victim compensated must be maintained electronically in 'Victim Compensation Module' in Citizen portal of CCTNS project.

⁸⁹Acid attack- 3 Lakhs, Rape- 3 Lakhs, Physical abuse of Minor- 2 Lakhs, Rehabilitation of victim of Human Trafficking- 1 Lakh, Sexual assault (Excluding rape)- 50,000, Death- 2 Lakhs, Permanent Disability (80%or more)- 2 Lakhs, Partial Disability (40% to 80%)- 1 Lakhs, Burns affecting greater than 25% of the body (excluding Acid attack cases)- 2 Lakhs, Loss of foetus- 50,000, Loss of fertility- 1.5 Lakhs. It further lays down that if the victim is less than 14 years of age, the compensation shall be increased by 50% over the amount specified herein.

⁹⁰Supra note 37 at pp 20-21

offered⁹¹. There is Federal Victims Compensation Fund⁹² which exists alongside state programs⁹³. It generally covers victims of violent crimes where the offender is federally prosecuted or falls under specific categories (e.g., terrorism). In India the Victim Compensation Scheme is at state level. Section 396 BNSS mandates State Governments to establish Victim Compensation Schemes⁹⁴.

Britain and India operate government-funded victim compensation schemes, while the USA primarily relies on offender-based compensation through court orders, supplemented by a federal program. Britain has a centralized system (CICA) while the USA has a decentralized system with individual state programs. India has a decentralized system with each state administering its own victim compensation scheme the fund, the amount may be reimbursed by CVCF.

2. Eligibility/Scope:

In Britain the scheme focuses on violent crimes only. Scheme applies to victims of violent crimes⁹⁵ who suffered physical or mental injury, or whose close relative died as a result of the crime. The scheme their awards compensation regardless of whether the offender is apprehended. In USA programs vary from state to state⁹⁶ and cover both violent and non-violent crimes, property crimes, and even crime victim assistance services⁹⁷. In India compensation is offered for both violent and non-violent crimes. Britain has specific schemes for violent crimes, the U.S. scheme is broader and may include certain property crimes depending on the state.

⁹¹Each state has a crime victim compensation program that allocates funds to survivors of sexual assault and other violent crimes. See generally RAINN (Rape, Abuse & Incest National Network). It is the largest organization in the United States that works to prevent sexual violence, help victims, and bring perpetrators to justice, (16th September, 2024) <https://rainn.org/articles/crime-victim-compensation>.

⁹²Crime victim compensation is a direct reimbursement to or on behalf of a crime victim for a wide variety of crime-related expenses such as medical costs, mental health counselling, lost wages, and funeral and burial costs. Office for Victim of Crime (OVC) administers federal funds to support their crime victim compensation programs in all U.S. states, Washington, D.C., the U.S. Virgin Islands, Puerto Rico, and Guam. See generally victim compensation Office for Victim of Crime (OVC) (16th September, 2024) <https://ovc.ojp.gov/topics/victim-compensation>.

⁹³Section 8 of Victims of Crime Act (VOCA), 1984 see generally Part III VOCA, 1984

⁹⁴Supra note 74

⁹⁵Supra note 32

⁹⁶While each state operates under its own law, all compensation programs have the same basic criteria to determine eligibility for benefits. Generally, the victim must (a) report the crime promptly to law enforcement, and cooperate with police and prosecutors (many states allow exceptions to this requirement, particularly for child victims, and for victims of sexual assault and domestic violence); (b) submit a timely victim compensation application (again, some exceptions are available in nearly every state); (c) have a cost or loss not covered by insurance or another government benefit program (victim compensation programs pay only after other collateral sources are used); and (d) not have committed a criminal act or some substantially wrongful act that caused or contributed to the crime (the eligibility of family members generally depends on the behaviour of the victim when programs assess this requirement, but there are a few programs whose laws authorize eligibility for family members in homicides). Apprehension or conviction of the offender is not required. See generally Victim Compensation an Overview, (16th September, 2024) <https://nacvcb.org/victim-compensation/#:~:text=Maximum%20benefits%20available%20from%20the,health%20counseling%2C%20or%20lost%20wages.>

⁹⁷In Fiscal Year 2023, a total of 7,808,408 crime victims received support from victim assistance programs throughout the Nation, provided by 6,430 subgrantees through 9,808 subawards; and state victim



3. Funding:

In Britain and USA, the victim compensation scheme is funded by the government. The Crime Victims Fund (CVF) provides financial resources to states for their victim compensation programs. Crime Victims Fund is also inclusive of fines, surcharges, and federal grants⁹⁸. In India both Central and state government fund the scheme. Britain and USA have centralized funding mechanisms, while India involves both central and state governments. However, USA relies more on offender-based compensation through court orders, with a secondary federal program. In US a separate federal program, the Victims Compensation Fund, exists for specific crime categories (e.g., terrorism) where the offender is prosecuted federally.

4. Claim process:

In Britain applications for compensation are made to CICA, with a 2-year time limit after the crime⁹⁹. In USA processes vary by state, but often involve applying to a state agency and the time limits may also differ¹⁰⁰. While in India after the crime is reported application need to be made to District or State legal services authority¹⁰¹. All three require reporting the crime, but timeframes and specific requirements vary.

5. Compensation:

Compensation in Britain is based on the severity of the injury. Tariff based system is used for awarding compensation which covers medical expenses, lost earnings, pain and suffering¹⁰². In The USA, both amounts and types of compensation vary by state, but may include medical expenses, medical expenses, lost earnings, counselling and funeral

compensation programs made payments to 202,830 claims throughout the Nation totalling \$359,652,096. See generally OVC Releases VOCA Victim Assistance and Victim Compensation Data Dashboards, (16th September, 2024) <https://ovc.ojp.gov/news/announcements/victim-assistance-and-victim-compensation-data-dashboards>.

