



SIGNIFICANCE OF COMPENSATORY JURISPRUDENCE UNDER THE EMPLOYEES COMPENSATION ACT, 1923

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“While studying the biological, sociological, psychological, and criminological details about the victim - victimology brings into focus the victim-offender relationship and role played by the victim.”

– Fattah

Abstract

The basic rights contained in the Constitution of India would be useless unless and until concrete means to ensure them were implemented. There can be no justice if there is no remedy (*Ubi jus ibi remedium*). The term “compensation” refers to making amendments for a loss. Crime is more than simply a breach of the law; it also causes harm to victims and their families, including economic loss, emotional distress, and bodily, psychological, or intellectual injury. Crime has a wide variety of consequences for victims and their families, ranging from major injuries to minor disruptions. The concept of victims’ compensation is a well-established legal principle that is implemented within the framework of traditional civil courts. The court’s adoption of compensatory jurisprudence, guided by the principles of human rights philosophy, serves as a positive indication of its commitment to safeguarding the fundamental rights to life and personal liberty for all individuals, even in situations when there is a lack of explicit Constitutional provisions or established legal precedents. There is evidence that some groups of victims of crime were reimbursed, either by the perpetrator, their relatives, or the sovereign, even in ancient times. The right to compensate is a relatively new addition to Indian Constitutional law. This notion just began to gain trac-

tion in India under Constitutional law in the late 1980s. This was an innovative notion devised by the Indian Judiciary to ensure justice. Compensation is often granted based on the claimant’s entitlement. Modern justice is more concerned with delivering assistance to victims than with the requirements of legal *principles*. The right to compensation for violations of basic rights comes from the rights that were infringed, which shall be further addressed in the research.

Keywords: Compensation, Constitution, Victim, Jurisprudence, Legal.

Introduction

The increasing presence of compensatory jurisprudence suggests that the court has assumed the duty of safeguarding the fundamental rights to life and personal liberty for all persons, even in the lack of explicit Constitutional provisions or established legal precedents. Earlier also, victims could have been able to seek compensation for their injuries or losses under the Tort Law. The concept of victim compensation has recently gained a lot of traction. Modern welfare governments have recognized the need to compensate victims of crime as part of their obligation to safeguard their citizens and also as part of their overall well-being. There is evidence that some groups of victims of crime were reimbursed, either by the perpetrator, their relatives, or the sovereign, even in the ancient times.

This occurred because, in early cultures, the duty to protect oneself from crime and punish offenders was vested in people rather than the sovereign, and therefore the concept of private revenge prevailed. As societies

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became more systematized, the duty of safeguarding citizens from crime and prosecuting criminals fell to political authorities. The Court's adoption of compensatory jurisprudence, in accordance with the principles of human rights philosophy, serves as a positive indication of its commitment to safeguarding the fundamental rights to life and personal liberty for all individuals, including in cases where there is a lack of explicit Constitutional provisions or established legal precedents. In India, the notion of compensation dates back to 1857, when the courts attempted to regulate the pollution caused by the Oriental Gas Corporation by imposing penalties on the company and granting a right to compensation for the polluting water.

No redress was offered for violations of environmental rights at the time, although in personal injury cases, the courts seldom gave compensation for non-monetary damage. The right to compensate is a relatively new addition to Indian Constitutional law and it just began to gain traction in India under Constitutional law in the late 1980s. This was an innovative notion devised by the Indian Judiciary to ensure justice.

Compensation is described as financial help provided to victims of crime by the government or another entity unrelated to the criminal. The amount of money given usually reflects the kind and extent of the victim's harm. Compensation is anything delivered to balance things out, something given to make apologies for losses, recompense, reimbursement, or refund. The following three grounds might be the rationale or essentials for compensation that is the first being as a supplementary kind of social security or another aspect of government/public support to the underprivileged is welfare or a method of satisfying an unacknowledged governmental commitment to all residents.

Compensatory Jurisprudence in India

Evolution of Compensatory Jurisprudence

For the well-being of crime victims, compensating jurisprudence - a branch of compensation law - emerged

at the end of the 20th century. The victim holds a significant position within the context of compensating jurisprudence, an emerging field of criminal law that is seeing notable expansion due to its dual functionality.

