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The Role of Compensation in Reducing Recidivism: A Doctrinal Perspective

TONISH SINGH* AND DR. SURENDER KUMAR**

ABSTRACT

The issue of recidivism remains a significant challenge for criminal justice systems worldwide, including India. While punitive measures often dominate strategies to deter repeat offences, compensation as a victim-centric remedy has emerged as a potential tool for addressing recidivism. By emphasising offender accountability and fostering restorative justice, compensation mechanisms provide an avenue for addressing harm to victims while encouraging behavioural change in offenders. This paper explores the role of compensation in reducing recidivism from a doctrinal perspective, analysing its theoretical underpinnings, legal framework, and practical application within the Indian criminal justice system. Key statutory provisions, such as Sections 395 and 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023, are examined alongside landmark judicial precedents to highlight the integration of compensation into criminal jurisprudence. Comparative insights from jurisdictions such as the UK, the USA, and Australia further illustrate the potential of compensation mechanisms to promote offender rehabilitation and societal reconciliation. The paper identifies significant gaps in the Indian framework, including inadequate enforcement of compensation orders, limited integration of compensation into offender rehabilitation programmes, and a lack of empirical studies linking compensation with reduced recidivism. Its recommendations include codifying guidelines for compensation within offender rehabilitation programmes, establishing offender-victim mediation initiatives, and conducting research to evaluate the impact of compensation on recidivism. By bridging doctrinal and practical gaps, the paper advocates a victim-centric, restorative justice approach that uses compensation to reduce recidivism and enhance public confidence in the criminal justice system.

Keywords: Compensation, Recidivism, Restorative Justice, Offender Accountability, Indian Criminal Law

* Author is a Senior Research Fellow at Department of Law, Maharshi Dayanand University, Rohtak, Haryana, India.

** Author is an Associate Professor at MDU Centre for Professional and Allied Studies, Gurugram, Haryana, India.

I. INTRODUCTION

A. Background and context

Recidivism, defined as the tendency of convicted offenders to reoffend, remains one of the most persistent challenges faced by criminal justice systems worldwide.¹ Its implications are multifaceted, affecting victims, communities, and the effectiveness of the justice system itself. While traditional responses to recidivism have largely centred on punitive measures, there is growing recognition of the need for alternative approaches that address the root causes of reoffending and prioritise victim-centric remedies. One such approach is the integration of compensation into the framework of criminal justice, with an emphasis on offender accountability and restorative justice.

Compensation, traditionally viewed as a remedy for victim harm,² has the potential to play a dual role in reducing recidivism. By obliging offenders to acknowledge and address the harm caused by their actions, compensation fosters a sense of responsibility and accountability. At the same time, it empowers victims, contributing to their psychological and emotional recovery while reinforcing the principles of justice and equity. This dual focus aligns with restorative justice frameworks, which seek to repair harm and restore relationships rather than merely punish offenders.

B. Research problem

Despite its potential, the role of compensation in reducing recidivism has received limited doctrinal and practical attention within Indian criminal jurisprudence. The existing legal framework, while incorporating compensation provisions under Sections 395 and 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023,³ lacks structured guidelines for integrating compensation into offender rehabilitation programmes. Furthermore, the emphasis on financial reparation often overlooks the broader behavioural and rehabilitative aspects of compensation, leaving a critical gap in the understanding of its impact on recidivism.

C. Objectives of the study

This research aims to explore the doctrinal underpinnings of compensation and its role in reducing recidivism within the Indian context. The objectives of the study are:

¹ NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2022, vol. I (2023), <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf> (reporting recidivism among persons arrested under the Indian Penal Code, classified by previous convictions).

² G.A. Res. 40/34, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, ¶¶ 8–13 (Nov. 29, 1985), <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

³ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, INDIA CODE (2023), §§ 395–396.

- to examine the theoretical and legal frameworks connecting compensation and recidivism;
- to analyse the strengths and limitations of the Indian legal provisions relating to compensation; and
- to propose reforms that integrate compensation into offender rehabilitation programmes so as to promote accountability and reduce reoffending.

