

# A STUDY OF VICTIM COMPENSATION IN INDIA WITH EMPHASIS ON JUDICIAL ACTIVISM

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## **ABSTRACT**

The victim compensation scenario in India reflects a complex landscape shaped by legal frameworks, judicial interventions, and systemic challenges. The legal framework, primarily under the Victim Compensation Scheme (VCS) and related statutes, outlines the principles and mechanisms for compensating victims of crimes. However, implementing these provisions faces challenges such as bureaucratic hurdles, delays, and variations in compensation amounts across states.

Judicial activism in this context has been instrumental in broadening the interpretation of victim rights and compensation eligibility. Courts have often intervened to ensure a more inclusive approach, addressing the diverse needs of victims beyond mere financial restitution. Noteworthy cases have set precedents, influencing the evolution of compensation laws and prompting a re-evaluation of existing schemes.

## **INTRODUCTION**

The compensation to the victim of crime is a significant matter of concern; all over the world, the condition of the victims of crime is not better. For quite a long time, the victims were not the major concern for criminology. The function of compensation is simple. Compensation serves the victim's right to what would be unlawful injuries to persons or their property. The advancement of victim compensation played a significant issue in the victim support movement. Part of the dilemma, in my opinion, might be traced to the fact that a lot has been written through these years about the arrangement and function of victim compensation.<sup>1</sup> Victim compensation is a form of victim support that meets the physical, emotional, and society-related needs of the victim and has played a crucial role in victim recovery. Not much attention

is given to the role of victim compensation in future victim support efforts. Victims of crime often endure physical, emotional, and financial suffering, and their path to recovery can be arduous. In recognition of this, India has implemented a system of victim compensation to provide financial assistance and support to those who have been victimized.

The role of the victim of a crime in the present criminal justice system is limited to that of a witness for the prosecution, even though he or she is a person who has suffered harm such as physical, mental, emotional, economic or impairment of his/her fundamental rights. The primary attention of the State is on the offender, to protect his rights, his fundamental rights, human rights, fair trial, the protection from custodial harassment, etc., faced by them. All the problems of the accused are taken care of by the State ignoring the plight of the victim. The State spends the resources to take care of the accused. Of course, the accused will have to be

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<sup>1</sup> Robert E. Goodin, Theories of Compensation, Oxford J. Legal Stud., 9, 56 (1989).

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treated with dignity as he is deemed to be innocent till he is convicted, but understanding the fact that the victim, against whom the crime was committed, was put to irreplaceable pain and suffering and punishment alone was not subserving the needs of the victim. It is necessary to give due attention to the victims of crime, as otherwise, the victim will remain discontented and may develop a tendency to take the law into his own hands in order to seek revenge and pose a threat to the maintenance of the Rule of Law, essential for sustaining democracy.

Victim compensation in India is a significant step forward in recognizing the rights and needs of crime victims. It serves as a critical support mechanism for those who have suffered at the hands of offenders. While challenges exist, continued efforts to raise awareness, streamline processes, and ensure adequate funding will contribute to a more effective and victim-centric compensation system, thereby upholding the principles of justice, equality, and human rights in India.<sup>2</sup>

### SIGNIFICANCE OF VICTIM COMPENSATION

1. **Restoring Dignity and Confidence:** Victim compensation in India plays a crucial role in restoring the dignity and confidence of those who have suffered from crime. Providing financial support helps victims recover from their losses, rebuild their lives, and regain their trust in the justice system.
2. **Promoting Access to Justice:** Victim compensation schemes ensure that individuals from vulnerable and marginalized backgrounds have access to justice. This is particularly important in a country as diverse as India, where socio-economic disparities can impede access to legal remedies.
3. **Encouraging Reporting of Crimes:** Compensation schemes incentivize victims to report crimes and cooperate with law enforcement. By alleviating financial burdens and providing support, victims are more likely to come forward, which aids in investigating and prosecuting offenders.

