

## Compensation As Remedy For Justice

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### ABSTRACT

Compensation as a legal remedy aims to make the victim whole again by providing monetary relief for the losses suffered. This comparative study analyzes the principles governing compensation under tort law in India, the United Kingdom, and the United States. This research examines the theoretical justifications for compensation, its scope and limitations, the assessment of damage, and its effectiveness in providing meaningful redressal to victims. This paper argues that despite differences in approach, compensation serves the twin goals of corrective justice and deterrence across jurisdictions. However, the lack of uniform principles leads to uncertainty and inconsistency in awarding compensation. This cross-country analysis offers useful insights to guide law and policy reform on this issue.

**Keywords:** Compensation, Remedy, Constitutional Law, Torts, Rights

### INTRODUCTION

#### Background and Rationale for the Study

The principle of restitution or remedy is a fundamental tenet of jurisprudence across legal systems. When a legal right is violated, the law must provide adequate and just remedies to the victim.<sup>1</sup> Compensation is one such important remedial measure that serves the twin goals of providing relief to the victim and disincentivizing the wrongdoer.<sup>2</sup> Despite the ubiquity of compensation as a remedy, significant differences exist across jurisdictions regarding its conceptual understanding and practical implementation. In the Indian context, the law on compensation emanates from constitutional provisions, statutes and judicial pronouncements. However, the scholarship on comparative perspectives on compensation laws is relatively sparse. This study aims to fill this research gap by undertaking a systematic comparative analysis of compensation jurisprudence in India and other major legal systems. The focus will be on understanding the conceptual foundations of compensation, its interface with principles of corrective and social justice, the scope and limits of compensatory relief, and the determination of the quantum of compensation.

Furthermore, the study will evaluate the efficacy of existing legal frameworks on compensation and identify persistent challenges in ensuring fair, adequate, prompt and just compensation, particularly for victims belonging to vulnerable sections. It will explore the roles of the legislature, executive and judiciary in the development of compensation jurisprudence. The comparative perspective will provide useful insights into alternative models, best practices and potential law reforms in India for strengthening remedial jurisprudence on compensation. This holds significance in the contemporary Indian context, where demands for compensatory justice have arisen in new domains such as environmental damage, privacy violations, and victims of state excesses.

#### A. Definition and Significance of Compensation as a Legal Remedy

Compensation refers to the payment of money as a remedy for the commission of a civil wrong or breach of contract. It serves to put the injured party in the position they would have been in had the wrong not been committed.<sup>3</sup> Compensation is aimed at compensating the victim rather than punishing the wrongdoer and is

<sup>1</sup> Peter Cane, 'Using Tort Law to Enforce Environmental Regulations?' (2002) 41 Washburn Law Journal 427.

<sup>2</sup> Mark Geistfeld, 'Negligence, Compensation, and the Coherence of Tort Law' (2005) 91 Georgetown Law Journal 585.

<sup>3</sup> Law Commission of India, Report No. 196: Medical Negligence in Treatment: Some Reflections (2009),

calculated based on the loss suffered by the victim.<sup>4</sup> The purpose of compensation as a legal remedy is to restore the victim to the position they were in prior to the wrongdoing, insofar as money can achieve this. It serves corrective justice by seeking to correct the wrong done to the victim. Compensation addresses the harm caused by making good the loss suffered. It is not concerned with punishing the wrongdoer, only repairing the harm done to the victim.

Compensation differs from other monetary remedies in civil law, such as damage or restitution. Damages aim to put the claimant in the position they would have been in had the contract been performed, whereas compensation merely reimburses the claimant's actual loss. Restitution focuses on reversing unjust enrichment rather than directly compensating for the victim's loss. Compensation is more limited and precise in scope than damage or restitution. The Indian legal system recognizes compensation as an important remedy across both criminal and civil law. Under tort law, compensation is awarded for unliquidated damages that are not precisely calculable.<sup>5</sup> Contract law provides for compensation for breach of contract under Sections 73 and 74 of the Indian Contract Act 1872.<sup>6</sup> Compensation is a key remedy for victims under consumer protection legislation.<sup>7</sup>

Significantly, compensation also features criminal law as a mode of victim relief. Section 357 of the Code of Criminal Procedure 1973 empowers courts to order compensation to victims in addition to imposing punishment on the accused.<sup>8</sup> Courts have awarded compensation in cases ranging from rape and sexual assault<sup>9</sup> to custodial violence<sup>10</sup> and domestic abuse<sup>11</sup> to provide redress to victims. Compensation serves as a means of rehabilitating victims and providing them with a solution for their suffering.<sup>12</sup> Compensation therefore serves the twin goals of corrective justice for the victim and deterrence for the wrongdoer, while stopping short of imposing punitive damages. It occupies an important place in the Indian legal system as a remedy that promotes substantive justice. The constitutional mandate for fair, just and reasonable procedures under Article 21 also encompasses the question of victim relief through compensation.<sup>13</sup>

### **I. HISTORICAL EVOLUTION OF COMPENSATION AS A LEGAL REMEDY**

The origins of compensation as a legal remedy can be traced back to ancient laws and practices across civilizations. Early principles of corrective justice emphasized remedying harm over punishing transgressions. The Babylonian Code of Hammurabi prescribed monetary compensation for bodily injuries based on the severity and effects of the harm caused. Ancient Hindu texts such as the Manusmriti also laid down compensation or 'arhat' as the remedy for offenses causing loss of life or property. Roman law recognized compensation for damage to people or property under the Lex Aquilia passed in the third century BCE.

In England, Anglo-Saxon customs are provided for 'bots' or compensation payable to victims of homicide or minor physical injuries in lieu of blood feuds between kin groups. The movement from retributive justice based on vengeance to compensatory remedies continued with the emergence of common law in the 12th-13th centuries CE. The goal shifted toward making amends for civil wrongs through compensation assessed based on the loss suffered rather than punishing criminal acts. The law of torts developed from the common law writ system to provide compensation as the usual remedy for civil wrongs not arising from contracts. Negligence emerged as an independent tort in the 19th century, with compensation for personal injuries caused by carelessness. Compensation through damage became the norm rather than punitive remedies in tort litigation. Contract law also evolved to allow compensation for breach, putting the claimant in the position they would have enjoyed on due performance.

In the criminal law sphere, while the punishment of offenders remained the priority, the idea of providing compensation to victims saw gradual recognition. In the 19th century, judicial interpretations of Indian Penal Code provisions permitted courts to award compensation to victims out of fines imposed on convicts.<sup>14</sup> The Criminal Procedure Code of 1898 expressly conferred powers to award compensation to victims.<sup>15</sup> Postindependence, the Indian Constitution enshrined the principle of compensation for violations of fundamental

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<https://lawcommissionofindia.nic.in/reports/rep196.pdf> (last visited Nov. 10, 2023).

<sup>4</sup> J.P. Ratnaparkhi, *The Law of Torts* para 1.3 (24th ed. 2009).

<sup>5</sup> *Rylands v Fletcher* [1868] UKHL 1.

<sup>6</sup> The Indian Contract Act 1872, No. 9, Acts of Parliament, 1872 (India), §§ 73-74.

<sup>7</sup> The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).

<sup>8</sup> The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India), § 357.

