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# Preface

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# VICTIM COMPENSATION SCHEME IN INDIA: FROM RETRIBUTIVE JUSTICE TO VICTIM-CENTRIC JUSTICE

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## 1. ABSTRACT

This research examines the evolution of victim compensation in India's criminal justice system, tracing the shift from a retributive model to a victim-centric framework through the transition from Section 357 CrPC to Section 357A introduced by the 2008 Amendment, and further to the corresponding provisions under Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Employing doctrinal methodology, the study analyzes constitutional provisions, statutory enactments, and judicial pronouncements spanning three decades.

The paper evaluates the constitutional foundations in *Nilabati Behera v. State of Orissa*[1] and the 154th Law Commission Report's legislative influence. *Suresh v. State of Haryana*[2] established compensation as a statutory right independent of conviction; *Laxmi v. Union of India*[3] and *Acid Survivors Saahas Foundation v. Union of India*[4] further advanced protections for acid attack survivors.

Despite progressive developments including the BNSS 2023, critical implementation gaps persist: inter-state disparities (Rs.25,000–Rs.10 lakh), delays averaging 6–8 months against the 60-day mandate, and only 30–40% of eligible victims accessing compensation. The paper concludes that while India has achieved a legislative paradigm shift, the transition to restorative justice remains incomplete, necessitating uniform national standards, holistic rehabilitation, and robust enforcement mechanisms.

**KEYWORDS**

Victim Compensation; Section 357A CrPC; Restorative Justice; Victim-Centric Justice; Retributive Justice; NALSA Compensation Scheme; Central Victim Compensation Fund (CVCF); BNSS 2023; Judicial Interpretation; Implementation Challenges; State Legal Services

Authority (SLSA); District Legal Services Authority (DLSA); Acid Attack Survivors; 154th Law Commission Report;

# 2. INTRODUCTION

## 2.1. Background and Context

The question of what criminal law owes to a crime victim is as old as law itself, yet it has taken the better part of two centuries of modern jurisprudence to produce a coherent answer. Traditional criminal justice systems, built upon the adversarial model inherited from British colonial administration, oriented themselves almost entirely around the State-accused dyad: the State prosecutes, the accused defends, and the court adjudicates guilt or innocence. In this framework, the victim, the person upon whom the crime was actually committed, occupied no independent legal space. She appeared in the proceedings as a witness, her suffering admitted into evidence only insofar as it established the elements of the offence charged, and she departed the courtroom with whatever satisfaction the conviction of her assailant might provide, but rarely with anything more tangible.

The global reassessment of this position gathered momentum through the second half of the twentieth century, accelerated by the adoption of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985[5] and by a growing body of victimological scholarship that documented the compounded harms financial, psychological, and social that the criminal justice process itself inflicts upon those it ostensibly serves. India's constitutional framework, with its transformative guarantees under Articles 21, 14, 39A, and 41, furnished the domestic normative soil within which a victim-centric jurisprudence could take root even before the legislature had supplied the statutory framework to sustain it.

The trajectory of victim compensation in Indian criminal law reflects a gradual shift from the limited, conviction-dependent remedy under Section 357 CrPC to the transformative introduction of Section 357A in 2009, which imposed a mandatory, State-funded obligation for victim rehabilitation independent of conviction. This evolution is carried forward in the Bharatiya Nagarik Suraksha Sanhita, 2023. Yet, the transition remains incomplete, with a significant gap persisting between the statutory framework and the lived realities of victims making continued examination both urgent and necessary.

### 2.2. Statement of the Problem

The problem that animates this paper is not merely legislative inadequacy, it is structural invisibility. For the greater part of the post-independence period, the Indian criminal justice system treated the victim as a procedural instrument rather than a rights-bearing subject. The Malimath Committee on Reforms of the Criminal Justice System (2003) characterised the prevailing system as one that "weighed in favour of the accused" and remained insufficiently attentive to justice for the victims of crime.[6] The observation was not hyperbolic: in a system where only approximately sixteen percent of persons booked for criminal offences were finally convicted,[7] The victim whose case ended in acquittal or remained unresolved had, prior to 2009, no statutory entitlement to any form of State-funded relief whatsoever.

Section 357 CrPC, the sole pre-2008 compensation provision, suffered from three key limitations: it applied only upon conviction, was tied to the fine rather than actual loss, and remained discretionary, imposing no duty on courts. As a result, it was rarely invoked. Victims of serious crimes such as rape, acid attacks, custodial violence, and trafficking received no financial relief from the State despite severe harm.