Secondly, the criminal justice system makes an accused person recognise that he has a responsibility to people harmed by his acts. In various nations, including our own, there is currently a growing push to review the issue of victim compensation or restitution.

During the initial stages of human civilization, the primary objective of legal systems was to restore the victim to a state of wholeness, rather than focusing on punitive measures against the perpetrator. Narada was the first proponent of the idea that the offender should engage in acts of reparation towards those affected by his wrongdoing as a means of achieving redemption.³ The victim and their family occupy a major role within the field of criminal law, tracing their lineage back to its establishment. The individuals in question possess the legal jurisdiction to request recompense or restitution. However, as the State and its prosecuting system have evolved throughout time, the role of the victim has undergone changes.⁴

Ancient Greek and Roman penal codes and mosaic law both placed a strong emphasis on the idea of compensating crime victims.⁵ Roman law stipulated a graduated rise in damages that were due based on the severity of the crime. Apart from theft, other offences for which compensation was due included assault, libel, and trespass. The Anglo-Saxon era marked a significant development in England, as it witnessed the establishment of a structured system for monetary payments in the form of damages or compensation to address the grievances of those who had suffered harm. This period may be seen as the peak of growth for the concept of compensation in England.⁶ During the period of Anglo-Saxon England, it was customary for the wrongdoer to provide compensation in the form of either the Wer or Bot to the aggrieved party or their designated representative. Additionally, a writ was sent to either the reigning monarch or the feudal lord. However, as royal and ecclesi-

3. Saket Anand, *Public Law Remedy Through Compensatory Justice, The Advocate's League* (Jan. 12, 2023, 10:30 AM), https://theadvocatesleague.in/assets/pdf/researches/public_law_remedy_through_compensatory_justice_by_Saket_Anand.pdf.

4. *Id.*

5. S. C. RAINA, *LAW, JUDICIARY AND JUSTICE IN INDIA* 200 (Deep & Deep Publications 1993).

6. D HUGH BARLOW, *INTRODUCTION TO CRIMINOLOGY*, 453 (Little, Brown 1984).

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astical power increased toward the end of the Middle Ages, the payment of compensation started to lose its efficacy. During the 19th-century campaign for penal reform, the need for restitution for crime victims was revitalized.⁷

The penal philosophers Bonneville, Lombrose, and Garofalo pushed hard for victim recompense and restitution. The victim's "public duty" was emphasized by Bonneville. Lombroso endorsed the concept of victim compensation and suggested that the harm suffered by a criminal should be fairly compensated. Garofalo was in favor of "enforced compensation."⁸

India's Compensatory Jurisprudence

The Indian Judiciary's contribution to the conceptualization of compensatory jurisprudence was the recognition that no court may provide monetary relief or compensation in violation of Article 32 of the Constitution. Nonetheless, the court has lately compensated victims of fundamental rights infringement in a number of cases. The Supreme Court ruled in *Bhim Singh v. State of J&K and Others*⁹ that a person's complaint that his legal rights were violated and that he was unlawfully detained cannot be resolved by freeing the accused. In such circumstances, the court has the authority to compensate him by issuing a monetary award, and it has also been argued that the rising violation of human rights by the police administration and military forces is not only a threat to human beings, but also to the very life of mankind. In *Khatri v. Bihar State*¹⁰, also known as the Bhagalpur blinding case, Judge Bhagwati addressed the issue of compensation while emphasizing the need for a new remedy in order to demonstrate the inherent rights to life and personal liberty. Invoking Articles 32 and 21 of the Constitution of India, the Court ordered the State to cover the costs of keeping those men in Delhi's blind houses.

In the case of *M.C. Mehta v. Union of India*, the goal was to defend the basic rights provided by Article 21 of the Indian Constitution. The court ruled that when it comes to paying compensation for a breach of basic rights, it has "all incidental and ancillary authority, including the capacity to design new remedies." The entitlement to interim compensation was ruled Constitutional in the case of *Bodhisattwa Gautam v. Sudhra Chakroborty*¹¹.