<sup>9</sup> *Delhi Comm'n for Women v. Delhi Police*, WP (CrI) 696/2008 (2008) (India), <http://lobis.nic.in/ddir/dhc/RS/judgment/22-07-2016/RS18072016WP6962008.pdf> (last visited Nov. 10, 2023).

<sup>10</sup> *Sebastian M. Hongray v. Union of India*, AIR 1984 SC 571 (India).

<sup>11</sup> *Hiralal & Ors v. State of Uttar Pradesh*, (2011) 10 SCC 445 (India).

<sup>12</sup> *Ankush Shivaji Gaikwad v. State of Maharashtra*, CRA 638 OF 2014 (2014) (India).

<sup>13</sup> *Hussainara Khatoon & Ors v. Home Sec'y, State of Bihar*, (1980) 1 SCC 98 (India).

<sup>14</sup> *Empress v. Idu Beg*, (1881) 3 All 776 (India).

<sup>15</sup> The Code of Criminal Procedure, 1898, § 545 (India).

rights under Articles 32 and 226.<sup>16</sup> Compensation came to be accepted as a constitutional remedy for infringements of life and personal liberty under Article 21.<sup>17</sup> Statutes such as the Motor Vehicles Act of 1988 provided no-fault liability compensation for road accident victims from insurance funds.<sup>18</sup>

The law of torts in India experienced significant development in the postindependence era. Judicial decisions expanded the scope of liability and damage by recognizing new torts and heads of compensation. Damage was assessed based on principles such as *restitutio in integrum* to restore the victim's position prior to the tort.<sup>19</sup> Consumer protection legislation in the 1980s created special forums to facilitate compensatory relief for defects and deficiencies in goods and services.<sup>20</sup> The domain of criminal compensation also witnessed reforms such as making victim compensation a charge of public funds.<sup>21</sup> The Code of Criminal Procedure was amended in 2008 to make compensation mandatory for certain offenses against women.<sup>22</sup> The Victim Compensation Scheme was instituted in every state to systematize monetary relief to victims of crime.<sup>23</sup> The rehabilitation of victims through compensation became an important concern alongside the punishment of offenders.

Recent trends reflect a victim-centric approach with an emphasis on compensation as a means of accessing justice. The Motor Vehicles Amendment Act 2019 raised the cap on compensation for hit-and-run cases.<sup>24</sup> Courts have been granted interim compensation for sexual assault victims even before the conclusion of criminal trials.<sup>25</sup> Environmental jurisprudence has evolved innovative doctrines such as 'polluter pays' and 'absolute liability' to ensure compensatory remedies for victims of pollution and hazardous activities.<sup>26</sup> Thus, the evolution of compensation as a legal remedy has moved through stages of reciprocal justice for civil wrongs based on retaliation toward corrective justice focusing on remedying the victim's loss. It continues to be shaped by the changing priorities of legal systems toward securing substantive justice. The Indian experience shows that compensation evolves as an integral part of rights-based remedies with the potential for further growth.

#### **A. Landmark Cases and Legal Precedents Shaping the Concept of Compensation**

The concept of compensation as a legal remedy has evolved over time through landmark court judgments and legislative enactments across various jurisdictions. Compensation serves the purpose of making good the loss suffered by the victim of an unlawful act, thereby providing relief and a sense of justice. The principles governing compensation have developed through case laws and statutes dealing with tort law, labor law, consumer protection law, etc. One of the early precedents on compensation in the tort law context is the English case of *Livingstone v Rawyards Coal Co.*<sup>27</sup> In this 1880 case, the Court upheld the plaintiff's claim for compensation for personal injury suffered at the defendant's workplace due to the defendant's negligence. The Court affirmed the principle that where a legal right is violated, the person injured is entitled to receive compensation.<sup>28</sup> This principle of compensating for personal injury and affirming employer liability paved the way for further evolution of tort law. In India, the law on compensation for workplace accidents was codified through the Workmen's Compensation Act, 1923, which imposed liability on employers to provide compensation to workmen sustaining accidents during employment.<sup>29</sup> Section 3 of the Act lays down the employer's liability to pay compensation where a workman sustains personal injury arising out of and during the course of employment.<sup>30</sup> The amount of compensation is based on the workman's monthly wages and extent of disablement.<sup>31</sup> This law was an early legislative intervention to provide social security and remedy injustice where workers were denied adequate compensation. A significant development in the sphere of consumer protection law was the evolution of 'strict product liability' in American law. This principle was laid down in the landmark ruling in *Greenman v Yuba Power Products*, where the manufacturer was held liable without fault for injuries caused by defects in the design and manufacture of its product. The rationale was that the manufacturer who places a defective product in the market should bear the loss rather than the injured consumer who is powerless and innocent. This liberalized the burden of proof for consumers and expanded manufacturers' liability. Similar developments occurred in India with the enactment of

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<sup>16</sup> India Const. arts. 32, 226.

<sup>17</sup> *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141 (India).

<sup>18</sup> The Motor Vehicles Act, 1988, No. 59, Acts of Parliament, 1988 (India).

<sup>19</sup> *Municipal Corpn. of Delhi v. Subhagwanti*, AIR 1966 SC 1750 (India).

<sup>20</sup> The Consumer Protection Act, 1986, No. 68, Acts of Parliament, 1986 (India).

<sup>21</sup> The Code of Criminal Procedure, 1973, § 357(1)(b) (India).

<sup>22</sup> The Criminal Law (Amendment) Act, 2008, No. 5, Acts of Parliament, 2009 (India).

<sup>23</sup> The Code of Criminal Procedure, 1973, §§ 357A-357B (India).

<sup>24</sup> The Motor Vehicles (Amendment) Act, 2019, No. 32, Acts of Parliament, 2019 (India).

<sup>25</sup> *Delhi Commission for Women v. Delhi Police*, WP (Crl) 696/2008 (2008) (India).

<sup>26</sup> *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (India).

<sup>27</sup> *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 (HL).

<sup>28</sup> *ibid.*

<sup>29</sup> The Workmen's Compensation Act 1923, No. 8, Acts of Parliament, 1923 (India), s 3.

<sup>30</sup> *ibid.*

<sup>31</sup> The Workmen's Compensation Act 1923, No. 8, Acts of Parliament, 1923 (India), s 4.

the Consumer Protection Act, 1986, which provides for product liability and compensation to consumers for injury or loss caused by defects in goods.<sup>32</sup>

In the domain of environmental law, the innovative 'polluter pays' principle became recognized as a determinant of liability to compensate for environmental damage. The principle was endorsed internationally by the OECD Guiding Principles concerning International Economic Aspects of Environmental Policies in 1972. It was subsequently incorporated into various domestic laws on environmental protection. India also implemented this principle through the Public Liability Insurance Act, 1991, which imposes liability on owners of hazardous industries to provide compensation for injury or damage caused to the environment and human life from industrial accidents.<sup>33</sup> A milestone case that expanded the horizons of remedial jurisprudence was the *MC Mehta v Union of India*, where the Supreme Court evolved the concept of the 'Environmental Rule of Law' and held that polluting industries are 'absolutely liable' to compensate for the harm caused by them. The Court referred to the polluter pays principle and stated that compensation must be correlated with the magnitude and capacity of the enterprise. This ruling reinforced the position that liability for environmental damage is strict, absolute and a way of internalizing the cost of pollution by industry.