<sup>2</sup> Ibid

4. **Reducing the Burden on the State:** In cases where the offender is unable to pay compensation, the state steps in to provide the required funds. This reduces the burden on the state by sharing the responsibility for victim support.

### HISTORICAL RECORD OF VICTIM COMPENSATION IN MODERN INDIAN HISTORY

The ancient Indian history attests to the notion that victims of crimes are entitled to adequate restitution in the form of recompense for their injuries.

If the King could not restore the stolen things or reclaim the price for the owner by apprehending the thief, it was deemed his obligation to pay the price from his treasury, which he might then recover from the village officers who were responsible for the thief's escape due to their carelessness. Since ancient times, reparation or compensation as a form of punishment has been documented in India. In ancient Hindu law, compensation was recognized as a royal right throughout the Sutra period.<sup>3</sup>

The law of Manu mandates the offender to compensate the victim and pay for medical expenses if the victim is injured, as well as satisfaction to the owner if assets are harmed. The assailant must pay the costs of a perfect cure or, if he fails, both total damages and a fine in all situations of cutting a limb, injuring, or obtaining blood. It demonstrates that victim compensation was never an alien concept in the country's justice delivery institutions.<sup>4</sup>

A story is often told how Emperor Jahangir was faced with a problem in one of his daily "darbars" and how he solved it. One day, the Empress, in a fit of anger, hit her launderer, whose work was not satisfactory, and the washer man fell down dead. On being persuaded, the widow attended Jahangir's "darbar" the following day, and on being asked by Jahangir as to who killed her husband, she trembled and replied, "The Empress" Jahangir was stunned;

<sup>3</sup> Aryan Mohanty, Detailed Analysis of Victim Compensation in India, Law Insider ( Jan. 29, 2023, 9:30 AM), <https://www.lawinsider.in/columns/detailed-analysis-of-victim-compensation-in-india>

<sup>4</sup> Ibid

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he drew his sword and said, "The Empress killed your husband. Now, with that sword, you kill the Empress's husband. I command you to do it." The Laundress was nonplussed. She fell at the Emperor's feet, recovered her equanimity soon enough and said, "Sire, I have suffered, but I do not want either the Empress or the country to suffer by my obeying Your Majesty's command. I am prepared to take any punishment for this disobedience." The story goes that the words of the washerwoman touched Jehangir so much that he made her a baroness and showered her with riches beyond measure.

### NATURE & SCOPE - VICTIM COMPENSATION

Any person who has suffered damage or his dependants are entitled to compensation. In the medieval era, a criminal or his kin used to give compensation for any wrongful act. If the accused is not capable of paying the compensation, then the state is duty-bound to pay the compensation.

"**Ubi jus ibi remedium**" is a principle in the of torts that states that there is no wrong without a remedy and that the rule of law demands that one should not be disturbed by wrongdoing.<sup>5</sup>

The term "Compensation" in the current scenario means repayment for the loss suffered. Anything that is given to make things equal is called compensation, a thing that is given to make reparation for the loss, repay, recompense or pay. It can be seen as a liability to society, which is civil. Compensation, which is different from damages, is used for any unlawful act which causes damage or loss to any person. Compensation means that the money is given to compensate for any damage or loss. The main objective behind the compensation is to make the loss bearable to the victim, whether the person has suffered financial loss. The crux of providing compensation is to provide some help to the victim who has suffered the damage, whether it be physical, psychological or emotional. It supports the victim to recover from the trauma as soon as possible

and works as a helping hand. The idea underlying compensatory justice is not merely to rehabilitate the victim but also leads to a regime where societal values see such crimes as aberrations, entitling the victim to some form of compensation due to the stark intensity of the crime.<sup>6</sup>

The word 'victim' lacks descriptive precision. The word Victim objectively implies more than the mere existence of an injured party in that innocence or virtuousness is suggested as well as a moral claim to a compassionate response from others.

The United Nations General Assembly in 1985 adopted a 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' which defines "Victims" as 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.