D. Research questions

To achieve these objectives, the paper addresses the following questions:

- How does compensation contribute to reducing recidivism from a doctrinal perspective?
- What are the key legal and theoretical connections between compensation and offender accountability?
- How can the Indian criminal justice system enhance its compensation mechanisms to reduce recidivism and promote restorative justice?

By addressing these questions, the research seeks to provide a doctrinal and practical roadmap for using compensation as a tool to reduce recidivism while ensuring justice and recovery for victims.

II. CONCEPTUAL FRAMEWORK

A. Definition of recidivism

Recidivism refers to the recurrence of criminal behaviour by individuals who have previously been convicted of offences. It is a critical metric for assessing the effectiveness of criminal justice systems and rehabilitation strategies. Factors contributing to recidivism include socio-economic challenges, the absence of rehabilitation programmes, stigmatisation, and inadequate accountability measures for offenders. Addressing recidivism requires a holistic approach that not only deters reoffending but also focuses on the rehabilitation and reintegration of offenders into society.

B. Definition of compensation in criminal law

Compensation is a remedy designed to redress the harm suffered by victims of crime, typically through monetary payment or other forms of reparation. Unlike restitution, which requires the offender to return what was taken or directly repair the harm, compensation can also involve

state-funded mechanisms, especially where offenders are unable or unwilling to make restitution.⁴ The objectives of compensation are twofold:

- **Victim-centric objective:** to acknowledge and address the harm suffered by the victim, fostering recovery and restoring a sense of justice.
- **Offender-centric objective:** to instil accountability and responsibility in offenders, making them confront directly the consequences of their actions.

C. Linking compensation and recidivism

The relationship between compensation and recidivism is rooted in restorative justice principles, which aim to repair the harm caused by crime while addressing the needs of victims, offenders, and society. This link can be analysed through the following dimensions:

- **Promoting offender accountability:** compensation mechanisms compel offenders to recognise the harm caused to victims, fostering a sense of responsibility. This acknowledgment is often the first step towards behavioural change and deterrence from future offences.
- **Reinforcing restorative justice principles:** compensation aligns with restorative justice frameworks by prioritising victim recovery while facilitating offender rehabilitation. The act of providing compensation can create opportunities for reconciliation and reintegration.
- **Deterrence through responsibility:** when offenders are held financially or otherwise accountable for their actions, the obligation can serve as a deterrent against future criminal behaviour. The duty to compensate creates tangible consequences for their actions, reducing the likelihood of reoffending.

D. Theoretical foundations

The relationship between compensation and recidivism is supported by several legal and philosophical theories:

- **Restorative justice theory:** emphasises repairing the harm caused by crime and restoring relationships between victims, offenders, and the community. Compensation plays a pivotal role in addressing victim needs while promoting offender accountability and societal reintegration.

⁴ G.A. Res. 40/34, *supra* note 2, ¶¶ 8, 12 (distinguishing restitution by the offender from compensation by the State where full compensation is not available from the offender).

- **Deterrence theory:** posits that the certainty and severity of consequences deter individuals from committing crimes.⁵ Compensation mechanisms introduce a rehabilitative dimension to deterrence by linking consequences to offender responsibility.
- **Social contract theory:** recognises the state's role in ensuring justice and preventing recidivism through mechanisms that balance victim rights and offender rehabilitation. Compensation reflects the state's commitment to upholding societal norms while addressing harm.

E. Global perspectives

International practice highlights the potential of compensation mechanisms in addressing recidivism:⁶

- **United Kingdom:** restorative justice programmes often incorporate compensation orders, requiring offenders to make amends to victims as part of their rehabilitation.⁷ This approach emphasises accountability and reintegration.
- **United States:** many states, and the federal system, impose restitution or compensation requirements as conditions of probation or parole.⁸ These measures link offender accountability with rehabilitation efforts, with the aim of reducing recidivism.
- **Australia:** victim compensation schemes integrate monetary and non-monetary remedies, combining offender accountability with psychological support and community-based restorative justice practices.⁹

These examples underscore the importance of compensation in reducing recidivism through victim-centric and rehabilitative strategies.