The enactment of Section 357A CrPC in 2009 and its successor provision under Section 396 of the BNSS, 2023, represent the legislature's attempt to correct this deficit. However, the gap between statutory design and on-the-ground implementation inter-state disparities in compensation quantum ranging from Rs.25,000 to Rs.10 lakh for comparable injuries, bureaucratic delays averaging six to eight months against a statutory limit of sixty days, and estimates that only thirty to forty percent of eligible victims actually apply for compensation[8] suggests that the transition from retributive to victim-centric justice is a project still very much in progress.

### 2.3. Research Questions

This paper is structured around four interconnected research questions that together map the field from its normative foundations to its operational realities:

1. How has India traversed the conceptual and legislative distance from a retributive framework in which the punishment of the offender exhausts the State's obligation to a victim-centric one in which the State bears an independent duty of rehabilitation?
2. What is the constitutional and statutory framework that currently governs victim compensation in India, and what are its principal structural features?
3. What has been the role of the judiciary in shaping victim compensation jurisprudence,

and in what respects has judicial interpretation departed from, expanded upon, or corrected the legislative text?

4. What are the principal implementation challenges that prevent the existing framework from fulfilling its remedial promise, and what reforms legislative, institutional, and procedural are necessary to address them?

### 2.4. Objectives of the Study

The objectives of this study are five-fold: to trace the historical evolution of victim compensation in India from the pre-independence period through the enactment of the BNSS, 2023; to analyse the constitutional and legislative framework that currently governs the field; to examine the body of judicial pronouncements from Nilabati Behera v. State of Orissa[9] through Suresh & Anr. v. State of Haryana[10] and beyond have shaped victim compensation jurisprudence; to evaluate the institutional mechanisms and State-level schemes through which compensation is delivered; and to identify the specific challenges of implementation and to propose targeted reforms capable of bridging the gap between the law on the books and the law in action.

### 2.5. Scope and Limitations

The paper examines victim compensation under the CrPC, 1973 and the BNSS, 2023, including judicial interpretation by the Supreme Court and High Courts, and the institutional roles of the National Legal Services Authority (NALSA), State Legal Services Authorities (SLSAs), and District Legal Services Authorities (DLSAs). It also analyses state schemes under Section 357A CrPC and Section 396 BNSS, with limited reference to international frameworks like the UN Declaration (1985) and the European Convention (1983). The study focuses on the general framework, particularly acid attacks, sexual violence, and custodial deaths. It is confined to India, adopts a doctrinal methodology, and relies on primary and secondary sources.

### 2.6. Research Methodology

This paper employs doctrinal and analytical research methodology. The primary sources consulted include the Constitution of India; the Code of Criminal Procedure, 1973; the Bharatiya Nagarik Suraksha Sanhita, 2023; the Bharatiya Nyaya Sanhita, 2023; the Indian Penal Code, 1860; the Protection of Children from Sexual Offences Act, 2012; Supreme Court and High Court judgments; and official reports of the Law Commission of India, including the

42nd (1971), 154th (1996), and 226th (2009) Reports[11]. The secondary sources comprise the Malimath Committee Report (2003); academic journals including the Journal of the Indian Law Institute, the National Law School of India Review, and the Journal of Victimology and Victim Justice; and NALSA documentation including the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018. The methodology is critical and analytical: provisions and decisions are not merely described but interrogated for their internal coherence, their fidelity to constitutional principle, and their adequacy as instruments of real-world relief.

### 2.7. Significance of the Study

This paper is significant at three levels. Doctrinally, it provides a comprehensive analysis of victim compensation law in India, examining both its constitutional foundations and statutory framework in light of the BNSS, 2023. At the policy level, it identifies key implementation gaps such as disparities in compensation, procedural delays, and lack of awareness to inform ongoing reform efforts. Jurisprudentially, it addresses the fundamental question of the State's obligation to victims, highlighting the shift toward rehabilitation over mere punishment while noting the gap between legal recognition and practical realization.[12]

## 3. CONCEPTUAL FRAMEWORK AND CONSTITUTIONAL BASIS

**Understanding Key Concepts**

### *3.1. Victim: Definition and Legal Categories*

The concept of a 'victim' has undergone substantial definitional refinement in Indian law. Historically, the term was used colloquially in criminal proceedings without any legislative anchor. The Code of Criminal Procedure (Amendment) Act, 2008 introduced Section 2(wa) into the CrPC 1973, defining a victim as "a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged."[13] Crucially, the provision extends this status to the victim's guardian or legal heir, thereby recognising the familial ripple of criminal harm, a recognition that pure offender-centric frameworks had long refused to make.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) carries forward this definition under Section 2(1)(y) without substantive alteration, though its procedural architecture for compensation under Section 396 BNSS broadens the State's obligations considerably.[14] The retention of the definition signals legislative continuity, even as the remedial machinery is

overhauled.