The right of compensation to the victim was finally crystallised in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985, which recognises four types of rights and entitlements of victims of crime: (a) Access to justice and fair treatment, (b) Right to restitution, (c) Personal assistance and support services, and (d) Compensation.

The right to compensation is recognised in UDHR, 1948 and the International Covenant on Civil and Political Rights.<sup>7</sup> Considering the victims as the key players in the criminal justice process, the UN General Assembly passed The UN Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985. The Declaration lays down basic standards for the fair treatment of victims, consideration of their views in the criminal justice process, restitution and compensation. The Declaration reconceptualised victimhood as a notion inclusive of those who had been victimised by the

5 MARLENE A. YOUNG, THE ROLE OF VICTIM COMPENSATION IN REBUILDING VICTIMS' LIVES, 1

6 Ibid

7 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (Dec. 11, 1985).

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state and by private individuals.

The term 'victim' has been defined in The Code of Criminal Procedure, 1973 under **Section 2 (wa) of The Code of Criminal Procedure (Amendment) Act, 2008** also defines "Victim" means a person who has suffered any loss or injury caused because of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir. The literal meaning of the word "victim" is a person to whom any harm or injury is caused or a person killed as a result of an accident, crime or other event or action and also includes his guardian and legal heirs.

When a victim gets compensation for any crime he has suffered, it becomes essential to the person because it symbolizes justice towards the victim, and it can be seen as financial help for the victim.

- In society, when compensation is awarded, it shows that there is something wrong that the victim does.
- The compensation would work as a step towards helping the victim to overcome the trauma and the damages that are suffered by the victim at the individual level.
- The compensation helps victims transform their lives.

### **Suresh v. State of Haryana (2015) -**

"It is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show the commission of a crime, whether the victim is identifiable and whether the victim of crime needs immediate financial... relief. On being satisfied with an application or on its own motion, the court ought to directly grant interim compensation, subject to final compensation being determined later. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from other factors that may be found relevant in the facts and circumstances of an individual case."<sup>8</sup>

### **Nipun Saxena v. Union of India -**

Pursuant to Supreme Court directions, NALSA

<sup>8</sup> Suresh v. State of Haryana (2015) 2 SCC 227

drafted the Grant of Compensation to Women Victims/ Survivors of Sexual Assault/Other Crimes-2018.

Essential features of the Scheme:

- (i) Woman victim eligible for compensation from multiple schemes
- (ii) Online application for compensation.
- (iii) The enquiry to be completed within 60 days &
- (iv) In the Acid Attack case, and in all other deserving cases, the Secretary DLSA will grant interim compensation.

Subsequently, the Supreme Court laid down that NALSA's Compensation Scheme for Women/ Victims should function as a guideline to the Special Courts for the award of compensation to victims of child sexual abuse under Rule 7 until the Central Government finalizes the Rules.<sup>9</sup>

## LEGAL FRAMEWORKS FOR VICTIM COMPENSATION IN INDIA

### **CONSTITUTIONAL PROVISIONS**

Constitution of India also provides for certain safeguards to the victim of crime. It has several provisions which endorse the principle of victim compensation.<sup>8</sup> The guarantee against unjustified deprivation of life and liberty has elements obligating the state to compensate victims of criminal violence. The Supreme Court of India has interpreted the right to compensation as an integral part of Article 21 of the Constitution.<sup>10</sup>

### **COMPENSATORY PROVISIONS UNDER CR.P.C.**

The CR.P.C 1973 has authorized the courts in which criminal matters are tried in India for ordering compensation to the person who has suffered loss or damage. Section 357 deals with compensatory provisions.

