# FROM PAST TO PRESENT: THE EVOLUTION OF VICTIM COMPENSATION IN INDIA'S CRIMINAL JUSTICE SYSTEM

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**ABSTRACT**

*The evolution of victim compensation in India's criminal justice system highlights a significant transition from an offender-centric approach to a victim-centric framework. Historically, Indian criminal law focused primarily on punishing offenders, with little to no provision for the rehabilitation of victims who suffered physical, psychological, and financial harm. The introduction of Section 357A in the Criminal Procedure Code, 1973 (CrPC) was a crucial development, mandating the establishment of a Victim Compensation Scheme by State Governments in coordination with the Central Government. While this provision aimed to provide financial relief and support to victims, its implementation was marred by inconsistent application across states, bureaucratic delays, and limited judicial oversight. The enactment of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), particularly Section 396, marks a more structured and efficient approach to victim compensation. By granting courts greater authority in recommending and ensuring timely disbursement of compensation, the BNSS seeks to eliminate previous inefficiencies and enhance access to justice for victims of crime. Additionally, the law emphasizes state-backed financial aid, rehabilitation measures, and psychological support, aligning with the principles of restorative justice. Despite these advancements, challenges such as fund allocation, awareness among victims, and monitoring mechanisms remain crucial areas for further reform. This paper examines the historical development, legislative reforms, and contemporary challenges of victim compensation in India, emphasizing the need for a holistic, victim-centric justice system that prioritizes restoration and rehabilitation alongside punitive measures.*

**Keywords:** Victim Compensation, Criminal Justice, Bhartiya Nagarik Suraksha Sanhita, Restorative Justice, Rehabilitation

## INTRODUCTION

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Every crime produces a victim(s). The victims are generally considered as mere informants or witnesses in criminal trials, assisting the state in its endeavor to punish offenders, are now becoming the focal points of our criminal justice system. The criminal justice system is basically meant to redress the victimization of these victims and to address the issues surrounding him. However getting justice in Indian criminal justice system was never a bed of roses for the victims of offence. The last few decades however witnessed groundbreaking reforms in the approach of legal systems nationally as well as internationally with reforms not only in statutory laws but also even in judicial approach towards the victims of crime.

Victim compensation is one of the major aspects in reparation of the harm or injury caused to the victim due to the commission of the crime. Monetary assistance in one-way or the other always benefits the victims in the mitigation of their sufferings. The renaissance of the prominence of victims in legal system is however a recent phenomenon.

Criminal Law has always discouraged the acts or omissions which in general can affect right in rem and violators have always been punished with strict sanctions but the crime rate is not falling and State is in regular quest to preserve social solidarity and peace in society. The initial focus of criminologists were only on the aspect of punishment but the focus started shifting when they encountered with the fact that the person who is victim of crime is getting nothing out of the whole process of criminal justice system or is getting a so called satisfaction by seeing the offender punished. Therefore jurists, penologist etc. in all countries started giving their full attention to the cause of victim in form of compensation and hence the whole debate started about ways, means and extent of compensation. This paper is an addition to the same as it tries to look in to the position of compensation to victim of crime in Indian Legal frame Work.

**ANCIENT HISTORY OF VICTIM COMPENSATION**

The ancient Indian History is a witness to the fact that the victims of crimes have sufficient provisions of restitution by way of compensation to injuries. Author of the book, "*General Principle of Hindu Jurisprudence*" Dr. Priyanath Sen [2] has observed-

"*It is, however, remarkable that in as much as it was concerned to be the duty of the King to protect the property of his people, if the King could not restore the stolen articles or recover*

[2]Dr. Priyanath Sen: "General Principle of Hindu Jurisprudence", Page 335

*their price for the owner by apprehending the thief, it was deemed to be his duty to pay the price to the owner out of his own treasury, and in his turn he could recover the same from the village officers who by reason of their negligence, were accountable for the thief's escape.*"

Reparation or compensation as a form of punishment is found to be recognized from ancient time in India. In ancient Hindu law, during Sutra period, awarding of compensation was treated as a royal right. The law of Manu, requires the offender to pay compensation and pay the expenses of cure in case of injuries to the sufferer and satisfaction to the owner where goods were damaged. In all cases of cutting of a limb, wounding or fetching blood, the assailant shall pay the expenses of a perfect cure or in his failure, both full damages and a fine. It shows that the victim compensation was never an alien concept in the justice delivery systems of the country. The edifice of the law in our present day legal system relating to the victim compensation are provisions contained in the Criminal Procedure Code, 1973 and various judgments of the Hon'ble Supreme Court. The question that arises for consideration is that despite having laws for victim compensation are these laws being satisfactorily used by those on who lies the duty of the execution of these laws and to give beneficial effects to it. Answer is very infrequently. The reasons are many.