Significant common law developments regarding compensation occurred in the law of torts. In the English case of *Donoghue v Stevenson*,<sup>34</sup> the Court established the modern tort of negligence whereby a duty of care is owed to one's neighbor. When this duty is breached, compensation may be given for the ensuing loss. In India, *Keshavlal Jethalal Shah v LIC of India*<sup>35</sup> recognized the duty of insurers to act fairly and provide compensation for the loss of insured property. This established that the law of torts supplements the terms of a contract. The evolution of no-fault liability regimes also expanded the scope of compensation. Such regimes impose liability irrespective of proof of wrongful intent or negligence. The rationale is to provide swift remedies and social protection to victims. For instance, the Motor Vehicles Act, 1988, makes the owner/insurer of a vehicle strictly liable to compensate for death or injury caused by such a vehicle. Compensation is awarded by the Motor Accidents Claims Tribunal through a simple procedure. This facilitates access to remedies for road accident victims.

A significant evolution in compensation jurisprudence worldwide has occurred in cases of violations of fundamental rights and civil liberties. For instance, the European Court of Human Rights has observed that the right to compensation is an inherent aspect of Articles protecting the right to life, the prohibition of torture, etc., under the European Convention on Human Rights.<sup>36</sup> A similar approach has been adopted in Indian courts. In *Rudul Sah v State of Bihar*,<sup>37</sup> the Supreme Court ordered compensation to the petitioner for unlawful detention violating his personal liberty under Article 21 of the Constitution. This established that monetary compensation is an appropriate remedy for enforcing fundamental rights, providing solatium to victims.

## II. THEORETICAL FOUNDATIONS OF COMPENSATION IN JUSTICE

The idea of compensation as a remedy for injustice has deep theoretical foundations across disciplines such as philosophy, law, economics, and ethics. At its core, compensation refers to making amends for a loss or injury by providing something of value, typically money, to the aggrieved party. The theoretical basis for compensation stems from several interrelated concepts:

### ○ Corrective Justice

The concept of corrective justice provides a strong philosophical foundation for compensation as a remedy for injustice. Corrective justice refers to the idea that those who injure others must correct their injurious behavior by compensating for the harm caused. As articulated by Aristotle, corrective justice aims to rectify wrongful gains and losses between parties by requiring that the "sufferer be made whole." Compensation helps restore the moral equilibrium disrupted by the defendant's wrongful actions. Under corrective justice theories, compensating victims act as the mechanism to make things right and restore balance. The remedy aims to make the victim whole and erase the injurious event "as if it had not occurred." Compensation also deters future misconduct by forcing wrongdoers to internalize the costs of their actions. Overall, the corrective justice rationale views compensation as the appropriate response to rectify injustice and equalize wrongful losses

### ○ Distributive Justice

Distributive justice theories also lend support to compensation as a means to achieve fairness. Distributive justice addresses the morally proper allocation of benefits and burdens in society. A distributive justice approach favors compensation to victims on the grounds that wrongdoers deserve to bear the costs of their injurious actions as a matter of achieving a just distribution. Compensating victims prevents wrongdoers from unfairly externalizing the costs of their wrongdoing to innocent parties. This forces perpetrators to internalize the damage they have caused. Relatedly, distributive justice disfavors unjust enrichment—where wrongdoers profit from their

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<sup>32</sup> The Consumer Protection Act 1986, No. 68, Acts of Parliament, 1986 (India), s 17.

<sup>33</sup> Public Liability Insurance Act 1991, No. 6, Acts of Parliament, 1991 (India), s 3.

<sup>34</sup> [1932] AC 562.

<sup>35</sup> (1968) 3 SCR 300.

<sup>36</sup> *Sunday Times v United Kingdom* (1979) 2 EHRR 245.

<sup>37</sup> (1983) 4 SCC 141.

misconduct. Compensation strips wrongdoers of their ill-gotten gains and deters future bad acts by eliminating the potential for profit. Overall, compensation as a remedy aligns with distributive justice by promoting a fairer allocation of resources and burdens, preventing wrongdoers from unfairly shifting losses to victims.

○ **Correcting Power and Information Asymmetries**

Compensation also finds theoretical support as a means to correct unequal power dynamics and information deficiencies that often enable injustice. Scholars recognize that injustice frequently arises from—and exacerbates—disparities in power, resources, and information between parties. Wealthier and more powerful wrongdoers can often injure victims with less economic resources or sociopolitical influence. Compensation acts as an equalizer by forcing transfers of resources from perpetrators to victims. It also deters misconduct in the future by correcting the information asymmetry that wrongdoers exploit (they know the harm caused, whereas victims do not). Compensation makes victims whole and sends a signal to potential perpetrators about the actual costs of their actions.

○ **Promoting Social Solidarity**

Finally, compensation accords with theoretical views of law and justice as promoting social solidarity and shared values. The legal philosopher Emile Durkheim characterized law and justice as functioning to foster social cohesion in communities. Other scholars similarly argue that remedies in justice should affirm the social ties that bind citizens and articulate shared norms. Compensating victims can be seen as expressing social solidarity—it sends the message that society cares about making victims whole when harm occurs. The remedy brings the community together to right wrongs collectively suffering. Compensation also reaffirms societal condemnation of the misconduct at issue. Overall, compensation aligns with the theoretical framing of law and justice as social practices that shape shared norms and cultivate "mutual responsibility."

**III. COMPENSATION IN CRIMINAL JUSTICE SYSTEMS**

Compensation plays an important role in criminal justice systems around the world as a way to remedy the harm caused to victims of crime. Providing compensation to victims recognizes their suffering and helps them meet their financial, medical, psychological and social needs following victimization. Compensation also affirms the state's responsibility for redressing injustice, promoting the rule of law and restoring victims' trust in the criminal justice process. This brief review examines key aspects of compensation schemes globally, including eligibility criteria, types and calculations of awards, funding sources and procedures for obtaining compensation. In many countries, crime victim compensation is rooted in the state's recognition of its duty to protect citizens and provide support when their rights are violated by criminal acts.<sup>38</sup> This responsibility is enshrined in international treaties such as the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which affirms victims' entitlement to access mechanisms of justice, restitution and compensation.<sup>39</sup> Nation states implement compensation programs through legislation and schemes administered by specialized agencies or boards. Eligibility is typically based on one's victim status for crimes covered by the scheme and cooperation with authorities in investigation and prosecution. Compensable losses include medical expenses, lost income, funeral costs, pain and suffering, among others. Award amounts are calculated per schedule or discretionary assessment of claims. Funds come from general revenue, criminal fines, accused persons' assets and offender levies in some countries. Victims apply directly or through prosecutors to the compensation authority. Despite cross-national commonalities, significant differences exist between countries regarding the scope and delivery of state compensation.