### *3.2. Compensation Versus Restitution: A Necessary Distinction*

Compensation and restitution, though often used interchangeably in popular discourse, occupy distinct legal spaces in the criminal justice architecture. Restitution is an offender-directed remedy a court order compelling the accused to restore the victim to the pre-crime financial position.[15] In Indian law, this is reflected in Section 357(1)(b) and (c) CrPC (now Section 395 BNSS), which permits courts to direct a portion of any fine recovered to be applied in meeting the victim's losses or injuries.

Compensation, by contrast, is a State-funded remedy, a public law obligation owed by the government to a citizen who has suffered harm from crime, irrespective of whether the offender is apprehended, prosecuted, or convicted.[16] This distinction was given crisp doctrinal formulation by the Supreme Court in *Nilabati Behera v. State of Orissa,*[17] where Justice Anand, speaking for the Court, categorically separated the public law remedy from a private law action in tort, holding that the State's constitutional liability to compensate under Article 21 flows not from any notion of charitable benevolence but from its obligation to uphold fundamental rights. This conceptual separation matters enormously at the level of practice: a victim whose assailant has been acquitted or who remains untraced cannot claim restitution, but may after 2009 claim State compensation under Section 357A CrPC. To conflate the two is to misconceive the very architecture of victim-centric reform.

### *3.3. Restorative Justice: The Emerging Counter-Model*

Restorative justice proceeds from a different premise altogether: that crime is, at its core, a violation of persons and relationships, and that justice therefore requires repairing that violation rather than merely punishing its author. The framework organises itself around a triad victim, offender, and community and seeks outcomes defined by healing, accountability, and reconciliation rather than punishment alone.[18]

Globally, restorative justice has taken diverse institutional forms. New Zealand's Family Group Conferencing model, grounded in indigenous Maori dispute resolution, has been legislatively integrated into the youth justice system since the Children, Young Persons, and Their Families Act 1989.[19] Canada has developed circle sentencing rooted in First Nations traditions, while Australia has adopted community conferencing in both youth and adult criminal justice placing victim participation at the center of the process.

India, though lacking a comprehensive legislative framework for restorative justice, reflects similar impulses through provisions like Section 357A CrPC and Section 396 BNSS. These State compensation schemes shift the focus from determining guilt to addressing victim suffering embedding a restorative approach within a largely retributive system.

### *3.4. Article 21: The Primary Constitutional Source*

Article 21 of the Constitution guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law. Through a decades-long process of judicial expansion, this provision has come to encompass not merely physical liberty but a cluster of dignitary rights including the right to live with human dignity, the right to health, and the right to be free from State-inflicted or State-permitted harm.[20]

The landmark pronouncement establishing compensation as a constitutional remedy under Article 21 came in *Nilabati Behera v. State of Orissa.*[19] In that case, the twenty-two-year-old son of the petitioner died in police custody under circumstances that pointed clearly to custodial violence. The Supreme Court held that where the State violates a fundamental right, the constitutional court possesses jurisdiction to award monetary compensation as a public law remedy, a remedy that is distinct from, and does not displace, the tortious remedy available before a civil court. The Court awarded Rs.1,50,000 to the petitioner, establishing for the first time a direct nexus between Article 21 and monetary relief.

This reasoning was extended and consolidated in *Bodhisattwa Gautam v. Subhra Chakraborty,*[21] where the Supreme Court held that rape is not merely a penal offence but a violation of the fundamental right to life and dignity guaranteed under Article 21, and that interim compensation could therefore be awarded as an incident of that right irrespective of the outcome of the criminal trial. The doctrinal contribution of this decision lay in its insistence that the victim's constitutional entitlement to relief should not be held hostage to the slow machinery of criminal adjudication.

More recently, in *Suresh & Anr. v. State of Haryana,*[22] The Supreme Court located the State's obligation to rehabilitate victims squarely within the constitutional framework, treating Article 21 not merely as a negative restraint upon State action but as a positive mandate requiring the State to put in place mechanisms that restore to the extent possible the fundamental rights that crime has violated.

### *3.5. Article 14: Equality Before Law and Equal Protection*

Article 14's guarantee of equality before the law and equal protection of the laws has a specific application in the compensation context: it prohibits arbitrary or discriminatory award of compensation. If the State establishes a compensation scheme, the criteria for eligibility and quantum cannot be applied in a manner that treats similarly situated victims differently without rational justification.[23] The judicial insistence in *Ankush Shivaji Gaikwad v. State of Maharashtra*[24] that trial courts must record reasons for granting or refusing compensation and cannot simply ignore the provision draws its legitimacy, in part, from Article 14: arbitrary non-application of a mandatory statutory provision is itself a constitutional infirmity.