F. Challenges in the Indian context

Despite the potential benefits, the integration of compensation into efforts to reduce recidivism in India faces several challenges:

⁵ ANDREW ASHWORTH, SENTENCING AND CRIMINAL JUSTICE (6th ed. 2015).

⁶ UNITED NATIONS OFFICE FOR DRUG CONTROL AND CRIME PREVENTION, HANDBOOK ON JUSTICE FOR VICTIMS (1999), https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf.

⁷ Sentencing Act 2020, c. 17, §§ 133–135 (UK), <https://www.legislation.gov.uk/ukpga/2020/17/section/133>.

⁸ 18 U.S.C. § 3563(b)(2) (restitution as a discretionary condition of probation); 18 U.S.C. § 3663A (mandatory restitution to victims of certain offences).

⁹ Victims Rights and Support Act 2013 (NSW) (Austl.), http://www.austlii.edu.au/au/legis/nsw/consol_act/vrasa2013318/; Victims of Crime (Financial Assistance) Act 2022 (Vic) (Austl.).

- **Limited awareness:** victims and offenders often lack awareness of compensation mechanisms, reducing their effectiveness as tools for accountability.
- **Financial constraints:** many offenders lack the financial capacity to provide meaningful compensation, necessitating greater reliance on state-funded schemes.
- **Procedural inefficiencies:** delays in enforcing compensation orders and in disbursing state-funded compensation hinder their impact on victim recovery and offender accountability.
- **Lack of integration with rehabilitation programmes:** current compensation mechanisms are not systematically linked with offender rehabilitation programmes, missing an opportunity to address recidivism comprehensively.

III. LEGAL FRAMEWORK IN INDIA

A. Statutory provisions

India's legal framework provides for compensation mechanisms that, while primarily victim-centric, have implications for offender accountability and recidivism. The key statutory provisions are:

- **Section 395 of the Bharatiya Nagarik Suraksha Sanhita:** this provision empowers courts to award compensation to victims out of the fine imposed on the offender, and, under sub-section (3), to order the offender to pay compensation even where the sentence includes no fine.¹⁰ It reflects the principle that offenders bear responsibility for addressing the harm caused by their actions. In practice, however, its reach is limited by the offender's capacity to pay, so that it offers little where the offender lacks financial resources.
- **Section 396 of the Bharatiya Nagarik Suraksha Sanhita:** this section, which carries forward Section 357A of the Code of Criminal Procedure, 1973 (inserted by amendment in 2009), requires every State Government to establish a victim compensation scheme.¹¹ These schemes are designed to provide financial relief to victims, particularly where offenders are unable or unwilling to compensate them. While primarily victim-focused, the provision underscores the state's responsibility for

¹⁰ Bharatiya Nagarik Suraksha Sanhita, *supra* note 3, § 395; see also *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551 (directing that the power under the corresponding Section 357(3) of the Code of Criminal Procedure, 1973 to order compensation be exercised liberally); RATANLAL & DHIRAJLAL, THE CODE OF CRIMINAL PROCEDURE (23rd ed. 2024).

¹¹ Bharatiya Nagarik Suraksha Sanhita, *supra* note 3, § 396; The Code of Criminal Procedure (Amendment) Act, No. 5 of 2009, INDIA CODE (2009), § 28 (inserting Section 357A into the Code of Criminal Procedure, 1973, with effect from 31 December 2009).

upholding justice and indirectly links offender accountability with societal rehabilitation.