⁹⁸The fund is funded by money collected from criminal fines, forfeited bail bonds, penalties, and special assessments. The money comes from offenders convicted of federal crimes, not taxpayers. All states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico receive a base victim assistance amount of \$500,000 each. The territories of the Northern Mariana Islands, Guam, and American Samoa each receive a base amount of \$200,000. Additional funds are distributed based on population. For FY 1986-2003, states received \$3,062,972,335 in VOCA victim assistance grants from Office for Victims of Crime (OVC). See generally The U.S. Department of Justice's Office for Victims of Crime (OVC) Funding History, (16th September, 2024) https://ovc.ojp.gov/sites/g/files/xyckuh226/files/publications/factshts/companassist/fs_000306.html#:~:text=Although%20each%20state%20compensation%20program,in%20VOCA%20compensation%20grant%20funds.&text=Crisis%20intervention,Emergency%20transportation.

⁹⁹If one is injured by a violent crime, they can apply for compensation from the Criminal Injuries Compensation Scheme. Usually have to claim within 2 years of the crime, and the crime must be reported to the police before applying. See generally Claim compensation if you were the victim of a violent crime, (16th September, 2024) <https://www.gov.uk/claim-compensation-criminal-injury>.

¹⁰⁰Generally, victims are required to report to crime within 3 days and file claim within 2 years. See generally Adv. Amit Bhaskar, "Analysing Indian Criminal Justice Administration from Victims' Perspective", BHARATI LAW REVIEW, 172 (Oct.-Dec., 2013).

¹⁰¹Supra note 77

¹⁰²The CICA awards compensation for mental or physical injury following a crime of violence; sexual or physical abuse; loss of earnings - where no or limited capacity to work as the direct result of a criminal injury; special expenses payments - costs incurred as a direct result of an incident. special expenses are considered where unable to work or have been incapacitated to a similar extent for more than 28 weeks due to injury; a fatality

costs¹⁰³. India on similar lines to Britain has tariff-based system for awarding compensation. All three countries offer compensation for various losses but the US system offers the most variation depending on the state. All three countries also allow courts to order compensation from convicted offenders.

VII. CONCLUSION AND WAY FORWARD

The victim of a crime has historically and almost universally enjoyed the right to reparations¹⁰⁴ that is what Stephen Schafer calls it 'Golden Age' of victims. This right was confiscated by the state in the form of fines without due consideration for the victim. The term "*victim*" comprises the most significant or the most distressed body in criminal justice administration. Victims are generally believed not to have appropriate legal rights or safeguards and are thus perceived to be the largely overlooked group in the whole management of criminal justice. There is a common perception that unless victims' rights are prioritized in the criminal justice system, the system will eventually devolve into an institution that perpetuates injustice against victims. Victim is one of the greatest stakeholders in the system. It is therefore apparent that victim justice is an emerging ideology. This new perspective emphasizes the need for criminal justice agencies to be more sensitive and compassionate towards those who have suffered as a result of crime.

There are major drawbacks in the schemes of these countries. Britain excludes non-violent crimes in addition to that there is lengthy application process. In USA the availability and compensation amounts vary greatly by state. India has low compensation amounts, complex application process and reported underfunding. It can be fairly concluded that the US system can be more complex to navigate due to variations by state. India's scheme faces challenges with low compensation amounts and potential underfunding. All three schemes have limitations and navigating the application process can be challenging. The compensation mechanism in the jurisdiction of USA, Britain and India is not very satisfactory yet there are relevant points which could be borrowed in Indian model to enhance its outcome.

Way Forward

After conducting a comprehensive study of the legal regimes on victim compensation in Britain, the USA, and India, several policy recommendations can be made to enhance the victim compensation framework in an ideal world.

- I. **Mandatory Victim Impact Assessments and Statements:** Victim Impact Assessments and Victim Impact Statements should be made mandatory in the judicial process to ensure that the emotional, psychological, and financial effects of the crime on the victim are formally recognized and considered during the compensation determinations.

caused by a crime of violence including bereavement payments, payments for loss of parental services and financial dependency; and funeral payments. To qualify for an award, an injury must be described in the tariff of injuries at Annex E of the Scheme. Not all claims for compensation will be successful; you must be eligible under the rules of the Scheme.

¹⁰³Supra note 92

¹⁰⁴Retribution was prevalent among the individuals and their clan and eye for an eye amounted to reparation.



- ii. Establish a Dispute Settlement Mechanism: It is desirable to have a strong dispute settlement mechanism within district police to effectively address potential criminal matters that currently in the form of minor civil disputes. This proactive approach can help prevent intensification and promote community resolution.
- iii. Establishment of a Criminal Injuries Compensation Board: In the Delhi Domestic Working Women's Forum case, the Supreme Court of India emphasized the necessity for the government to establish a Criminal Injuries Compensation Board for rape victims within six months. The Court recommended that this board should provide compensation irrespective of conviction. The same board should be established for ensuring timely support and justice for victims.
- iv. Enhancing Witness-Victim Protection: Witness and victim protection in India has historically been inadequate; however, the enactment of the new criminal laws in 2023 introduced important provisions to address this issue. This significant step toward the safety and security of victims and witnesses should be enforced by legal process.
- v. Implementation of Victim-Offender Reconciliation Programs (VORPs): Victim-Offender Reconciliation Programs (VORPs),¹⁰⁵ recognized as a longstanding approach to facilitating dialogue between victims and offenders, should be actively implemented.

¹⁰⁵VORPs is the restorative justice perspective that the crime that occurred has not only violated the law but has caused a violation of a relationship between two or more people. Accordingly, encounter and understanding can initiate the healing process not only for individuals and communities as victims, but for offenders as well