### *3.6. Article 15(3): Special Provisions for Women and Children*

Article 15(3) enables the State to make special provisions for women and children, and has served as the constitutional anchor for legislative measures that treat female victims of crime particularly sexual violence as a distinct class entitled to enhanced protection and compensation.[25] Section 357C CrPC (now Section 397 BNSS), which mandates free medical treatment for victims of sexual offences at all hospitals government and private alike and Section 357B's provision for compensation over and above any fine, both draw sustenance from this constitutional permission to treat women's victimisation as a category requiring positive intervention.

### *3.7. Article 39A: Equal Justice and Free Legal Aid*

Article 39A, inserted by the Constitution (Forty-second Amendment) Act, 1976, directs the State to ensure that the legal system promotes justice on the basis of equal opportunity and provides free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.[26] The provision is significant for victim compensation in a functional rather than doctrinal sense: many victims who have suffered crime are precisely those least equipped financially and informationally to navigate the application process under Section 357A. The mandate of Article 39A requires that NALSA, SLSA, and DLSA not merely adjudicate compensation claims but proactively reach those who cannot reach them.

### *3.8. Article 41: Right to Public Assistance in Cases of Disablement*

Article 41, a Directive Principle, enjoins the State to make effective provision for securing the

right to public assistance in cases of disablement and in other cases of undeserved want, within the limits of its economic capacity. While non-justiciable in isolation, Article 41 has been read in conjunction with Article 21 by the Supreme Court to support the conclusion that the State has a positive obligation to provide economic support to crime victims who suffer disability or loss as a result of criminal harm.[27] The 154th Law Commission Report relied on Article 41's directive expressly in recommending a State-funded compensation scheme, a recommendation that eventually crystallised into Section 357A.

## 4. LEGISLATIVE EVOLUTION AND LEGAL FRAMEWORK

The trajectory of victim compensation legislation in India is best understood as a series of reactive adjustments each responding to a perceived inadequacy in the law that preceded it. From the truncated remedy offered by Section 357 of the Code of Criminal Procedure, 1973, through the transformative insertion of Section 357A in 2009, to the consolidation effected by the Bharatiya Nagarik Suraksha Sanhita,

### 4.1. The Pre-2009 Era: A Contingent and Inadequate Framework Section 357 CrPC 1973

Section 357 CrPC granted courts discretionary power to award victim compensation from fines. Section 357(1)(b) covered offences causing loss or injury, Section 357(1)(c) applied to theft and misappropriation, and Section 357(3) allowed compensation even without a fine, subject to the accused's capacity to pay. However, the framework was inadequate: compensation depended on conviction, was limited by the fine rather than actual loss, and remained discretionary leading to its frequent non-use. The Supreme Court highlighted these shortcomings in Rattan Singh v. State of Punjab[28], describing victims as the "worst sufferers," and in Hari Krishan & State of Haryana v. Sukhbir Singh[29], urging liberal use of Section 357 though without achieving systemic change.

### 4.2. Law Reform Initiatives: Building the Case for Change The Law Commission Reports and the Malimath Committee

The Law Commission's 42nd Report (1971) was the first official document to examine victim compensation systematically, surveying models in France, Germany, and the former Soviet Union and recommending reform of India's punitive-only framework.[30] Although it did not lead to immediate legislation, it laid the normative foundation for later reforms. The 154th Law

Commission Report (1996) argued that the State has a constitutional obligation under Articles 21, 14, and 41 to compensate victims independent of conviction, and recommended compensation based on actual loss, extension to family members, and provision of interim relief recommendations that directly shaped Section 357A.[31]

The Malimath Committee Report (2003) reinforced these findings, characterising the existing system as weighted in favour of the accused and "utterly insensitive to the rights of the victim," and recommended a dedicated Victim Compensation Fund financed from fines and assets seized in organised crime prosecutions.[32] The 226th Law Commission Report (2009) addressed acid attack victims specifically, proposing Criminal Injuries Compensation Boards on the United Kingdom model and a minimum compensation of Rs.3 lakh recommendations that the Supreme Court translated into binding directions in Laxmi v. Union of India.[33]

### 4.3. The Paradigm Shift: CrPC Amendment Act, 2008 Section 357A: Deconditioning Compensation from Conviction

The Code of Criminal Procedure (Amendment) Act, 2008 (effective 31 December 2009) introduced Section 357A, creating a statutory obligation on the State distinct from the offender to compensate victims. Section 357A(1) mandates States to frame compensation schemes, with the term “shall” held to be non-discretionary in Suresh & Anr. v. State of Haryana[34]. Sections 357A(2)–(5) operationalize this framework: the DLSA/SLSA determines compensation on court recommendation; courts may award compensation even in acquittal or discharge, breaking the link with conviction; victims can directly apply where the offender is untraced; and a two-month timeline ensures timely relief. Collectively, these provisions transform victim compensation into an independent, State-driven remedy focused on rehabilitation.