The Supreme Court established the principle of providing compensation to crime victims based on the premise that it is the duty of the Welfare State to safeguard citizens' fundamental rights in the face of misconduct by its agencies. Additionally, the Welfare State recognizes its obligation to address the hardships endured by victims, guided by principles of humanitarianism, social welfare, the duty to protect, and the pursuit of equitable and just outcomes. The foundation of fairness may be attributed to the overarching idea of social security, which encompasses the interplay between freedom, equality, solidarity, and individual dignity. The resurgence of the doctrine of natural rights as Human Rights on a global scale is a significant advancement within the realm of legal philosophy in modern times.¹²

In the present scenarios, the emphasis on human rights and the right of individuals to avail themselves of the legal remedy of Habeas Corpus is indicative of a pluralistic society that upholds the principles enshrined in the Constitution of India, affirming its commitment to respecting human dignity.¹³ The compensatory law, which was established by the Supreme Court through the exercise of its authority under Article 32 of the Indian Constitution, has become increasingly significant in the present context. This is primarily due to the escalating instances of political lawlessness, unlawful detainment, acts of brutality against women, mistreatment of prisoners, and various other forms of violent human rights violations.

7. *Supra note. 5.*

8. *Supra note. 3.*

9. *Bhim Singh v. State of J&K and Others*, AIR 1986 SC 494.

10. *Khatri v. State of Bihar*, AIR 1980 SC 1068.

11. *Bodhisattwa Gautam v. Sudhra Chakroborty*, 1996 AIR SC 922.

12. P T Sherman, *A Compensation Law and Private Justice*, 38 THE ANN' OF THE AMERICAN ACAD' OF POL' AND SOC' SCI' 151, 157 (1911).

13. Gaus and F Gerald, *Does Compensation Restore Equality?*, 33 NOMOS 45, 72 (1991).

The landmark case of *Rudul Sah v. State of Bihar* (1983) marked the initial instance in which the Supreme Court of India interpreted the Constitution, particularly Article 32, to encompass a provision for compensating those who had been wrongfully detained.¹⁴ The Court rendered a decision stating that the petitioner's entitlement to life and liberty was infringed upon in contravention of Article 21 of the Constitution. Furthermore, the Court acknowledged that reparation for the loss of a fundamental right may be awarded in accordance with Article 32. According to Article 32(1), individuals possess the entitlement to approach the Supreme Court in order to seek redress for the protection and enforcement of fundamental rights, by means of appropriate legal proceedings. According to Article 32(2), the Supreme Court possesses the discretion to establish various mechanisms for the implementation of fundamental rights and holds the power to issue any necessary legal proceedings in a particular case.

The Supreme Court interpreted the term compensation in Article 31(2) of the Constitution. The Court attempted to comprehend the Legislature's intent, but in the event of a conflict or ambiguity, the second source, legislative history, can be considered. The Supreme Court stated in *Sarwan Singh v. State of Punjab*¹⁵ that while awarding compensation, the Court must examine numerous elements such as the accused's ability to pay, the nature of the crime, the nature of the harm sustained, and other relevant circumstances. As a result, compensation is given on a case-by-case basis.

The Aristotelian doctrine of "corrective justice" requires monetary recompense when one party violates the constraints imposed on its behavior toward another party. When it comes to compensation, a person's obligation is determined by the terms of the loan. Liability is determined by both behavior and subjectivity, or by either action or subjective experience.¹⁶ The phrase 'compensation' is defined as the monetary value assigned to the property obtained, while the term 'suitable' is also used to denote the concept of equivalency. If the literal interpretation of both expressions is

adhered to, the validity of compensation cannot be contested within any judicial system. It has been previously observed that both the founders of the Constitution and the Fourth Amendment had no explicit intention for this to transpire. In the cases of *Vajravelu Mudaliar and Bank Nationalisation*¹⁷, the Court has expressed divergent perspectives.

The compensation provided does not necessarily need to be equivalent to the value of the confiscated property. When determining the fairness of compensation, the Court may need to take into account not only the concerns of the property owner whose property is being acquired, but also the broader interests of the society. This includes considering various principles of compensation that seek to distribute a significant portion of the increased value of the property, resulting from both specific community and government actions, as well as broader economic and social factors.