- **Section 461 of the Bharatiya Nagarik Suraksha Sanhita:** this section provides for the recovery of fines imposed on offenders, including by attachment and sale of property.¹² It facilitates the enforcement of compensation orders linked to offender accountability.
- **Special legislation:** several laws incorporate compensation provisions that align with the principles of restorative justice:
- **Protection of Children from Sexual Offences (POCSO) Act, 2012:** provides for compensation to child victims, focusing on their medical, psychological, and rehabilitative needs.¹³
- **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:** mandates relief and compensation for victims of caste-based atrocities, highlighting the state's role in addressing structural inequalities and ensuring justice.¹⁴
- **Motor Vehicles Act, 1988:** includes provisions for compensating victims of road accidents, emphasising the need for prompt and adequate relief.¹⁵

B. Judicial precedents

Indian courts have played a critical role in interpreting and expanding the scope of compensation to incorporate principles of restorative justice and accountability. The key decisions include:

- *Rudul Sah v. State of Bihar (1983)*: the Supreme Court awarded compensation for wrongful incarceration, holding that monetary reparation is essential to uphold the right to life and personal liberty under Article 21 of the Constitution.¹⁶
- *Nilabati Behera v. State of Orissa (1993)*: this landmark case established the principle of state liability for custodial death, with compensation serving as a constitutional

¹² Bharatiya Nagarik Suraksha Sanhita, *supra* note 3, § 461.

¹³ The Protection of Children from Sexual Offences Act, No. 32 of 2012, INDIA CODE (2012), § 33(8); Protection of Children from Sexual Offences Rules, 2020, r. 9.

¹⁴ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, INDIA CODE (1989); Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, r. 12(4) (prescribing scales of relief for victims of atrocities).

¹⁵ The Motor Vehicles Act, No. 59 of 1988, INDIA CODE (1988), §§ 164, 166.

¹⁶ *Rudul Sah v. State of Bihar*, AIR 1983 SC 1086, (1983) 4 SCC 141; INDIA CONST. arts. 21, 32.

remedy.¹⁷ The Court's reasoning reflected the dual objectives of redressing victim harm and holding the state accountable.

- *Delhi Domestic Working Women's Forum v. Union of India (1995)*: highlighted the need for victim compensation schemes in cases of sexual violence, emphasising the state's responsibility to support victims and deter future offences.¹⁸
- *Balram Prasad v. Kunal Saha (2013)*: arising from a civil claim for medical negligence against AMRI Hospital, Kolkata, this decision set a precedent for determining the quantum of compensation by reference to the gravity of the harm caused.¹⁹ The judgment underscored the importance of ensuring that compensation reflects the impact of the wrong on the victim.
- *State of Himachal Pradesh v. Vijay Kumar (2019)*: in an acid-attack case, the Supreme Court directed the offenders to pay additional compensation and the State to pay compensation under its victim compensation scheme, treating offender liability and state-funded relief as complementary and linking offender accountability with victim recovery.²⁰

C. Policy initiatives

In addition to statutory provisions and judicial precedents, policy initiatives aim to strengthen victim compensation and its connection to offender accountability:

- **State victim compensation schemes**: mandated under Section 396 of the Bharatiya Nagarik Suraksha Sanhita, these schemes are implemented at the state level, guided by the National Legal Services Authority's model scheme and supported by the Central Victim Compensation Fund, to provide financial relief to victims.²¹ While primarily designed for victim support, the schemes indirectly address recidivism by reinforcing the state's commitment to justice and accountability.

¹⁷ *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960, (1993) 2 SCC 746; see also *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610, (1997) 1 SCC 416; LAW COMMISSION OF INDIA, *One Hundred Fifty-Second Report on Custodial Crimes* (1994), <https://www.legal-tools.org/doc/81da17/pdf/>.

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

¹⁹ *Balram Prasad v. Kunal Saha*, (2014) 1 SCC 384 (decided Oct. 24, 2013).

²⁰ *State of Himachal Pradesh v. Vijay Kumar*, (2019) 5 SCC 373; see also *Laxmi v. Union of India*, (2014) 4 SCC 427 (fixing a minimum compensation of Rs. 3 lakh for acid-attack victims).