### 4.4. Sections 357B and 357C: Cumulative Relief and Medical Aid

Section 357B, inserted alongside Section 357A, establishes that State compensation under Section 357A shall be in addition to and not in substitution of any fine payable to the victim under Sections 326A (acid attack) and 376D (gang rape) of the IPC, 1860.[35] This cumulation principle rejects the pre-existing either-or logic: State-funded rehabilitation and court-ordered penal redress are independently owed and serve distinct purposes. Section 357C, inserted by the Criminal Law (Amendment) Act, 2013, mandates that all hospitals government and private alike shall immediately provide first-aid or medical treatment, free of cost, to victims of offences under Sections 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, and

376E IPC, and shall

forthwith inform the police.[36] No hospital may withhold treatment pending payment. Medical aid thereby became a justiciable statutory entitlement rather than a matter of institutional discretion.

### 4.5. Bharatiya Nagarik Suraksha Sanhita, 2023: Consolidation and Extension

**Sections 396 and 397 BNSS**

The BNSS, 2023, effective 1 July 2024, repeals the CrPC and retains the victim compensation framework under Section 396[37]. While largely mirroring Section 357A, it introduces key procedural improvements. Section 396(6) mandates immediate interim medical relief by the DLSA or SLSA upon certification by the police or a Magistrate, thereby institutionalising prompt assistance. Section 396(7) preserves the principle of cumulative compensation, ensuring that State compensation is in addition to fines under the Bharatiya Nyaya Sanhita, 2023.

Section 397 BNSS replaces Section 357C CrPC and extends the mandatory free medical treatment obligation to offences under Sections 64, 65, 66, 67, 68, 70, 71, and 124(1) of the BNS, and to Sections 4, 6, 8, and 10 of the Protection of Children from Sexual Offences Act, 2012.[38] The explicit inclusion of POCSO offences closes a gap left open by Section 357C: child victims of sexual abuse now possess the same enforceable right to immediate, cost-free medical treatment as adult victims of rape and acid attack.

## 5. JUDICIAL INTERPRETATION AND LANDMARK PRONOUNCEMENTS

Legislation acquires its operational meaning through judicial construction. In the field of victim compensation, the Supreme Court of India has been the primary architect recognising constitutional liability ahead of statute, giving mandatory force to discretionary provisions, and enforcing compliance where executive action has fallen short. The eleven decisions examined below are arranged chronologically across three phases: constitutional foundation, statutory interpretation, and enforcement.

### 5.1. Foundational Phase: Building the Constitutional Base

In ***Nilabati Behera v. State of Orissa,***[39] Suman Behera, aged twenty-two, died in police custody on 2 December 1987 at the Jeraikela Police Outpost, Orissa. The Supreme Court held that compensation for violation of the right to life under Article 21 is a public law remedy distinct

from a tortious action sovereign immunity cannot defeat it. The State of Orissa was directed to pay Rs.1,50,000 to the petitioner.

In ***Delhi Domestic Working Women's Forum v. Union of India,***[40] the Court issued comprehensive guidelines for rape victims covering legal representation, anonymity, rehabilitation, and interim compensation anticipating the Section 357A framework by over a decade, and treating victim compensation as a component of the constitutional right to justice rather than State discretion.

In ***Chairman, Railway Board v. Chandrima Das,***[41] a Bangladeshi national raped by Railway employees at Howrah Station's Yatri Niwas was awarded Rs.10 lakh. The Court held that Article 21 protects all persons present on Indian soil regardless of nationality, and that the State is vicariously liable for the criminal acts of its employees.

### 5.2. Interpretive Phase: Giving Section 357A Its Full Force

In ***Ankush Shivaji Gaikwad v. State of Maharashtra,***[42] The Court held that although the award of compensation under Section 357 CrPC is described as discretionary, every criminal court bears a mandatory duty to apply its mind to the question in each case and to record reasons for granting or refusing it. Judicial silence on compensation is itself a legal infirmity; the word "may" permits the court to calibrate the amount, not to ignore the provision.

The most authoritative pronouncement on Section 357A came in ***Suresh & Anr. v. State of Haryana,***[43] arising from the kidnapping and murder of Devender Chopra and his son in December 2000. The Court held that Section 357A is mandatory, not discretionary; that the State's obligation to rehabilitate victims is independent of conviction or acquittal; that courts must consider compensation at the stage of cognizance itself; that interim compensation must be awarded in deserving cases; and that courts may apply Section 357A suo motu. Compensation, the Court declared, is the victim's right not the State's charity.

In ***Nipun Saxena & Anr. v. Union of India***,[44] The Supreme Court addressed the related dimension of secondary victimisation, the harm inflicted upon victims by the justice system itself. The Court held that the identity of rape victims and child victims of sexual offences must be strictly protected under Section 228A IPC, directed that FIRs in such cases shall not be placed in the public domain, and ordered the extension of the NALSA Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes 2018 to child victims under POCSO. It further directed Special Courts to proactively enquire into the interim compensation needs of child victims upon registration of an FIR, regardless of awaiting a formal application,

a direction that advanced victim-centricity from the trial to the investigative stage.