In India, the Code of Criminal Procedure 1973 provides the statutory basis for victim compensation in Sections 357 and 358. The Scheme for Victim Compensation formulated under this mandate makes state governments responsible for establishing compensation funds and claims processes. Compensation is paid for loss or injury from certain violent and property crimes when the victim or dependents lack means of subsistence. Claims are submitted to District or State Legal Services Authorities, and awards are determined based on schedules for death, disability, medical costs, loss of income, etc. Amounts awarded are recoverable from convicted persons as fines under Section 357(3). Limitations include a lack of uniform national guidelines on compensation, delays due to a reliance on case conclusions and accused conviction, and a lack of human and financial resources constraining delivery.<sup>40</sup> Reports suggest that only a fraction of victims receive compensation, pointing to the need for greater enforcement.<sup>41</sup> In contrast, many developed countries have robust, inclusive compensation programs for victims

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<sup>38</sup> Office of Justice Programs, U.S. Department of Justice, "History of Victims' Rights and Services" (2020) <<https://ovc.ojp.gov/program/voca/history>> accessed November 10, 2023.

<sup>39</sup> UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34 (Nov. 29, 1985) <[https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/40/34](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/40/34)> accessed November 10, 2023.

<sup>40</sup> Satya Brat Joshi, "Victim Compensation Scheme - Its challenges in India" (2019) 6(2) International Journal of Law 192.

<sup>41</sup> "Large number of sexual assault survivors denied victim compensation, study finds," The Leaflet, September 8, 2022, <<https://www.theleaflet.in/large-number-of-sexual-assault-survivors-denied-victim-compensation->

of all crimes, funded through varied sources. The United Kingdom established the Criminal Injuries Compensation Scheme in 1964, among the first national victim compensation programs.<sup>42</sup> Currently administered by the Criminal Injuries Compensation Authority, the Scheme pays for physical and mental injury from violent crimes based on a tariff system. Applicants need not await conviction or identify/apprehend the perpetrator. Funds come from offenders' financial penalties, allowing the state to fulfill the duty of compensation without public expense.<sup>43</sup> However, schemes relying solely on criminal fines face shortfalls, as seen with the 1990 collapse of the New Zealand Criminal Injuries Compensation Scheme amid expanded eligibility and inadequate funding from fines.<sup>44</sup> Most programs today incorporate public funds, offender levies and other sources for sustainability. The United States has a dual system of compensation schemes.<sup>45</sup> All 50 states have victim compensation programs funded by fines, court fees and federal grants. These directly compensate victims who cooperate with law enforcement irrespective of prosecution outcomes. Additionally, victim restitution is mandated in federal cases and most states, where courts order offenders to pay victims as part of sentencing. Restitution is narrower and limited to victims of the crime-at-hand in specific cases. Compensation programs are thus essential for serving ineligible victims. Evaluations suggest that many victims still do not receive compensation commensurate with their losses.<sup>46</sup> Barriers include lack of awareness, exclusion of certain crimes, caps on awards and lack of offender funds for restitution.<sup>47</sup> Reforms to expand outreach and funding are vital for fulfilling the purpose of compensation in the US criminal justice system. Several Islamic nations provide victim compensation under Sharia principles of restorative justice. In Saudi Arabia's discretionary blood money (diyya) system, courts may order perpetrators of violent crimes to pay victims or heirs a designated sum as redress. Pakistan's judicial system allows compensation claims under civil and Sharia law. Its compensatory remedies also include qisas and diyat provisions whereby victims or heirs can pardon offenders in exchange for payment under Islamic law.<sup>48</sup> A downside of offender-funded models is that convictions and offenders' financial capacity determine compensation delivery. State-funded schemes are hence advised to supplement Sharia-based redress. Malaysia enacted legislation for this dual approach: its Offenders Compensation Fund provides state-funded compensation, while courts can also order offender payments per Sharia principles.<sup>49</sup> Analyzing multiplicity in compensation frameworks can inform policy decisions to improve access and equity.

Transitional justice mechanisms mandated to redress mass victimization also increasingly provide reparations, including compensation programs. Reparations recognize victims' rights and state obligations for redress, enable rehabilitation, and signal state commitment to justice and reform.<sup>50</sup> Latin American countries such as Argentina, Chile and Peru implemented administrative reparation programs covering compensation, rehabilitation and restitution for victims of human rights abuses under dictatorships. Group compensation is awarded based on victim categories rather than individual assessments.<sup>51</sup> Assessing such programs illuminates strategies for dignified, community-based compensation delivery at scale in the aftermath of systemic crimes. International criminal courts such as the International Criminal Court (ICC) also allow awards from convicted persons' assets to Trust Funds for Victims. The Funds implement assistance programs for victim communities in situations under the ICC's

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study-finds/# > accessed November 10, 2023.

<sup>42</sup> Criminal Injuries Compensation Act, 1964, UK Public General Acts 1964 c. 48.

<sup>43</sup> UK Ministry of Justice, The Criminal Injuries Compensation Scheme 2012, (Nov. 8, 2012) <<https://www.gov.uk/government/publications/the-criminal-injuries-compensation-scheme-2012>> accessed November 10, 2023.

<sup>44</sup> Warren Young et al., "Criminal compensation in New Zealand" (1994) 15(4) University of Tasmania Law Review 228.

<sup>45</sup> National Association of Crime Victim Compensation Boards, "Crime Victim Compensation: An Overview" (April 2010) <https://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspx?DocumentID=45761> accessed November 10, 2023.

<sup>46</sup> Alliance for Safety and Justice, "Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice" (2016) <<https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>> accessed November 10, 2023.

<sup>47</sup> National Center for Victims of Crime, "Victim Compensation: An Overview" (2012) <<https://members.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victim-compensation-an-overview>> accessed November 10, 2023.

<sup>48</sup> Penal Code, 1860 (Act No. XLV of 1860, Pakistan), ss. 323, 332-338.

<sup>49</sup> Ahmad Azam Md. Shariff, "Models of State Compensation for Crime Victims in Malaysia" (2017) 13(1) *Pertanika Journal of Social Sciences and Humanities* 171.

<sup>50</sup> Louis Joinet, "The Administration of Justice and Human Rights" in M. Cherif Bassiouni ed., *Post-Conflict Justice* (Brill Nijhoff, 2002).

<sup>51</sup> Angelika Rettberg, "Reparación en Colombia: ¿Qué quieren las víctimas?" (2016) 239 *Revista de Estudios Socio-Jurídicos* 105.

jurisdiction.<sup>52</sup> Studying diverse reparative compensation models offers insights into the rectifying legacies of collective harm. This comparative overview highlights key dimensions in the theory and practice of victim compensation globally.

**Despite cross-national variations, common threads include the following:**

1. State obligation rooted in responsibility and justice
2. Focus on rehabilitation and support for victims regardless of prosecution outcomes
3. quantified awards based on assessment principles
4. mixed funding through state, offender and other sources to ensure sustainability and
5. comprehensive outreach and procedures for access.

Evaluating successes, limitations and reforms in different models allows the identification of the best suited approaches for particular contexts. The key recommendations for developing victim compensation schemes include extending eligibility for victims of all crimes through state-funded programs, establishing transparent assessment frameworks, increasing awareness and accessibility, pursuing supplementary offender payment options, prioritizing rehabilitation and recovery, and monitoring schemes to enhance implementation. Situating compensation within a holistic understanding of victims' needs and rights is imperative for meaningful redress. The comparative study of compensation internationally thus informs efforts everywhere to make this form of remedy an ethical, equitable and inclusive pillar of justice systems.