²¹ Bharatiya Nagarik Suraksha Sanhita, *supra* note 3, § 396; NATIONAL LEGAL SERVICES AUTHORITY, *Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018*, https://kslsa.kar.nic.in/pdfs/guidelines/NALSAs_Compensation_Scheme_for_Women_Victims-2018.pdf; *Nipun Saxena v. Union of India*, (2019) 13 SCC 719 (approving the NALSA scheme and directing its implementation by all States and Union Territories); MINISTRY OF HOME AFFAIRS, *Central Victim Compensation Fund Scheme: Guidelines* (2015), https://www.mha.gov.in/sites/default/files/CVCFGuidelines_141015_2.pdf.

- **Restorative justice pilot programmes:** some states have initiated pilot programmes that integrate compensation with restorative justice practices, including victim-offender mediation. These programmes aim to foster accountability, reconciliation, and the reintegration of offenders into society.
- **Justice Malimath Committee Report (2003):** recommended expanding the scope of victim compensation and integrating it into broader justice reforms.²² The report highlighted the potential of compensation mechanisms to address both victim recovery and offender rehabilitation.

D. Challenges in the legal framework

Despite its strengths, the Indian legal framework faces several challenges in linking compensation with the goal of reducing recidivism:

- **Limited scope of Section 395 of the Bharatiya Nagarik Suraksha Sanhita:** the provision's dependence on the offender's means limits its application, particularly in cases involving indigent offenders or serious crimes where a fine is an inadequate response.
- **Procedural delays:** bureaucratic inefficiencies and delays in implementing compensation schemes under Section 396 of the Bharatiya Nagarik Suraksha Sanhita undermine their effectiveness in addressing victim harm and promoting offender accountability.²³
- **Lack of integration with rehabilitation programmes:** compensation mechanisms are not systematically linked with offender rehabilitation initiatives, missing an opportunity to address recidivism through a holistic approach.
- **Inconsistent enforcement:** the enforcement of compensation orders often depends on judicial discretion and offender compliance, leading to inconsistent outcomes and a limited deterrent effect.
- **Awareness deficit:** victims and offenders frequently lack awareness of compensation mechanisms, reducing their impact on accountability and recidivism.

²² MINISTRY OF HOME AFFAIRS, COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM: REPORT, vol. I (2003), https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf.

²³ See *Suresh v. State of Haryana*, (2015) 2 SCC 227 (holding that interim compensation under Section 357A of the Code of Criminal Procedure, 1973 ought to be granted at the earliest and that the award does not depend on the conviction of the accused).

IV. CRITICAL ANALYSIS

A. Strengths of compensation in reducing recidivism

The existing legal framework in India demonstrates several strengths in linking compensation to the reduction of recidivism, highlighting its potential as a tool for fostering accountability and rehabilitation:

- **Victim-centric justice:** compensation provisions under Sections 395 and 396 of the Bharatiya Nagarik Suraksha Sanhita prioritise victim recovery, ensuring that harm caused by criminal acts is addressed. This victim-centric approach fosters trust in the justice system, which can indirectly deter offenders from reoffending.
- **Offender accountability:** by requiring offenders to compensate victims, provisions such as Section 395 of the Bharatiya Nagarik Suraksha Sanhita emphasise direct accountability. This mechanism compels offenders to confront the consequences of their actions, encouraging behavioural change and reducing the likelihood of recidivism.
- **Judicial activism:** Indian courts have been proactive in interpreting compensation as an essential remedy for upholding constitutional rights. Landmark cases such as *Nilabati Behera v. State of Orissa* and *Rudul Sah v. State of Bihar* reflect the judiciary's commitment to ensuring justice for victims while emphasising state and offender accountability.²⁴
- **Integration of restorative justice principles:** emerging initiatives, such as restorative justice pilot programmes, demonstrate the potential for integrating compensation into holistic offender rehabilitation strategies. These initiatives focus on reconciliation and reintegration, in line with international best practice.