### **Under Section 357(1) it is given : <sup>11</sup>**

"Whenever under any law in force for the time

<sup>9</sup> Nipun Saxena v. Union of India (2019) 2 SCC 703

<sup>10</sup> INDIA CONST. art. 21

<sup>11</sup> S.N MISHRA, THE CODE OF CRIMINAL PROCEDURE, 1973 (Central Law Publications 2001)

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being a criminal court puts fine... or a sentence (including a sentence to death) of which fine forms a part, the court may, when imposing judgment, order the whole or any part of the fine recovered to be applied:

- a) In covering expenses properly incurred in the prosecution;
- b) In the payment to any person of reimbursement for any loss or injury caused by the offence when compensation is, in the view of the court, restorable by such person in a civil court;
- c) When any person is prosecuted of any offence for having caused the death of another person. Under the Fatal Accident Act, 1855, another person is compelled to pay a person entitled to receive compensation from a person who has been compensated for such a death." - Under Sec. 1A (b) of the Act, husband, wife, parents and children are entitled to compensation.

Section 358 gives power to a magistrate to force or give an order to a person to pay or give compensation of not more than Rs1000 to a person for making police officers arrest that person in the wrong case. Likewise, section 359 of CR.P.C directs the payment of compensation in non-cognizable cases.

It can be seen clearly that only small action is possible under section 357 of the Cr.P.C in case of compensation to a victim of a crime. Moreover, it has been proved through various restrictions and limitations. Some restrictions given in the section are the capacity of the wrongdoer to pay the compensation amount, and its ability to pay acts as an obstacle for the victim to get the compensation.

The state government, on the direction of the Supreme Court, made certain modifications to sec 357 A of CrPC in 2008 for the benefit of V.C.S. The amendment provided for various compensatory measures, and the main objective of the modification in 2008 was to broaden the definition of victim as defined under sec. 2(wa) of crpc. In context to the amendment made in 2008, all the Indian states came up for the benefit of providing a remedy to the victim with the help of a victim compensation scheme. In lieu of the following amendments and the initiative taken by the various states, the Delhi govt and also issued an order giving 200 crores to victims of various

types of offences like rape, acid attack. This victim compensation scheme was effectively addressed and implemented, which was seen in various case laws. In one of the cases Delhi Domestic Working Women's Forum v. Union of India and others, Ankush Shivaji Gaikwad v. State of Maharashtra, and other cases. Where the court implementing the order of govts gave the compensatory relief to the victim. Owing to the situation, the 2008 amendment also ratified sec 372 of CRPC and added certain rights to be given to the victims of such kinds of offences. Some of the rights include

1. Acquittal of criminated,
2. Condemnation for a trivial offence or little legal in nature, and;
3. Not satisfied with the amount of compensation given before."

Implementation of victim compensation scheme in relation to CRPC -

The victim compensation scheme, which various states have started under the direction of the Supreme Court for the protection of the victims against mental harm and dependents of the victims against the offences under sec. 357A of crpc. Further the sec 357A providing for compensation to the victims has been categorised into various parts which are as follows:-

- Sec 357A(1) provides for compensation to be given to either the victim or his legal heirs who have suffered misfortunes or faced any discrimination by society and should be given an opportunity to recover under the formation of a victim compensation scheme as implemented by the states.

The compensation criteria for victims laid down in sec 357A (2) is based upon sub sec (1) itself. The District Legal Service Authority, which is referred to as DALSA, when ordered by any court under its judgement, has The power to decide on the amount of compensation to be paid to the victim. This power has been granted to the District legal authority as expertise in understanding the nature and effect on the victim for granting the proper quantum of compensation.

- After the insertion of sec 357A the District or the Trial courts are also allowed to compensate

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the victims as earlier they were not authorised. Under sub-sec (30 of sec 357A, it has been provided that the District legal authority, on the direction of the District court, has the power to grant compensation under those circumstances where the victim is released or requires any rehabilitation to recover from the event as it might hamper in his life ahead. Also, the compensation provided by the D.A.L.S.A. should be sufficient enough that the individual can recover from the event.