### 5.3. Acid Attack Jurisprudence

In ***Laxmi v. Union of India,***[45] a PIL filed by acid attack survivor Laxmi Agarwal produced the most comprehensive victim-centric directions issued by the Court in a single proceeding. The Court directed: (i) a minimum compensation of Rs.3 lakh to all acid attack victims Rs.1 lakh within fifteen days and Rs.2 lakh within two months; (ii) free treatment at all hospitals, government and private, without advance payment; and (iii) sale of acid only to persons above eighteen years of age against photo identification, with mandatory vendor registers. The decision directly led to the Criminal Law (Amendment) Act, 2013 inserting Sections 326A and 326B into the IPC.[46]

In ***Parivartan Kendra v. Union of India,***[47] the Court clarified that Rs.3 lakh is a floor, not a ceiling, and directed that compensation for acid attack victims be assessed individually against actual medical expenses, anticipated future surgical costs, psychological trauma, social stigma, loss of livelihood, loss of marriage prospects, and severity of disfigurement affirming a needs-based framework over standardised tariffs.

### 5.4. Enforcement and Recent Directions

In ***Acid Survivors Saahas Foundation v. Union of India,***[48] the Supreme Court observed that despite Rs.484 crore being disbursed between April 2024 and March 2025, many approved victims had not received compensation due to bureaucratic delays and inadequate state funding. The Court directed timely release of all pending amounts, held Chief Secretaries personally accountable, and mandated quarterly compliance reports shifting focus from mere grant of compensation to its effective delivery.

In Delhi High Court Minor Sexual Assault Case (September 2024),[49] the High Court enhanced compensation awarded by the DLSA from Rs.85,000 to Rs.10.5 lakh for a minor victim of sexual assault, holding that the DLSA's initial assessment had failed to account for severe psychological trauma, long-term rehabilitation requirements, and loss of educational opportunity.

## 6. INSTITUTIONAL FRAMEWORK AND STATE SCHEMES

### 6.1. Role of Courts in Victim Compensation

The Indian judiciary has significantly shaped victim compensation jurisprudence by expanding

statutory interpretation and grounding it in constitutional principles. The Supreme Court has emphasized that victims are central stakeholders in the criminal justice process. In Ankush Shivaji Gaikwad v. State of Maharashtra[50], compensation under Section 357 CrPC was held to be mandatory, not discretionary. In Bodhisattwa Gautam v. Subhra Chakraborty[51], compensation was recognized as a public law remedy, allowing even interim relief before trial conclusion.

Linking compensation to Article 21, Nilabati Behera v. State of Orissa[52] affirmed monetary relief for fundamental rights violations. Section 357A CrPC institutionalized victim compensation schemes, further reinforced in Suresh v. State of Haryana[53], which mandated compensation even in acquittal or untraced offender cases. In Laxmi v. Union of India[54], the Court ensured minimum compensation for acid attack victims. Collectively, these developments establish victim compensation as a substantive constitutional and statutory right.

### 6.2. Role of the Central Government & State Government

The framework of victim compensation in India reflects a coordinated yet uneven interaction between the Central and State Governments, with each performing distinct but interdependent roles. The Central Government primarily functions as a policy-maker and financial supporter, exemplified by the introduction of Section 357A of the Code of Criminal Procedure through the 2008 amendment, which mandated the creation of victim compensation schemes across all states[55]. In furtherance of this objective, the establishment of the Central Victim Compensation Fund (CVCF) was intended to supplement state resources and reduce disparities in compensation, particularly in cases involving serious offences such as sexual violence and acid attacks[56].Additionally, the Centre has introduced targeted schemes for specific categories of victims, including those affected by terrorism, communal violence, and cross-border conflicts, while also collaborating with the National Legal Services Authority to develop model guidelines ensuring a degree of uniformity.

### 6.3. Delhi Victims Compensation Scheme (2018)[57]

From Delhi's 2018 scheme, the procedural framework includes:

- DLSA/DSLSA enquiry and award,
- Interim compensation timelines (notably for acid attack cases), and
- Schedule-based compensation determination with scope to exceed upper limits in deserving cases, with reasons recorded.

Compensation Amounts (Examples):

Loss of Life: Rs.3 Lakhs - Rs.10 Lakhs.

Rape/Unnatural Sexual Assault: Rs.2 Lakhs - Rs.5 Lakhs.

Acid Attack (Disfigurement): Up to Rs.7-8 Lakhs in specific cases. Loss of Limb (>80% disability): Rs.2 Lakhs - Rs.5 Lakhs.