B. Limitations and gaps in the existing framework

Despite these strengths, the Indian framework faces significant limitations in linking compensation mechanisms effectively to the reduction of recidivism:

- **Lack of doctrinal clarity:** the framework does not explicitly recognise compensation as a tool for reducing recidivism. While victim compensation schemes exist, their connection to offender rehabilitation and deterrence remains under-explored, leading to missed opportunities for fostering behavioural change.

²⁴ *Nilabati Behera*, *supra* note 17; *Rudul Sah*, *supra* note 16.

- **Limited scope of Section 395 of the Bharatiya Nagarik Suraksha Sanhita:** the dependence of offender-paid compensation on the offender's means restricts its applicability, particularly for indigent offenders. This limitation reduces the effectiveness of compensation as a tool for instilling accountability in such cases.
- **Inconsistent implementation of Section 396 of the Bharatiya Nagarik Suraksha Sanhita:** state victim compensation schemes often suffer from inadequate funding, procedural delays, and a lack of standardised guidelines, undermining their ability to support victims effectively and to serve the broader goals of restorative justice.²⁵
- **Overemphasis on monetary remedies:** while financial compensation addresses tangible harm, the framework largely ignores non-monetary remedies such as apologies, counselling, or community service, which could contribute to offender rehabilitation and reduce reoffending.
- **Judicial discretion without guidelines:** the absence of structured guidelines for awarding compensation leads to inconsistency in judicial decisions, with varying outcomes in similar cases, even though the Supreme Court has held that courts must consider compensation in every case and record their reasons.²⁶ This unpredictability weakens the framework's deterrent effect on recidivism.
- **Lack of integration with probation and parole:** compensation mechanisms are not systematically linked with probation or parole conditions, missing an opportunity to monitor and reinforce offender accountability during the rehabilitation process.

C. Comparative insights

An analysis of international practice reveals valuable lessons for strengthening the Indian framework:

- **United Kingdom:** the Criminal Injuries Compensation Authority (CICA) administers a structured, tariff-based scheme of state compensation for victims of violent crime, emphasising consistency and transparency, while the criminal courts may make compensation orders against offenders.²⁷ Restorative justice programmes in the UK often build on such orders, linking them to offender rehabilitation.

²⁵ See Nipun Saxena, *supra* note 21 (directing uniform implementation of the NALSA scheme in view of the disparities among State schemes).

²⁶ *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770 (holding that courts must apply their mind to the question of compensation under Section 357 of the Code of Criminal Procedure, 1973 in every case and record reasons where compensation is not awarded).

²⁷ MINISTRY OF JUSTICE, *The Criminal Injuries Compensation Scheme 2012* (as amended 2019), <https://www.gov.uk/government/publications/criminal-injuries-compensation-scheme-2012-amended--2>; Sentencing Act 2020, *supra* note 7, §§ 133–135.

- **United States:** in many US states, and in the federal system, restitution is integrated into probation and parole conditions, while state-administered compensation programmes supported by the federal Crime Victims Fund reimburse victims directly.²⁸ Offenders are required to fulfil their restitution obligations as part of their rehabilitation, ensuring sustained accountability and reducing recidivism.
- **Australia:** Australia's victim compensation schemes combine monetary remedies with restorative justice practices, such as victim-offender mediation.²⁹ These programmes emphasise reconciliation and reintegration, reducing the likelihood of reoffending.

The Indian framework can benefit from these practices by adopting structured compensation guidelines, integrating non-monetary remedies, and linking compensation with probation and parole conditions.

D. Broader implications

The limitations of the existing framework have significant implications for victims, offenders, and the criminal justice system:

- **For victims:** inadequate or delayed compensation undermines victims' trust in the justice system, exacerbating their emotional and financial distress. A more effective framework would enhance victim recovery and foster public confidence.
- **For offenders:** the lack of integration between compensation and rehabilitation deprives offenders of opportunities to address their actions constructively. A system that emphasises accountability and reintegration could reduce stigmatisation and deter reoffending.
- **For the criminal justice system:** the absence of a clear link between compensation and the reduction of recidivism limits the system's effectiveness in addressing the root causes of criminal behaviour. Strengthening this link would contribute to a more holistic and restorative approach to justice.