- Further, the rights of the victim and the legal heir or representative have been dealt with under sub-sec (4) of sec 357A. These rights include the right to compensation for any damages suffered by the victim before the identification of the culprit and before the court proceedings start. This sec. talks in favour of the victim as they can ask for compensation even before the start of any court proceeding from the District legal authority. This sub-section is significant for providing quick remedies to the victim.
- Recently, SECTION 375(A) was added in CR.P.C through the amendment act 2008 Section 357 (A) states that:
  - (1) Central government, with the help of state governments, should prepare a scheme for victim compensation to provide funds to the victims who have suffered death, loss, damage, or injury to restore their status of life. This provision would work as a helping hand for victim compensation. These regulations would strengthen the provision of victim protocol given in SAARC protocol.

### VICTIM COMPENSATION SCHEMES

The provision of a victim compensation scheme is a much desirable relief to the victim of offences; therefore, it is one of the most progressive legislations in recent times. The scheme provides that the state government, in coordination with the central government, shall prepare a scheme for providing funds for compensation to victims.<sup>15</sup> In 2009, the

central government gave directions to every state to prepare a scheme that had to be in agreement with the Canters scheme for victim compensation. The primary purpose of the scheme is to provide funds for compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and require rehabilitation.

Under the scheme when an application for compensation is made to the court by victim and the court if find that victim is worthy of compensation or any interim compensation during the proceedings as the case may be, it may make recommendation to the District, or State Legal Service Authority, and the quantum of compensation and award of compensation shall be decided and made respectively by the authority under the scheme made by State government in coordination with central government.

### JUDICIAL ACTIVISM IN GRANTING VICTIM COMPENSATION AS A CHANGING TREND

Judiciary plays a very crucial role in rectifying the claims of the compensation of the victims. High courts have played a vital role in awarding compensatory justice to the victim suffered from loss or damage. Some landmark judgments ensures compensatory justice to victims and show the concern of the judiciary in that field.

Guidelines for Victim Assistance in **Bodhisattwa Gautam v. Subhra Chakraborty**<sup>12</sup>, the Supreme Court held that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. Having satisfied the prima facie culpability of the accused, the court ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological

<sup>12</sup> Bodhisattwa Gautam v. Subhra Chakraborty, AIR 1996 SC 922

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services in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985: The Supreme Court of India has played the most commendable role in evolving compensatory jurisprudence for the victims. Some of the landmark cases in which the Supreme Court provided compensation to the victim are as follows:- **Chairman, Railway Board and Others v. Mrs. Chandrima Das**,<sup>13</sup> **Nilabati Behara v. State of Orissa**,<sup>14</sup>

The first landmark judgment where compensation to the victim was ordered by the Madras High Court and upheld with some modifications by the Supreme Court of India was **Palaniappa Gounder v. State of Tamil Nadu**.<sup>15</sup> In this case, the High Court after commuting the sentence of death on the accused to one of life imprisonment, imposed a fine of Rs.20,000 on the appellant and directed that out of the fine, a sum of Rs.15,000 should be paid to the son and daughters of the deceased under Section 357 (1) (c) of the Code of Criminal Procedure, 1973. The Supreme Court while examining the special leave petition of the appellant, observed that there can be no doubt that for the offence of murder, courts have the power to impose a sentence of fine under Section 302 of the IPC but the High Court has put the “cart before the horse” in leaving the propriety of fine to depend upon the amount of compensation. In the case of **Sarwan Singh v. State of Punjab**<sup>16</sup>, the Supreme Court not only reiterated its previous standpoint but also laid down, in an exhaustive manner, points to be taken into account while imposing fine or compensation. The Honourable Court observed that while awarding compensation, the court must decide whether the case is fit enough to award compensation. If the case is found fit for compensation, then the capacity of the accused to pay the fixed amount has to be determined.

The Supreme Court of India had pronounced upon the need by the government to set up a Criminal Injuries Compensation Board for rape victims within 6

months. The Supreme Court had suggested that this board should give compensation whether or not a conviction takes place. The Supreme Court explained the justification for this proposal as follows: “It is necessary, having regard to the Directive Principles contained under Article 38(I) of the Constitution of India, to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example are too traumatized to continue in employment. Compensation for victims should be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction takes place. The board will take into account pain suffering, and shocks as well as loss of earnings due to pregnancy and the expenses of the child, but if it occurred as a result of rape...”