The Delhi scheme also recognizes coordination with Section 396-type entitlements (compensation in addition to fine) while ensuring double benefits are accounted for in determining final quantum.

### 6.4. Uttar Pradesh Compensation Scheme (2014)

Provides financial aid to victims of crimes (or their dependents) through a state-funded pool. The scheme covers loss/injury from crimes like rape (Rs.2 lakh), acid attacks (up to Rs.5 lakh), and death. Compensation is determined by the District Legal Services Authority (DLSA) based on medical expenses and rehabilitation needs.

Compensation Amounts (2014 Framework):

Acid Attacks**:** Up to Rs.5 lakh (amended in 2016). Rape**:** Rs.2,00,000.

Death (Earning Member**):** Rs.2,00,000. Death (Non-earning Member): Rs.1,50,000. Severe Physical/Mental Injury**:** Rs.1,00,000.

### 6.5. Role of Legal Services Authorities

Legal Services Authorities constitute the operational backbone of the victim compensation framework in India, playing a crucial role in translating statutory provisions into practical relief for victims. Established under the Legal Services Authorities Act, 1987, these bodies function at the national, state, and district levels with the objective of ensuring access to justice and providing free legal aid to marginalized sections of society[58]. District Legal Services Authorities (DLSAs), in particular, act as the primary interface between victims and the compensation mechanism, thereby making the system accessible at the grassroots level.

### 6.6. NALSA Model Framework

The National Legal Services Authority (NALSA) plays a key role in standardizing victim compensation across India through model guidelines and oversight. Its 2018 scheme for women victims of sexual assault set minimum compensation benchmarks, enabled interim relief, and emphasized rehabilitation over mere financial aid[59]. The scheme promotes uniformity in

implementing Section 396 of the Bharatiya Nagarik Suraksha Sanhita[60] and introduces a dedicated Women Victim Compensation Fund with central and state contributions. NALSA also monitors implementation and issues guidelines to improve efficiency, accessibility, and accountability.

NALSA's Schedule Applicable to Women Victim of Crimes provides a structured compensation matrix. Key entries include:

Loss of life: Rs.5 lakh to Rs.10 lakh Gang rape**:** Rs.5 lakh to Rs.10 lakh Rape**:** Rs.4 lakh to Rs.7 lakh

Acid attack (disfigurement of face): Rs.7 lakh to Rs.8 lakh Acid attack (injury >50%): Rs.5 lakh to Rs.8 lakh

The scheme also provides interim relief for acid attack victims: Rs.1 lakh within 15 days and Rs.2 lakh within two months thereafter (subject to scheme).

## 7. FROM RETRIBUTIVE TO RESTORATIVE: PARADIGM SHIFT

The evolution of criminal justice in India reflects a gradual yet significant transition from a retributive model to a more restorative and victim-oriented framework. Traditionally, the retributive justice model dominated criminal law, premised on the understanding that crime constitutes a wrong against the State and must be met with punishment proportionate to the offender's culpability. As observed by the Supreme Court, criminal law historically became concerned primarily with "crime and the criminal," leaving the victim's personal and financial loss to civil remedies[61]. The Supreme Court in *Suresh v. State of Haryana*[62] acknowledged that a criminal justice system focused solely on punishment is inadequate to address the needs of victims.

In contrast, restorative justice reconceptualizes crime as harm to individuals and communities rather than merely a violation against the State. It emphasizes repair, accountability, and victim restoration, shifting the focus from punishment to rehabilitation. Grounded in principles of healing and responsibility, it requires offenders to acknowledge harm and contribute to its repair while recognizing victims as central stakeholders. International instruments reinforce this approach by promoting restitution, compensation, participation, and fair treatment of victims.[63] In India, this shift is reflected in statutory provisions such as Section 357A of the Code of Criminal Procedure, which mandates the creation of victim compensation schemes, and its continuation under Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023[64].

The paradigm shift in India has been driven by both legislative reforms and judicial

interpretation. Historically, compensation under criminal law was limited and discretionary. However, in *Ankush Shivaji Gaikwad v. State of Maharashtra*[65], the Supreme Court traced the evolution of compensation provisions and emphasized that legislative amendments reflect a deeper transition from retribution to restitution. The introduction of Section 357A through the 2008 amendment marked a watershed moment by institutionalizing a State-backed compensation regime and recognizing the State's responsibility to provide relief to victims irrespective of the outcome of criminal proceedings. Judicial developments have further strengthened this transition. In *Hari Kishan v. Sukhbir Singh*[66], compensation was described as a constructive mechanism to reassure victims of the justice system's responsiveness, while in *Suresh v. State of Haryana*[67], the Court emphasized the importance of interim compensation and rehabilitation. Additionally, constitutional jurisprudence under Article 21, particularly in *Nilabati Behera v. State of Orissa*[68], established compensation as a remedy for violations of fundamental rights, thereby integrating restorative principles into the broader framework of criminal justice.