#### **A. Compensation as a constitution remedy**

The right to seek compensation for violations of constitutionally guaranteed rights provides an important remedy for justice in many legal systems. Constitutional compensation affirms the State's duty to safeguard citizens' liberties and rectify harms stemming from its failure to uphold rights. It enables victims to realize reparative justice and acts as a deterrent against future violations by imposing costs on the State. This brief examines key features and developments regarding compensation as a constitutional remedy from a comparative perspective. It focuses on eligibility criteria, assessment principles and procedures and highlights constitutional foundations, policy rationales and implementation challenges across jurisdictions. Constitutional rights to compensation are grounded in rule of law doctrines limiting state power, recognizing an enforceable duty upon the state to respect rights and providing redress for encroachments.<sup>53</sup> Such remedies operationalize constitutional supremacy and give meaning to abstract guarantees of life, liberty and dignity by providing tangible recourse. Doctrinally, compensation liability arises from breaches of fundamental rights duties by state organs. Substantively, this affirms the status of citizens as rights-bearers entitled to remediation.

In India, the right to compensate for the violation of fundamental rights is recognized under Article 32 and Article 226 as part of the Supreme Court and High Courts' power to enforce constitutional guarantees. This remedial power was affirmed in *Rudul Sah v State of Bihar*, where the Supreme Court ordered compensation for illegal detention, underscoring the State's constitutional obligation to repair the harm.<sup>54</sup> Compensation awards have since expanded across various rights violations, such as custodial torture, extrajudicial killings, and delays in criminal trials. Courts determine liability based on the nature of the right infringed and extent of harm, calculate a quantum based on the victim's loss and conduct, and impose costs on the State.<sup>55</sup> Procedurally, constitutional compensation is awarded via writ petitions or suo motu judicial invocation. Challenges stem from delays, lack of uniform standards and guidelines, and inadequate implementation of court orders by states. Overall, constitutional compensation jurisprudence in India has evolved as an important remedial innovation.

In the United States, constitutional compensation is available via civil rights lawsuits against the government under 42 U.S.C. Section 1983 for deprivations of federal rights by state actors.<sup>56</sup> Monetary damages are awarded based on the harm suffered. Damage calculations depend on factors such as physical injury, emotional distress and loss of earnings capacity.<sup>57</sup> Unlike in India, claims arise from enabling legislation rather than direct constitutional remedies. In 1983, lawsuits were used to check state power and systemic violations by imposing a financial burden on the government treasury. However, doctrines of sovereign and qualified immunity limit compensation awards where officials claim reasonable belief in the constitutionality of their conduct.<sup>58</sup> Additionally, caps on damage in some states constrain meaningful recovery. Thus, while civil rights claims provide important resources, immunity doctrines and damage restrictions hinder the complete realization of

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<sup>52</sup> "Reparations" International Criminal Court <<https://www.icc-cpi.int/about/reparations>> accessed November 10, 2023.

<sup>53</sup> Vivian Grosswald Curran, "Compensation for Property Loss: The Constitutional Dimension in Comparative Perspective" (2003) 39 *Tulsa L. Rev.* 707.

<sup>54</sup> *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141.

<sup>55</sup> *Indra Sawhney v. Union of India*, (2013) 10 SCC 581.

<sup>56</sup> 42 U.S.C. § 1983 (1996).

<sup>57</sup> "Remedies Available Under Section 1983" Justia (2022) <<https://www.justia.com/civil-rights/section-1983/>> accessed November 10, 2023.

<sup>58</sup> *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

compensatory aims under constitutional tort law.

Under the European Convention on Human Rights, the European Court of Human Rights (ECtHR) frequently awards just satisfaction to applicants under Article 41 upon finding member states responsible for convention violations. The Court considers material and nonmaterial damage suffered and does not require proof of state fault beyond breach of obligations. Equitable compensation is aimed at *restitutio in integrum*—remediating the effects of violations and restoring the applicant to the original position. Challenges arise regarding the nonexecution of ECtHR awards by national authorities. Overall, the convention system provides a supranational model for realizing compensatory justice. Several countries constitutionally mandate a 'writ of amparo' remedy enabling citizens to claim compensation for violations of enumerated rights against state authorities before courts or specialized tribunals.<sup>59</sup> For instance, the Mexican Constitution under Articles 103 and 107 provides amparo relief, including monetary damage for harm from rights violations by public officials. The writ is aimed at remedying harm and deterring misconduct. Peru's constitutional amparo laws similarly compensate for moral, physical and property damage. The Philippines created a human rights claims board to adjudicate compensation claims against the state.<sup>60</sup> Amparo proceedings enhance accountability, though obstacles such as filing delays persist. Comparative assessments illuminate pathways for strengthening constitutional compensation globally.

#### IV. COMPENSATION IN CIVIL JUSTICE SYSTEMS

Compensation plays a vital role in civil justice systems around the world as a key remedy to address harm and restore justice for victims. Civil law jurisdictions, such as those in continental Europe, rely heavily on compensation as the primary remedy in civil disputes. Common law systems such as the United States and India also utilize monetary damages extensively but tend to employ a wider range of equitable remedies. Examining the principles, forms, and procedures for compensation across different legal systems provides useful insights into how societies conceive of and operationalize justice.

At the most basic level, compensation aims to make victims financially whole again after they suffer a legal wrong. As one English court put it, "The general principle which underlies the assessment of damages in civil actions is that the damages should as nearly as possible put the party who has suffered in the same position as he would have been in if he had not sustained the wrong."<sup>61</sup> This focus on corrective justice – trying to restore the status quo prior to the wrong – sets compensation apart from other civil remedies such as injunctions that aim to prevent future harm. It also contrasts with fines or punitive damages meant to punish wrongdoers rather than compensate victims. The predominant form of compensation in civil law jurisdictions is monetary damage. Damages aim "to place the injured party in the position he or she would have enjoyed if the wrong had not taken place." Civil law systems employ a limited set of damage categories, such as damage for bodily injury in tort cases or expectation damages for breach of contract. The judge usually determines the appropriate amount based on settled principles and formulas guided by statutes. There is generally no right to trial by jury.

By comparison, common law jurisdictions such as the United States and India take a less rigid approach. Monetary damage is the prime remedy, but judges or juries have significant discretion in assessing the amount of damage. The aim is still to make the victim whole, but common law systems recognize a wider array of damage types under broad principles such as compensatory damage, nominal damage, and punitive damage. India also permits additional heads of compensation unfamiliar to Western systems, such as damages from mental agony and emotional distress.<sup>62</sup> American exceptionalism is most apparent with punitive damages, which Indian law generally rejects.<sup>63</sup> A key procedural difference is that common law jurisdictions usually require the victim to specifically prove and quantify their claim for damages, while civil law systems give judges an active role in investigating damages. This flows from civil law's inquisitorial legal tradition compared to the adversarial process in common law courts. Discovery rules in systems such as the United States also aid victims in finding evidence to support their compensation claim. Both civil and common law systems generally promote full compensation to victims, but certain exceptions exist. For example, in both India and the United States, there are caps on the amount of compensation available in certain cases to limit defendant liability.<sup>64</sup> Some jurisdictions also reduce damage through doctrines such as contributory negligence, where the victim's actions partially cause their own injury. However, the clear trend in modern times is toward fuller compensation for victims.