In *Delhi Domestic Working Women's Forum V. Union of India*¹⁸, a group of seven military personnel assaulted six young girls from rural areas while they were traveling via train. The Court rendered a verdict mandating that the federal government offer compensation for victims of rape, while concurrently safeguarding the confidentiality of their names and identities in light of prevailing societal stigmatization. Compensation is granted at the discretion of the court under Criminal Procedure Code (Section 357), and the court bears the costs of the action.

In *Sarwan Singh v. Punjab State*,¹⁹ the Supreme Court highlighted the objectives and guidelines governing the Court's exercise of jurisdiction under Section 357 of the Cr.P.C., delineating its purpose with respect to awarding compensation, which includes a right to collect from the convicted criminal, even if the fine forms a component thereof. In addition to Section 357 of the Cr.P.C., the victim may seek compensation from the High court, which is empowered to employ inherent authority in the interest of justice under Section 482 of the Cr.P.C. Victims of police abuse may be com-

14. Rudul Shah v. State of Bihar, 1983 AIR 1086, 1983 SCR (3) 508.

15. Sarwan Singh v. State of Punjab, AIR 1957 SC 637.

16. C. A. Hopkins, Prerogative and Compensation, 22 THE CAMBRIDGE LAW JOURNAL 180, 181 (2017).

17. Vajravelu Mudaliar and Bank Nationalisation, AIR 1965 SC 1017.

18. Delhi Domestic Working Women's Forum V. Union of India, 1995 SCC (1) 14.

19. Sarwan Singh v. State of Punjab, AIR 1978 SC 1525.

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compensated by the National Human Rights Commission (NHRC). The NHRC has this authority under the Protection of Human Rights Act of 1993. While the concept of the NHRC seems commendable, it has faced criticism from human rights advocates for its perceived shortcomings in terms of insufficiently offering compensation in certain situations and usually suggesting inadequate amounts.

Issues with Compensatory Jurisprudence in India

There are various issues relating to compensatory jurisprudence in India which were identified as follows:

- i. The Supreme Court has not construed the right to compensation as being absolute or obligatory, despite the fact that these instances contributed to its establishment.
- ii. The specifics of the case and the judge hearing it will determine the amount of compensation awarded and whether any is given at all.
- iii. Many victims have not received or have not even sought the compensation they deserve as a result of this discretion.

Legal Provisions for Compensatory Jurisprudence in India

In India, there are various laws that define the provisions relating to compensatory jurisprudence. This area of law is defined under General laws as well as Special laws. Here, General laws that provide provisions related to compensatory jurisprudence are the Code of Criminal Procedure, 1973, and the Constitution of India, 1950, whereas Special laws that provide provisions related to compensatory jurisprudence are: i. Probation of Offenders Act, 1958, Motor vehicle Act, 1988, The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Protection of human rights

Act, 1993, Workmen Compensation Act, 1923, Protection of Women against Domestic Violence Act, 2000 and Railways Act, 1989.

Compensatory Jurisprudence under the Constitution of India, 1950

The liberal world believes that respecting human rights also entails offering appropriate remedies when those rights are abused. The rights that were infringed form the basis for the right to compensation for fundamental rights violations. In fact, it is ingrained in them; for instance, a person's right to his body obligates the other and prevents him from attacking or hurting the other without cause.²⁰ Additionally, this control over one's body affords him the right to recompense if he is unjustly attacked so that he can recuperate physically and mentally. Recognizing a right that has been violated and making an effort to make up for the harm are both parts of compensation.

The Supreme Court in India has identified a financial remedy to address instances of human rights violations, addressing the deficiency in the fundamental right to compensation. In *Rudal Shah v. State of Bihar*²¹, the Supreme Court established the principle that compensation can be awarded when a person's fundamental rights have been violated and that higher courts have the power to do so by utilizing their writ jurisdiction.²² This led to the development of compensatory jurisprudence. As a result, the State authorities were strongly criticized by the Supreme Court, which also mandated a Rs. 30,000 compensation.