## 8. CRITICAL ANALYSIS: CHALLENGES AND EFFECTIVENESS

### 8.1. Reality Check: Law vs Ground Reality

The statutory framework governing victim compensation in India, particularly under Section 396 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, reflects a progressive shift towards victim-centric justice[69]. However, the ground reality reveals a significant gap between legislative intent and practical implementation. While the law mandates that victims or their dependents should receive compensation even in cases of acquittal or where the offender is untraceable, actual disbursement rates remain disproportionately low. Empirical studies and NCRB data indicate that only a fraction of eligible victims receive compensation, highlighting systemic inefficiencies[70].

One of the key issues is that victim compensation often remains "a promise on paper rather than a consistent remedy in practice" due to delays, procedural complexities, and lack of institutional coordination. Further, despite judicial emphasis on victim rights, compensation is not always treated as a mandatory outcome in trial courts. Victims frequently face prolonged waiting periods, which defeats the purpose of immediate relief and rehabilitation.

### 8.2. Legislative and Structural Challenges

Despite the introduction of Section 357A CrPC[71] and its continuation under the Bharatiya

Nagarik Suraksha Sanhita (BNSS)[72], the legislative framework suffers from structural limitations.

The law places the responsibility of framing victim compensation schemes on individual states, leading to significant disparities in compensation amounts, eligibility criteria, and procedural requirements and the absence of a uniform national compensation policy undermines the principle of equality. Victims in different states receive vastly different compensation for similar offences, which contradicts the idea of equal justice. Additionally, the legislative framework focuses primarily on financial compensation, with limited emphasis on holistic rehabilitation, including psychological support and social reintegration.

### 8.3. Awareness and Accessibility Challenges

One of the most critical challenges in the implementation of victim compensation schemes is the lack of awareness among victims, particularly in rural and marginalized communities. A significant number of victims remain unaware of their entitlement to compensation, the procedure for applying, or the availability of legal assistance. This issue is further compounded by limited awareness among law enforcement officials, who often fail to inform victims about such schemes at the initial stages of investigation. Additionally, socio-economic barriers such as poverty, illiteracy, and social stigma hinder access, especially for women and marginalized groups. Many victims refrain from pursuing claims due to fear of social repercussions, lack of trust in institutions, and financial constraints, resulting in the benefits of the scheme failing to reach those most in need.

## 9. RECOMMENDATIONS: STRENGTHENING VICTIM COMPENSATION FRAMEWORK IN INDIA

The effectiveness of India's victim compensation framework hinges on translating statutory rights into accessible and uniform relief, which remains hindered by structural and procedural gaps. A key reform is a uniform national framework prescribing minimum standards to address disparities under Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Procedural efficiency requires strict timelines for disbursement, as emphasized in Suresh v. State of Haryana. Institutional strengthening of Legal Services Authorities, along with integration of compensation with medical, psychological, and livelihood support, is essential. Financial sustainability demands adequately funded, non-lapsable compensation funds. Judicial

sensitization, as mandated in Ankush Shivaji Gaikwad v. State of Maharashtra, and focused support for vulnerable victims must be ensured. Improved data collection and research are also crucial to make compensation an effective tool of restorative justice rather than a mere formal entitlement.

## 10. CONCLUSION

The victim compensation framework in India represents a significant evolution in criminal justice, marking a shift from an exclusively offender-centric approach to one that recognizes the rights and needs of victims. Anchored in Section 357A of the Code of Criminal Procedure[73] and continued under the Bharatiya Nagarik Suraksha Sanhita[74], the scheme reflects the State's obligation to provide compensation and rehabilitation to victims, independent of the outcome of criminal proceedings. Judicial interpretation has been instrumental in strengthening this framework. The Supreme Court, in *Ankush Shivaji Gaikwad v. State of Maharashtra*[75], emphasized that compensation must be considered in every case, while in *Suresh v. State of Haryana*[76], it clarified that victims are entitled to compensation even in cases of acquittal or where the offender remains untraceable, thereby affirming compensation as an integral component of justice.

Despite progressive reforms, victim compensation in India remains constrained by inconsistent state schemes, delays, procedural hurdles, and low awareness among victims. The absence of uniform standards and effective monitoring leads to uneven application, while the focus on monetary relief often overlooks broader rehabilitative needs such as psychological care, medical support, and social reintegration.

Nevertheless, the framework reflects a commitment to restorative justice and aligns with international standards like the UN Declaration, while reinforcing dignity and substantive justice under Article 21. Ultimately, its success depends on effective implementation, institutional coordination, and reforms ensuring compensation is timely, accessible, and holistic so as to truly restore victims' dignity alongside punishing offenders.

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