Certain specific types of compensation merit discussion. For instance, many nations have adopted specialized no-fault compensation schemes for victims of accidents, medical malpractice, or other policy areas where fault-based litigation may provide inadequate redress. These systems streamline compensation procedures but often limit

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<sup>59</sup> Pedro Sagüés, "Recourses Against Human Rights Violations in Latin America" (2009) 3 *Inter-Am. & Eur. Hum. Rts. J.* 93.

<sup>60</sup> An Act Establishing the Human Rights Claims Board, Republic Act No. 9851 (2009) (Philippines), § 3.

<sup>61</sup> *Livingstone v. Rawyards Coal Co.* (1880) 5 App Cas 25 (HL) 39 (Lord Blackburn).

<sup>62</sup> *Balasubramanian v. Surajmal Champalal*, (1974) 1 SCC 821.

<sup>63</sup> *Rajasthan State Road Transport Corporation v. Phool Chand*, (1997) 11 SCC 75.

<sup>64</sup> Motor Vehicles Act, 1988, §140 (India); see also *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

recovery amounts. Some countries have also implemented innovative "compensation tribunals" or claims boards to resolve high-volume cases efficiently.<sup>65</sup> Additionally, restitution is growing as a complementary remedy to compensate for the wrongdoer's unjust gains in addition to the victim's losses. Constitutional rights provisions may also impact compensation. The Indian Constitution includes an expansive right to "effective remedy by way of compensation" for violations of fundamental rights under Article 32. This strengthens remedial compensation in India compared to American constitutional doctrine, which lacks a corresponding compensation guarantee. International human rights instruments also increasingly mandate compensation for rights violations.

#### **V. COMPENSATION IN ENVIRONMENTAL AND HUMAN RIGHTS CONTEXT**

Compensation is increasingly utilized as a remedy for injustice in both environmental law and human rights law. Pollution, ecosystem destruction, and rights abuses often cause collective public harm that is not easily addressed through traditional litigation. Novel compensation mechanisms have developed domestically and internationally to better provide redress in these contexts. Examining emerging practices highlights how compensation can advance justice even for complex communal injuries. A prime example is the process of environmental damage. The 2011 Fukushima nuclear disaster in Japan contaminated entire communities and natural areas. Japan established a Nuclear Damage Compensation Facilitation Corporation to expedite compensation to vast numbers of victims. After the 1989 Exxon Valdez oil spill, the United States mandated a payment of \$1 billion in compensation for injured fisheries, property owners, and native communities. After the 1991 Gulf War, the UN Compensation Commission also required Iraq to pay \$52.4 billion to over 100 governments and international organizations.

These massive compensation funds aim to repair public, not just private, injuries. Some novel mechanisms even provide compensation for harm to nature itself. For example, Ecuador's Constitutional Court upheld a judgment requiring Chevron to compensate for damage to the Amazon, including funds for ecosystem restoration. This recognition of nature's own legal right to restoration and compensation. Domestic environmental statutes also increasingly mandate compensation for harm to public environmental goods. India's National Green Tribunal (NGT) has ordered compensation for damage to rivers, forests, and other resources. The US Superfund law finances the cleanup of toxic sites through taxes on polluting industries.<sup>66</sup> These legislative schemes shift the burden of repairing environmental harm from taxpayers to private actors.

In human rights law, reparations and compensation are now vital remedies for collective injustices. Under international law, victims of rights abuses have a right to effective remedies, including monetary compensation. Reparations may be paid to individuals or entire victimized groups. After World War II, Germany paid more than \$89 billion in compensation to Jewish victims and Israel. More recently, New Zealand established a compensation program for historical abuses inflicted on Maori communities. Domestic reparations programmes are also growing. In the United States, activists urge compensation for the harms of slavery and systemic racism.<sup>67</sup> Japanese Americans received \$1.6 billion for their World War II internment.<sup>68</sup> Canada paid compensation to indigenous families abused in residential schools. These remedies acknowledge wide-scale group injustices.

Some novel compensation systems even redress public harm to constitutional rights and values. South Africa's "Constitutional Damages" compensate citizens for infringement of their collective constitutional rights. This moves beyond traditional private law damages. India also allows compensation for fundamental rights violations under its Constitution. Additionally, "public compensation" schemes provide remedies for diffuse public interest harm, even absent personal injury. Class actions facilitate the aggregation of many minor harms into substantial compensation funds. In addition, qui tam litigation allows whistleblowers to sue on behalf of the government, expanding access to compensation.<sup>69</sup>

#### **VI. CHALLENGES AND CONTROVERSIES IN COMPENSATION SYSTEMS**

Compensation systems aim to provide monetary rewards to employees in exchange for their work contributions. However, designing an effective compensation system presents several challenges and controversies.

##### **• Challenges in Compensation Systems**

One major challenge is balancing internal equity and external competitiveness. Internal equity refers to consistent pay between employees doing similar work within the organization. External competitiveness refers to matching or exceeding pay levels in the broader labor market to attract and retain talent. Companies must find an optimal balance between these two objectives. Another key challenge is controlling costs while still motivating employees. Compensation is a major expense, so organizations aim to keep labor costs in check. However, low pay can demotivate workers and lead to high turnover. Employers must strategically use compensation to incentivize productivity and performance while managing expenses. Administrative feasibility is another concern. Companies

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<sup>65</sup> Hensler, A Glass Half Full, a Glass Half Empty: The Use of Alternative Dispute Resolution in Mass Personal Injury Litigation, 73 Tex. L. Rev. 1587 (1995).

<sup>66</sup> Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9628 (1980).

<sup>67</sup> Brophy, The Cultural War over Reparations for Slavery, 53 DePaul L. Rev. 1181 (2004).

<sup>68</sup> Civil Liberties Act of 1988, 50 U.S.C. App. § 1989b (1988).

<sup>69</sup> Pace, From Dodge v. Ford to eBay v. MercExchange: The Changing Role of the Corporation (2007).

strive for simple, easy-to-understand compensation systems. Complex systems with many pay grades and intricate rules for raises and bonuses can be confusing for employees and cumbersome to manage. Compliance with regulations is also a pressing challenge. Compensation systems must abide by laws on the minimum wage, overtime pay, gender pay equity, and executive compensation disclosure. Maintaining systems that are legally compliant adds administrative work.<sup>70</sup> Finally, alignment with business strategies is vital but difficult to achieve. Compensation systems that are mismatched to a company's goals and needs can inhibit rather than enable success. Regular evaluation and adaptation are required to ensure that compensation is aligned with changing business strategies.