Rudal Sah's choice was significant in two ways: (1) It also lays forth the foundations for a theory of culpability. That a breach of a basic right might result in civil liability. (2) The judgment put more emphasis on presenting a citizen's fundamental right than on the distinction between sovereign and non-sovereign States.

20. *Rudal Shah v. State of Bihar*, (1983) 4 SCC 141.

21. *Id.*

22. *Supra note 8.*

In order to give Article 21 more significance, the Court claimed that the compensation was in the form of a palliative, or consoling to the sufferer.

Compensatory Jurisprudence Under the Code of Criminal Procedure, 1973

According to Section 357 Cr.P.C., the accused is responsible for providing compensation to crime victims. The Indian courts eventually came to the realisation that they had neglected the victim in their haste to punish the culprit. Based on the recommendations of the Malimath Committee, the Cr.P.C. was only modified in 2008 to impose an obligation on the State for such compensations. It was suggested that the sufferer should receive compensation both as a mark of relief and as a significant remedy. The rationale behind this justification lies in the assertion that the political, economic, and social institutions of the State are responsible for poverty, discrimination, unemployment, and insecurity. Consequently, it is argued that the State has an obligation to offer compensation to victims in cases of serious crimes, irrespective of the offender's guilt or innocence. In *Sawarn Singh v. State of Punjab*²³, the Supreme Court provided an explanation of S. 357's application. The Court stated that even though a fine is not part of the penalty, Section 357's purpose is to provide compensation to the victim or their family. The clause was applied by the Supreme Court in *Madan Lal v. State of HP*, where the perpetrator had disfigured the victim's face. In another instance, it was decided that the widow and her children were given compensation for the loss they had endured even though the death penalty had been reduced to life in prison in a serious case.²⁴

Compensatory Jurisprudence under the Motor Vehicles Act, 1988

Road accidents that result in deaths or serious injuries to victims are on the rise due to an increase in motor

vehicle use, poor road maintenance, and driver irresponsibility. Section 40 of the MV Act incorporates the notion of obligatory compensating jurisprudence with the objective of mitigating the harm suffered by victims involved in traffic accidents, so seeking to address this pressing concern. If the driver's negligence results in a person's death or permanent disability, it obligates the owner of the vehicle to pay a set amount as compensation.

Compensatory Jurisprudence under the Workmen Compensation Act, 1923

This Act enables employers to compensate employees for harm brought on by accidents that happen while they are working or while performing their duties. Employers are required by S. 3 to pay compensation for:

- (i) Any injury that left a worker permanently or partially disabled for a period longer than seven days;
- (ii) Any injury that resulted in death from an accident that was not brought on by the worker's use of alcohol or other drugs; or any injury that involved the worker wilfully disobeying a clear order; or any safety precautions that were put in place.²⁵

Compensatory Jurisprudence under Medical Negligence Cases

The Supreme Court loosened the rules for doctors with regard to criminal responsibility for medical negligence by adding the need for 'severe' medical negligence in the landmark cases of *Jacob Mathew v. State of Punjab*²⁶ and *Suresh Gupta v. Government of NCT, Delhi*²⁷. The Courts have acknowledged the doctors' civil liability-based guilt, though. In a recent ruling from 2014 in the case of *Balram Prasad v. Kunal Saha*²⁸, the Apex Court compensated a victim with Rs. 11 crores, which was paid by the private hospital and the doctors who were found to be at fault for the patient's untimely death. This was by far the biggest award ever given for medical malpractice.

23. *Sawarn Singh v. State of Punjab*, AIR 1957 SC 637.

24. *Madan Lal and Anr. Vs. State of Himachal Pradesh Appeal (crl.) 786 of 2002*.

25. *Madan Lal and Anr. Vs. State of Himachal Pradesh, Appeal (crl.) 786 of 2002*.

26. *Jacob Mathews vs State of Punjab & Anr., Appeal (crl.) 144-145 of 2004*.

27. *Dr. Suresh Gupta vs Govt. of N.C.T. of Delhi & Anr., Appeal (crl.) 778 of 2004*.

28. *Balram Prasad v. Kunal Saha, Civil Appeal No.692 of 2012*.