Some more prominent are like the 12th century distinction of English law of wrongs into civil wrongs and criminal wrongs which leads to misconception that the area of compensation is something exclusively belonging to the domain of civil law and others less obvious like the ignorance of those who can give effect to these benefactions. The present criminal justice system is based on the assumption that the claims of a victim of crime are sufficiently satisfied by the conviction of the perpetrator. It is a truth that in our present day adversarial legal system between the state and the accused, the victim is not only neglected but is lost in silence. The role of the victim is limited to report the offence and depose in the court on behalf of prosecuting party, which is the State. That's all. The Malimath Committee reflected on the present criminal justice system that not only the victim's right to compensation was ignored except as token provision under the Criminal Procedure Code but also the right to participate as the dominant stakeholder in criminal proceedings was taken away from him. He has no right to lead evidence, he cannot challenge the evidence through cross-examination of witnesses nor can he advance arguments to influence decision-making.

**COMPENSATION TO THE VICTIM: CRIMINAL JUSTICE SYSTEM**

Now accepting that there is no uniformity in the legal system in the country to address the issue of compensation to the victims of crime, it is expedient to discuss the legal position in respect of compensation to the victims of the offence. Post independence, the criminal trials were governed by criminal Procedure Codes 1898 and then by 1973 Code ("Cr.PC"). Till the year 2008, there was a provision more or less similar in both the codes for compensation to the victims of the offence that is section 545 in the old Code and section 357[3] in the new Code.

The plain reading of the section shows that sub-section (1) and (3) vests power on the trail court to award compensation and sub-section (4) gives power even to appellant or revision court to order for compensation. Sub section (1) empowers the courts to appropriate the whole or any portion of fine recovered for the purpose mentioned in the clauses to the sub section, under which Clause (b) is most important and of our use . It demands that claim of compensation must be accompanied by following conditions:

1. Loss or injury suffered

[3]357: Order to pay compensation.

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855 ), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

2. Loss or injury must be caused by the offence
3. Such person can recover the compensation in a civil court

Sub section (3) empowers the court, in its discretion, to order the accuse to pay compensation even though fine does not form part of compensation and hence although inserted in 1973 added new positive dimension to Indian philosophy of compensation.

The states duty to rehabilitate the victim of crime cannot be put any lower than its responsibility of rehabilitating the criminal. In India, however the state remained itself away from this obligation of compensating the victims till 2008, when the Criminal procedure Code was amended to impose a liability on state for such compensations. The 14th Law Commission in its report recommended state compensation, which is justified on the grounds that it is the political, economic and social institutions of the state system that generates crime by poverty, discrimination, unemployment and insecurity.

The Malimath Committee[3] was also of the view that the principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy. Victim compensation is a State obligation in all-serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by Parliament.

Victim compensation is an important aspect of victim restitution in criminal justice system. Supreme Court judgment recently in the case of *Ankur Shivaji Gaikwad Vs. State of Maharashtra*[4], has observed that a long line of judicial pronouncements of Supreme Court of India recognized a paradigm shift in the approach to victims of crime who are held entitled to reparation, restitution or compensation for loss or injury suffered by them.

It is in consonance with this shift in the approach towards victims for compensating them that an amendment was made in the Code of Criminal Procedure, 1973 whereby a new provision i.e. Section 357 A has been added which provides for the Victim Compensation Scheme. Earlier a provision for compensation to the victims of crime was section 357 Code of Criminal Procedure in which the mandate was a direction to the convict to pay compensation

[4]S.L.P. (Crl.) No.6287 of 2011

to the victims of crime, if the court on conviction of accused so directs. However in many cases as we see that the convicts are from very poor back ground or are reluctant to pay compensation considering their prolonged incarcerations, the victims seems to be remediless.

**(i) New Provision for Victim Compensation**

It appears that in order to overcome the situation, a new section 357A[5] Code of Criminal Procedure was added in the Code of Criminal Procedure by an amendment in the year 2009. This was the much-needed relief to the victims of offences and therefore one of the most progressive legislation in recent times. It reads as-

Under this provision 357 A Code of Criminal Procedure, the State is also liable to pay compensation to the victims of crime apart from the accused under section 357 Code of Criminal Procedure. There are many situations after the commission of the offences in which the compensation can be awarded.

- At the conclusion of the trial.
- Inadequate compensation
- Accused not traceable or no trial commenced

Earlier under section 357, the compensation was awarded only in the eventuality of the conviction of the accused but now not only on conviction but also on acquittal or discharge of

[5]**357A. Victim compensation scheme. -** (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).
(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

the accused or in case of untraced status of the accused, compensation can be granted. This is a positive development that takes into account practical reality of an already crumbling criminal justice system, which is not in a position to bring to book all offenders. It means that the new section 357 A Code of Criminal Procedure has substantially widened the scope of compensating the victims of crimes.

**(ii) Position of States in Victim Compensation**

In Goa there is a provision of compensation of Rs Ten Lacs to the rape victim whereas the scheme of Delhi provides for Rs Three lacs as maximum compensation with states like UP having provisions of further low compensations to such victims.