E. Potential areas for reform

The analysis underscores the need for doctrinal and practical reforms to enhance the role of compensation in reducing recidivism. The key areas for reform are:

²⁸ 18 U.S.C. § 3563(b)(2); 34 U.S.C. § 20102 (federal grants to state crime victim compensation programmes under the Victims of Crime Act of 1984); OFFICE FOR VICTIMS OF CRIME, *Victim Compensation*, <https://ovc.ojp.gov/topics/victim-compensation>.

²⁹ Victims Rights and Support Act 2013 (NSW) (Austl.), *supra* note 9; Victims of Crime (Financial Assistance) Act 2022 (Vic) (Austl.), *supra* note 9.

- codifying clear guidelines for integrating compensation into offender rehabilitation programmes;
- expanding the scope of compensation mechanisms to include non-monetary remedies;
- strengthening state victim compensation schemes to ensure timely and adequate support; and
- linking compensation obligations with probation and parole conditions to reinforce accountability.

V. RECOMMENDATIONS

To enhance the effectiveness of compensation mechanisms in reducing recidivism within the Indian criminal justice system, the following recommendations are proposed.

A. Codify clear guidelines for compensation

- **Statutory clarity:** amend the Bharatiya Nagarik Suraksha Sanhita to define clearly the objectives and mechanisms of compensation in the context of reducing recidivism. This should include:
 1. a clear distinction between restitution and compensation; and
 2. acknowledgment of compensation as a tool for offender accountability and victim recovery.
- **Standardised criteria for awards:** establish guidelines for determining the quantum of compensation on the basis of factors such as the severity of the harm, the socio-economic status of the victim, and the offender's capacity to pay.

B. Expand the scope of compensation

- **Incorporate non-monetary remedies:** introduce non-monetary forms of compensation, such as public apologies, offender-funded counselling services, and community service programmes. These remedies can complement monetary compensation, addressing emotional and societal harm while fostering offender accountability.
- **Broaden the application of Section 395 of the Bharatiya Nagarik Suraksha Sanhita:** expand the provision to mandate compensation orders in a wider range of offences, irrespective of the offender's financial capacity. This can be achieved by combining offender-funded restitution with state-supported compensation.

C. Strengthen victim compensation schemes

- **Adequate funding and infrastructure:** ensure that state victim compensation schemes under Section 396 of the Bharatiya Nagarik Suraksha Sanhita are adequately funded and efficiently managed. Introduce mechanisms for the timely disbursement of compensation to avoid procedural delays.
- **Centralised monitoring:** create a centralised database to track compensation claims, disbursements, and offender compliance. This would improve transparency and allow better oversight of compensation mechanisms.

D. Link compensation to offender rehabilitation programmes

- **Integration with probation and parole:** make compensation obligations a condition of probation and parole. Offenders should demonstrate compliance with compensation orders as part of their rehabilitation.
- **Restorative justice practices:** expand restorative justice programmes to include victim-offender mediation sessions, in which offenders can acknowledge their wrongdoing and provide compensation directly. Such programmes encourage reconciliation and foster accountability.

E. Judicial reforms

- **Specialised benches for compensation cases:** establish dedicated benches to handle compensation-related cases, ensuring expertise and consistency in decisions.
- **Judicial training programmes:** conduct training sessions for judges and legal professionals on the role of compensation in reducing recidivism and promoting restorative justice.
- **Reasoned judgments:** encourage courts to give detailed reasons for compensation awards, explaining how they serve the dual objectives of victim recovery and offender accountability.³⁰

F. Promote awareness and accessibility

- **Public awareness campaigns:** launch campaigns to educate victims, offenders, and the public about the availability and importance of compensation mechanisms.
- **Simplified application procedures:** streamline the process for claiming compensation under state schemes, reducing bureaucratic hurdles and ensuring that victims can access remedies efficiently.