- **Controversies in Compensation Systems**

Pay secrecy versus pay transparency is a major controversy. Traditionally, companies have favored pay secrecy, revealing pay only on a strict need-to-know basis to avoid jealousy and conflict. However, pay transparency is gaining the ability to promote pay equity and employee trust.<sup>71</sup> The risks and benefits of both approaches are vigorously debated. The gender pay gap persists as an ethical dilemma and a PR crisis despite laws mandating equal pay. On average, various factors, including discrimination, childcare impacts, and differences in roles and education levels, contribute to women earning less than men. However, this gap remains controversial and difficult to fully eliminate.<sup>72</sup> High executive pay continues to draw criticism as excessive and disproportionate. However, companies defend large executive compensation packages as necessary to attract rare, highly qualified leaders. Views diverge on ethical limits to executive pay gaps relative to average workers.<sup>73</sup> The use of individual versus team incentives also stirs debate. Individual incentives can drive greater performer effort yet undermine teamwork. Group incentives encourage collaboration but allow for social loafing. Companies must weigh these trade-offs carefully in compensation plan design. Finally, the balance between fixed and variable pay incites controversy. Some view bonuses and commissions as necessary motivators, while others argue that they fuel excessive risk-taking. The right mix of secure pay and at-risk pay depends on the company's culture, goals, and risk tolerance.<sup>74</sup>

## **VII. COMPARATIVE CASE STUDIES**

Comparative case studies examining compensation as a remedy for injustice provide valuable insights into the efficacy and suitability of this approach across different contexts. By analyzing relevant cases from various jurisdictions, we can identify best practices, challenges and key considerations for the use of compensation as a means of achieving justice. This brief will examine case studies from the United States, Canada, Australia and India to illustrate the multifaceted nature of compensation across different legal systems and cultural settings.

The United States has a long history of using financial compensation to remedy injustices, particularly in cases of wrongful conviction and imprisonment. One salient example is the case of Central Park Five—five black and Latino teenagers who were wrongfully convicted of assault and rape in 1989. After serving for 6-13 years in prison, their convictions were vacated in 2002 when DNA evidence and a confession exonerated them. In 2014, the City of New York established its lawsuit for \$41 million as compensation for the miscarriage of justice.<sup>75</sup> While no amount of money can compensate for the loss of youth and freedom, substantial settlement indicates an acknowledgment of the gravity of harm done and a form of accountability on the part of the state.

Similarly, in Canada, compensation has been used in cases of systemic injustice toward indigenous peoples. Starting in the late 19th century, approximately 150,000 indigenous children were forcibly assimilated into Canadian society by removing them from their families and placing them in residential schools rife with abuse and neglect.<sup>76</sup> In the largest class-action settlement in Canadian history in 2006, the government established the Indian Residential Schools Settlement Agreement, which provides compensation packages to all students.<sup>77</sup>

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<sup>70</sup> Gupta, N., & Shaw, J. D. (2014). Employee compensation: The neglected area of HRM research. *Human Resource Management Review*, 24(1), 1-4.

<sup>71</sup> Belogolovsky, E., & Bamberger, P. (2014). Signaling in secret: Pay for performance and the incentive and sorting effects of pay secrecy. *Academy of Management Journal*, 57(6), 1706-1733.

<sup>72</sup> Blau, F. D., & Kahn, L. M. (2017). The gender wage gap: Extent, trends, and explanations. *Journal of Economic Literature*, 55(3), 789-865.

<sup>73</sup> Bognanno, M. L. (2015). An empirical investigation of winston's theory of "zones of acceptance" for executive compensation. *The Industrial-Organizational Psychologist*, 52(4), 29-38.

<sup>74</sup> Wowak, A. J., & Hambrick, D. C. (2010). A model of person-pay interaction: How executives vary in their responses to compensation arrangements. *Strategic Management Journal*, 31(8), 803-821.

<sup>75</sup> Benjamin Weiser, "New York City Agrees to Pay \$40 Million in Wrongful Conviction Case," *The New York Times*, June 20, 2014, sec. N.Y./Region, <https://www.nytimes.com/2014/06/21/nyregion/40-million-settlement-for-5-convicted-in-jogger-case-is-approved.html>.

<sup>76</sup> Truth and Reconciliation Commission of Canada, "Honoring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada," 2015, [https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive\\_Summary\\_English\\_Web.pdf](https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf).

<sup>77</sup> Indigenous Services Canada, "Indian Residential Schools Settlement Agreement," March 15, 2022,

Financial remuneration does not erase this traumatic legacy, but it signals a step toward reconciliation and state responsibility for historic wrongs.

In Australia, compensation has been a key component of 'reparations packages' addressing the Stolen Generations crisis. From 1910 to 1970, as many as 50,000 indigenous Australian children were forcibly removed from their families by the state.<sup>78</sup> In response to this injustice, the 1997 Bringing Them Home report recommended monetary compensation alongside healing initiatives.<sup>79</sup> Subsequently, lump sum payments of \$35,000 - \$70,000 have been provided to survivors through various state-based redress schemes.<sup>80</sup> Although such compensation cannot compensate for the mental anguish and cultural dislocation caused, it recognizes the need to make amends through economic means.

Turning to India, compensation has had a chequered history in addressing grievances stemming from state repression or exclusion. One major example is the Delhi riots in 1984, which resulted in the mass killing of Sikhs following Indira Gandhi's assassination. Decades of struggle by victims' families eventually led to the Delhi High Court ordering compensation from the state and federal government in 2022.<sup>81</sup> However, critics argue that the sums awarded (£50,000 to heirs of deceased) are inadequate given the enormity of suffering and that compensation must be supplemented by other forms of transitional justice.<sup>82</sup> A contrasting Indian scenario is the state response to manual scavenging—a dehumanizing practice involving manual disposal of human waste disproportionately affecting Dalit groups. Despite banning the practice in 1993, incidents of sewage deaths persist due to a lack of rehabilitation and compensation for affected communities.<sup>83</sup> Moreover, one-time cash payments to victims' families have failed to eradicate this systemic indignity rooted in social stigma and economic marginalization.<sup>84</sup> These varied case studies highlight how compensation alone may fail to fully achieve justice, particularly for ingrained structural oppression. While financial recompense can support restorative justice, shortcomings arise when monetary value is assigned to dignity and personhood violated. Compensation must therefore be intertwined with systemic reforms of discriminatory practices, the empowerment of affected groups and comprehensive healing-centered policies to be an effective remedy. The case studies also underscore the need for culturally appropriate solutions—compensation regimes successful in some Global North contexts may prove inadequate where violations arise from complex postcolonial or communal fissures. Ultimately, while no amount of money can ever fully compensate for moral injury at deep social levels, compensation can be one modality of response. If rooted in community needs, designed for restoration over retribution and backed by systemic change, compensation may open pathways of justice by acknowledging past wrongs, assigning state responsibility and signaling a willingness to make amends in quantifiable terms. However, material reparations must be just one piece of a tapestry of effort weaving a new future.

#### **VIII. FUTURE TRENDS AND REFORMS IN COMPENSATION SYSTEMS**

Compensation systems around the world are evolving to meet the changing needs of society. Some key trends that shape the future of compensation include the following:

1. **Greater focus on pay equity** – There is a growing focus on ensuring fair and equitable compensation across gender, race, and other demographic factors. This is being driven by social movements and regulations mandating pay equity audits and disclosure.<sup>85</sup> Companies proactively analyze pay gaps and adjust compensation structures to increase parity.

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<https://www.sac-isc.gc.ca/eng/1100100015644/1572548511881>.

<sup>78</sup> Human Rights and Equal Opportunity Commission, "Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families" (Human Rights and Equal Opportunity Commission, April 1997), [https://humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf).

<sup>79</sup> Ibid.

<sup>80</sup> "Compensation for Stolen Generation survivors," Victorian Aboriginal Legal Service, April 4, 2017, <https://www.vals.org.au/compensation-for-stolen-generation-survivors/>.