The court adopted the paradigm shift towards enhancing the compensation to provide solace to the victim and to serve social justice in the society. Thus, in **Ankush Shiwaji Gaikwad v. The State of Maharashtra**,<sup>17</sup> it was held that, the legislative intent of the provisions relating to victim compensation was to reassure the victim that he is not a forgotten party in the criminal justice system. Further, a landmark decision of the Court in the case of **Suresh v. State of Haryana**<sup>18</sup> awarded the victim with an interim compensation, and the State was directed to pay an amount of Rs.10 lakhs to the family of the victims who had been abducted and murdered.

Increasing the area of awarding the compensation to the person suffered under Section 358 of Cr.P.C., in **Rudal Shah v. State of Bihar**<sup>19</sup>, observed that the person is compensated for the loss or injury caused by the crime, and this includes the deceased’s wife, husband, parents and children.

The Apex Court in **Sarwan Singh v. State of Punjab**<sup>20</sup>, there are several factors that should be taken into consideration before giving order of compensation to the crime victim is the court should keep in mind the ability of paying the compensatory

13 *Chairman, Railway Board and Others v. Mrs. Chandrima Das*, (2000)2 SCC 465

14 *Nilabati Behara v. State of Orissa*, (1993) 2 SCC 746

15 *Palaniappa Gounder v. State of Tamil Nadu*, AIR 1977 SC 1323

16 *Sarwan Singh v. State of Punjab*, AIR 1957 637

17 *Ankush Shiwaji Gaikwad v. The State of Maharashtra*, (2013) 6 SCC 770

18 *Suresh v. State of Haryana*, (2015) 2 SCC 227

19 *Rudal Shah v. State of Bihar*, AIR 1983 SC 1086

20 *Sarwan Singh v. State of Punjab*, AIR 2000 SC 362

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amount by the offender, the type of offence and the amount of damage and injury suffered and should keep in mind the effect of offence on the life of victim and its family the amount of bodily, psychological and emotional loss suffered by the victim and its relatives and family member. Before awarding compensation, the court should keep in mind that the amount should depend on facts, logic, and the circumstances. A reasonable time period should be provided for the accused to pay the compensation, and the offender should be allowed to pay the compensation in instalments.

As given in the case **SAHELI**<sup>21</sup> (a organization of women's activist group) the Apex Court of Delhi gave the order to the Delhi Administration to pay the sum of Rs. 75,000/- as exemplary compensation to nine-year-old child's mother as the boy died because of getting beaten by a police officer while extracting evidence from him.

### CONCLUSION

The victim compensation in India is still the vanishing point of our criminal law. The remedies currently available under the law are limited, fragmented, uncoordinated and reactive. This is the

lacunae in the system, which must be remedied by Comprehensive Law by the legislature. Nevertheless, the criminal justice system has changed its ambit, and the legislatures and judges have been playing a significant role in the expansion of the rights of victims of crime in the criminal justice administration of the country, yet the victims have not received their due concern and their rights have not been given their due weightage. Victims have few legal rights to be informed, present and heard within the criminal justice system. However, regrettably, victims do not have to be notified of court proceedings or of the arrest or release of the defendant, they have no right to attend the trial or other proceedings, and they have no right to make a statement to the court at sentencing or at other hearings. Further, the coordination between the various limbs of justice, i.e. the courts, the police, the DLSA and the State Legal Services Authority, must be streamlined. Each instrument must inform and assist the victim in realizing compensation. Judicial activism in victim compensation matters in India has seen a notable increase in recent years. Courts have taken a proactive role in interpreting and expanding the scope of victim compensation laws to ensure justice. This trend involves awarding compensation and addressing systemic issues related to delays and gaps in compensation schemes. The judiciary's focus on protecting victims' rights has led to landmark decisions, influencing policy changes for more effective victim redressal mechanisms.

<sup>21</sup> SAHELI V. police commissioner, Delhi, AIR 1990 SC 513

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