Compensatory Jurisprudence on International Perspective

United States

In the United States, the workers' compensation system is mostly State-based and was once known as workmen's compensation before being renamed to be gender-neutral. With the noteworthy exception of Texas as of 2018, almost all businesses in the United States are required by law to provide workers compensation in one form or another, depending on the specifics of their business. Businesses may choose to obtain insurance voluntarily or in response to mandatory regulations; in the US, policies normally comprise Part One for mandatory coverage and Part Two for optional coverage.²⁹

The provision of workers' compensation to employees, the upper limit of payments for workers, and the duration of benefits provided to injured workers differ between States due to the existence of distinct workers' compensation laws in each State within the United States. Different public/private combinations of workers' compensation programs are supervised by State governing boards, who manage the program on a State-by-State basis. These regulating boards, sometimes known as "quasi-judicial agencies," go by different titles in different States; many are called "workers' compensation commissions." The North Carolina Industrial Commission is the name of the State organization in North Carolina that is in charge of running the workers' compensation program.

Australia

Compensation for workers' compensation is given to employees who get sick or injured at work or as a result of their employment. Benefits from workers' compensation include lump sum payments for death or permanent impairment, medical and related costs, and incapacity payments to make up for missed wages. There are three workers' compensation plans in the Commonwealth, and each State and territory has its own.³⁰

The following are the goals of workers' compensation: give financial assistance to injured workers; pay medical payments to injured workers as well as other non-economic types of assistance; allow companies and employees to collaborate in order to keep an injured person on the job or to ensure an early, safe, and suitable return to work.

United Kingdom

UK citizens employed overseas may be subject to UK employment law, depending on how closely their job relationship is tied to the UK. The UK Courts have examined the conditions under which foreign workers may file claims in employment tribunals for discrimination or wrongful dismissal in two recent cases. In the first, the Scottish version of the Court of Appeal, the Court of Session, ruled that an employee who works abroad on a rotating basis may file an unfair dismissal claim against his UK-registered employer.³¹

Conclusion

The Criminal Procedure Code's provisions pertaining to victim compensation have played a significant role in the law's gradual evolution through the judicial perspective. The criminal justice system's jurisdiction needs to be increased in light of the compensatory justice doctrine as a whole as well as the general shift in attitudes, situations, and methods. Justice should be served without forgetting the victim. If the Legislature chose to completely disregard the laws and never even consider the issue of compensation, the victim would remain forgotten in the criminal justice system. The Legislature had even gone so far as to adopt explicit provisions relating to victim compensation. Even in situations where the fine is not a component of the sentence, the Courts ought to have the authority to order restitution. The Court's discretionary authority should be transformed into a binding legal mandate forcing it to issue compensation orders in all appropriate circumstances. If the Court chooses not to issue compensation orders, it may be required to document its decision. It should be legal for the victim of an offence to enter the

29. Mary Kati Haupt, *Workers' Compensation Law & the Remedial Waiver*, 21 BARRY LAW REVIEW 217, 224 (2016).

30. AUSTRALIAN LAW REFORM COMMISSION, https://www.alrc.gov.au/wp-content/uploads/2019/08/03._work_health_and_safety_and_workers_compensation.pdf (last visited on Jan. 12, 2023).

31. SHEPHERD AND WEDDERBURN, <https://shepwedd.com/knowledge/jurisdiction-when-can-overseas-employees-bring-claims-unfair-dismissal-and-discrimination> (last visited on Jan. 11, 2023).

criminal case against the perpetrator and seek damages for loss or harm. A clause like this will increase the use of statutory measures to pay crime victims because it would essentially assume that compensation should be taken into account in every situation.

Although compensation jurisprudence is still in its infancy, it has advanced significantly since the Rudul Sah Case. Many people have found the new remedy to be a blessing, and it has given the courts' ability to defend human rights a significant boost. A large portion of the shortcomings of the common law of torts have now been addressed which still face a lengthy battle against the terror that bureaucratized politicians, bureaucratized bureaucracy, and other leviathans have combined to create in the form of the State. Thus, it is evident that the trend is a wise decision.

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