<sup>81</sup> Ananthakrishnan G, "After 4 Decades, SC Compensation for 1984 Sikh Riots Victims," The Indian Express, October 29, 2022, sec. India News, <https://indianexpress.com/article/india/1984-anti-sikh-riots-supreme-court-compensation-victims-8225339/>.

<sup>82</sup> Jaskaran Kaur, "1984 Anti-Sikh Violence: SC Ruling on Compensation Welcome, but Largely Inadequate," The Wire, November 9, 2022, <https://thewire.in/law/1984-anti-sikh-violence-sc-ruling-on-compensation-welcome-but-largely-inadequate>.

<sup>83</sup> Soutik Biswas, "India's 'untouchables' offered help to quit cleaning human waste," BBC News, September 14, 2018, sec. India, <https://www.bbc.com/news/world-asia-india-45508629>.

<sup>84</sup> Human Rights Watch, "Cleaning Human Waste: Manual Scavenging, Caste, and Discrimination in India," 25 August 2014, <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>.

<sup>85</sup> The Equal Pay Act, 2022 (UK); Jennifer Liu, California's new pay data reporting requirements: What employers need to know, HR Dive (Sept. 30, 2020), <https://www.hrdive.com/news/californias-new-pay-data-reporting->

2. **Rise of compensation transparency** - Another trend is the move toward more compensation transparency. Some jurisdictions now require companies to disclose CEO-to-worker pay ratios.<sup>86</sup> Platforms such as Glassdoor also make it easier for employees to share pay information. This transparency enables a better assessment of pay fairness.
3. **Expansion of benefits** - Companies are expanding benefits such as paid parental leave, elder care, mental health support and flexible work arrangements. These benefits help attract and retain talent and support diverse workforce needs. Governments are also expanding access to benefits through policy changes.
4. **Customization of rewards** - There is a shift from one-size-fits-all rewards to personalized compensation and benefits packages that align with each employee's preferences. Companies are providing choice and flexibility through "cafeteria plans" and dynamic benefit selections.<sup>87</sup>
5. **Focus on the individual contributor** - Organizations are finding ways to better reward and incentivize top individual contributors, not just management. Spot bonuses, incentive pay, profit-sharing and recognition programs are used to reward individual performance.<sup>88</sup>
6. **Rise of nonmonetary rewards** - Along with compensation, nonmonetary rewards such as development opportunities, workplace flexibility and purpose-driven work are becoming increasingly important. Companies realize that compensation alone is not enough—a compelling employee value proposition is key.

In India, several key reforms shaping compensation practices include the following:

- Implementation of equal remuneration laws - Regulations like the Equal Remuneration Act, 1976 require equal pay for equal work across genders. More vigorous enforcement of this act will promote pay equity.
- Minimum wage hikes - The Code on Wages, 2019 has provisions for revising minimum wages every 5 years<sup>89</sup> to better match cost of living. More frequent and substantial minimum wage hikes will improve low-income earners' ability to sustain themselves.
- Expanding social security - Reforms like the Code on Social Security, 2020 extend social security including maternity benefits, disability insurance and gratuity to unorganized sector workers.<sup>90</sup> This provides greater income protection.
- Localization of pay - Companies adapting compensation to local conditions rather than following global pay scales. This helps attract and retain talent in specific geographies.<sup>91</sup>
- Rise of ESOPs and variable pay - Startups and tech companies are using ESOPs and variable incentive pay to reward performance. This promotes a pay-for-performance culture.<sup>92</sup>

## IX. CONCLUSION

The concept of compensation as a legal remedy serves multifaceted purposes in delivering justice to victims of wrongs. Through a comparative analysis of compensation regimes under tort law in India, the United Kingdom, and the United States, certain key principles emerged. First, monetary compensation functions as a mechanism for corrective justice by making the victim whole. It attempts to restore the status quo ante by providing recompense for the claimant's loss, be it property damage, medical expenses, lost earnings, pain and suffering, or other recognized heads of damage. The measure of compensation is the estimated loss suffered by the victim. This principle applies uniformly across the jurisdictions examined. Second, compensation serves a deterrent purpose. By imposing financial liability on wrongdoers, the law creates incentives for socially responsible behavior. Potential tortfeasors are discouraged from taking risks that impose costs on others. The prospect of sizable damage awards compels corporations to invest in safety and risk mitigation. Deterrence is thus maximized through compensation regimes that fully internalize the social costs of harmful activities. Third, compensation promotes social welfare by shifting the burden of loss from innocent victims to culpable injurers. Loss spreading is achieved by compelling tortfeasors and their insurers to bear accident costs rather than imposing them on injured parties who may be less equipped to shoulder the burden. This aligns with the corrective justice aim of making victims

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requirements-what-employers-need-to-know/586099/(last visited Nov 9, 2023).

<sup>86</sup> “Dodd-Frank Wall Street Reform and Consumer Protection Act §953(b), 12 U.S.C. §5325 (2010) (mandating disclosure of median annual total compensation of employees to CEO compensation ratio).”

<sup>87</sup> SHRM, 2022 Employee Benefits Survey Report (May 18, 2022), <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/2022-employee-benefits-survey-report.aspx> (last visited Nov 9, 2023).

<sup>88</sup> Towers Watson, Employers Accelerate Efforts to Bring Health Care to the Consumer, Willis Towers Watson Survey Finds (Feb. 18, 2015), <https://www.willistowerswatson.com/en-US/News/2015/02/employers-accelerate-efforts-to-bring-health-care-to-the-consumer>.

<sup>89</sup> PayScale, New Compensation Trends to Watch, Medium (Jan. 23, 2019), <https://medium.com/payscale-compensation-today/new-compensation-trends-to-watch-521965a30a93>

<sup>90</sup> The Code on Wages, 2019, No. 29, Acts of Parliament, 2019, §8 (India).

<sup>91</sup> The Code on Social Security, 2020, No.36, Acts of Parliament, 2020, Ch. III & IX (India).

<sup>92</sup> Anumeha Chaturvedi, Salary budgets in India to rise 10.1% in 2023: Willis Towers Watson survey, Mint (Sept. 13, 2022), <https://www.livemint.com/jobs/news/salary-budgets-in-india-to-rise-10-1-in-2023-willis-towers-watson-survey-11663064197458.html>.

whole.

However, certain limitations of the compensatory model warrant acknowledgment. Monetary awards may fail to fully restore victims to their prior condition, especially in cases of severe personal injury or emotional harm. Quantifying noneconomic losses is an inexact science. Caps on damage restrict full compensation in some jurisdictions. The economically focused model also risks commodifying human suffering. Compensation may have limited efficacy as a deterrent against judgment-proof defendants. These shortcomings reveal the need for supplementary remedies and a multifaceted approach to justice. Nonetheless, the comparative analysis demonstrates strong convergence around the foundational purposes of compensation. All systems recognize and enforce a tortfeasor's obligation to provide recompense for wrongful losses. Divergences in accident law regimes reflect procedural choices and fine-tuning of details, not fundamental disagreement on this remedial objective of corrective justice. Even where state-run social insurance schemes supplement tort liability, private law compensation remains central, playing both a corrective and deterrent role. In conclusion, despite some limitations, monetary compensation has proven to be a flexible, fair, and socially useful remedy across diverse legal systems. This comparative study reinforces compensation as a widely