However, in order to avoid these disparities the Supreme Court has given a landmark judgment in *Suresh vs. State of Haryana* [6] observed that there is need to consider upward revision in the scale for compensation in victim compensation schemes and pending such consideration Authorities are directed to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. It will therefore mean that if a victim compensation Scheme of a State prescribes lesser compensation for some offence, then in that event, the victim compensation scheme of the State of Kerala has to be followed. This has an effect of making compensations uniform throughout the country if followed in its right spirit. The Government of Delhi in compliance of section 357A Code of Criminal Procedure has framed a Victim Compensation Scheme for Delhi called as ''Delhi Victim Compensation Scheme, 2011''. It has come into force on 02.02.2012. The Nodal agency for deciding the quantum of compensation under the Victim Compensation Scheme is the District or the State Legal Services Authority, as the case may be. Clause 1 also speaks of creating a fund under the scheme.

## VICTIM COMPENSATION UNDER BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

The concept of victim compensation is an essential aspect of the criminal justice system, aimed at providing financial assistance and rehabilitation support to victims who have suffered injury, loss, or trauma due to criminal acts. The Bhartiya Nagarik Suraksha Sanhita,

[6] Criminal Appeal NO. 420 of 2012

2023 (BNSS) has introduced significant reforms in the victim compensation mechanism, ensuring a more structured and efficient framework compared to its predecessor, the Criminal Procedure Code, 1973 (CrPC). The introduction of Section 396 of the BNSS marks a shift towards a more victim-centric approach by granting courts greater authority in recommending compensation and ensuring timely disbursement.

The BNSS, 2023, under Section 396, lays down a structured mechanism for compensating victims or their legal heirs. This section mandates the Central and State Governments to collaborate in setting up victim compensation funds, ensuring that financial aid reaches victims in a timely and uniform manner. The provision emphasizes direct involvement of the judiciary in awarding compensation, reducing the dependency on State Legal Services Authorities (SLSA) and District Legal Services Authorities (DLSA), which were primarily responsible under Section 357A of the CrPC. This change aims to eliminate delays and inconsistencies that plagued the previous system.

The law mandates both the State and Central Governments to create and manage compensation funds, ensuring adequate financial resources for victims. Courts now have direct powers to grant compensation, reducing procedural bottlenecks that previously led to delays. The provision applies not only to victims of violent crimes but also to those suffering from psychological trauma and economic losses resulting from criminal acts. The structured mechanism ensures that victims receive financial assistance without prolonged bureaucratic hurdles. Moreover, the law recognizes the importance of holistic support beyond mere financial aid, including medical assistance, psychological counselling, and legal aid.

**COMPARATIVE ANALYSIS**

The Victim Compensation Scheme plays a crucial role in ensuring justice and rehabilitation for victims of crimes, and its legal framework has evolved significantly with the transition from the Criminal Procedure Code, 1973 (CrPC) to the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS). Under Section 357A of the CrPC, the State Governments, in coordination with the Central Government, are required to formulate a scheme to provide funds for compensating victims or their dependents who have suffered loss or injury as a result of a crime and require rehabilitation. The CrPC provision empowers the District Legal Services Authority (DLSA) and the State Legal Services Authority (SLSA) to determine the amount of

compensation and disbursement procedures. However, this mechanism has often faced challenges such as delays in processing claims, inconsistent implementation across states, and inadequate financial resources allocated to victim compensation funds.

In contrast, the Bharatiya Nagarik Suraksha Sanhita, 2023 has introduced Section 396, aims to streamline the process of victim compensation by ensuring a more structured and uniform mechanism across the country. This provision strengthens the role of the government in victim compensation by mandating a coordinated effort between the Central and State Governments, rather than relying solely on state-level legal service authorities. Additionally, Section 396[7] grants courts greater authority to recommend and facilitate compensation directly, reducing procedural hurdles that existed under the CrPC framework. The emphasis on government-backed financial assistance ensures that victims or their legal heirs receive timely support, improving the overall efficacy of the compensation mechanism. This transition from CrPC to BNSS represents a significant policy shift toward victim-centric justice, ensuring that the rehabilitation of crime victims is treated as a fundamental component of the criminal justice system. While both legal frameworks prioritize victim welfare, BNSS introduces a more robust and centralizedstructure, addressing key concerns related to implementation gaps and financial constraints that previously hindered effective compensation under the CrPC.

## CONCLUSION

Despite the improvements introduced by the BNSS, certain challenges remain in the effective implementation of the Victim Compensation Scheme. The success of the scheme depends on the proper allocation of funds by the government. It is essential to ensure adequate and timely funding to avoid shortages. Many victims remain unaware of their rights and the process of claiming compensation. Awareness campaigns and legal assistance programs must be strengthened. A mechanism to track compensation disbursement and hold authorities accountable for delays is necessary. In addition to financial aid, victims require medical, psychological, and vocational rehabilitation support.

The Victim Compensation Scheme under Section 396 of the BNSS, 2023, marks a significant shift towards a more structured, victim-centric approach in India's criminal justice system. By

[7]Bharatiya Nagarik Suraksha Sanhita, 2023, s. 396.

granting courts greater authority, ensuring state-backed financial assistance, and focusing on rehabilitation measures, the new framework addresses many of the gaps present in the CrPC's Section 357A scheme. However, to ensure effective implementation, the government must focus on adequate fund allocation, awareness programs, and accountability measures. With proper execution, the BNSS framework can serve as a robust model for victim justice, balancing punitive measures with restorative justice principles.