³⁰ See Ankush Shivaji Gaikwad, *supra* note 26.

- **One-stop victim assistance centres:** establish centres that provide victims with comprehensive support, including legal assistance, psychological counselling, and guidance on compensation claims.

G. Empirical research and data collection

- **Studies on compensation and recidivism:** conduct empirical studies to evaluate the impact of compensation mechanisms on recidivism rates in India. Such research would provide evidence-based insight into the effectiveness of these mechanisms.
- **Centralised data repository:** maintain a repository of data on compensation claims, offender compliance, and recidivism trends to inform policy decisions and identify areas for improvement.

H. Adopt international best practices

- **Incorporate lessons from the UK, USA, and Australia:** learn from international models that integrate compensation with offender rehabilitation and restorative justice, for example:
 - the UK's structured approach to compensation through the Criminal Injuries Compensation Authority (CICA);
 - the USA's integration of restitution with probation and parole conditions; and
 - Australia's focus on combining monetary and non-monetary remedies in compensation schemes.
- **Tailor global practices to the Indian context:** adapt international practices to address India's particular socio-economic and cultural challenges, ensuring that compensation mechanisms are accessible and equitable.

I. Institutional reforms

- **National victim compensation authority:** establish a centralised authority to oversee compensation mechanisms, ensuring uniformity and accountability across states.
- **Collaboration with NGOs and civil society:** partner with non-governmental organisations to support victims and implement restorative justice programmes.
- **Periodic review and evaluation:** regularly review compensation schemes and their effectiveness in reducing recidivism, incorporating feedback from victims, offenders, and other stakeholders.

VI. CONCLUSION

The role of compensation in reducing recidivism offers a promising avenue for enhancing the effectiveness of the Indian criminal justice system. This research has shown that compensation mechanisms, traditionally viewed as victim-centric remedies, can also serve as tools for offender accountability and rehabilitation. By compelling offenders to address the harm caused by their actions, compensation fosters a sense of responsibility that is integral to behavioural change and deterrence from reoffending.

The Indian legal framework, particularly the provisions of Sections 395 and 396 of the Bharatiya Nagarik Suraksha Sanhita, provides a foundation for integrating compensation into criminal jurisprudence. Judicial activism in landmark cases such as *Nilabati Behera v. State of Orissa* and *Rudul Sah v. State of Bihar* has further expanded the scope of compensation as a constitutional remedy. However, significant gaps remain, including the absence of doctrinal clarity, the limited integration of compensation into rehabilitation programmes, and procedural inefficiencies that hinder timely and adequate relief for victims.

Comparative insights from jurisdictions such as the UK, USA, and Australia highlight the potential of combining monetary and non-monetary remedies, structured guidelines, and restorative justice practices to address recidivism comprehensively. These international practices underscore the importance of aligning compensation mechanisms with broader offender rehabilitation efforts to achieve holistic justice.

To realise the full potential of compensation in reducing recidivism, this paper recommends codifying clear guidelines, strengthening state-funded victim compensation schemes, and linking compensation obligations with probation and parole conditions. Non-monetary remedies, such as public apologies, community service, and victim-offender mediation, should be integrated to complement financial reparation. Institutional reforms, judicial training, and public awareness campaigns are also critical to ensuring the accessibility and effectiveness of compensation mechanisms.

Compensation thus serves as a bridge between victim-centric justice and offender rehabilitation, in keeping with the principles of restorative justice. By addressing the existing gaps and adopting a holistic, victim-offender-community approach, the Indian criminal justice system can enhance its capacity to reduce recidivism while ensuring justice and dignity for all stakeholders. Such an approach has the potential not only to rehabilitate offenders but also to rebuild trust in the justice system, fostering a more equitable and inclusive society.
