

## Revisiting Victim Compensation In India

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**Abstract** - As India's criminal justice system gradually moves from an offender-centric approach to one that recognizes victims' rights, harm, and rehabilitation, victim compensation has become a crucial pillar. Examining significant reforms like Section 395 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), Law Commission recommendations, and court rulings that have influenced the current system, this paper analyzes the legal and historical evolution of victim compensation. It draws attention to the implementation's shortcomings and difficulties, such as inconsistent court discretion, administrative hold-ups, inconsistent standards, procedural obstacles, and low victim awareness. Along with lessons from national committees like the Malimath Committee, the article also examines the relationship between compensation and constitutional guarantees. Lastly, the assessment suggests a number of changes that would improve India's victim compensation systems by harmonizing state programs, streamlining processes, providing prompt interim relief, improving institutional coordination, and moving toward restorative, victim-centric justice.

**Keywords:** Victim, Compensation, Trial, Offence, Justice

### I. INTRODUCTION

In India, victim compensation has become an essential part of criminal justice reform, moving away from an offender-centric approach and toward acknowledging the rights and needs of victims. In the past, victims received very little assistance from the criminal court system; early provisions under the 1898 CrPC and later Section 357 CrPC offered only limited, discretionary relief that was rarely successful. Compensation has been reframed as an enforceable entitlement over time thanks to increased emphasis on restorative justice, international human rights standards, and judicial involvement, particularly in cases like *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013). The legal basis for victim-oriented remedies was further reinforced by legislative changes, such as Section 395 of the Bharatiya Nagarik Suraksha Sanhita (BNSS).

Significant obstacles still exist despite these advancements, such as administrative inefficiencies, varying state-level policies, lack of awareness, and procedural delays. The need for a consistent, easily accessible, and rehabilitative compensation system is

emphasized by the Law Commission and the Malimath Committee's repeated recommendations. It is crucial to assess the current framework and solve these systemic inadequacies as India updates its criminal laws through the BNSS. In order to promote a truly victim-centric and restorative justice model, this paper looks at the development, flaws, and future prospects of victim compensation in India.

## **II. HISTORY AND DEVELOPMENT OF COMPENSATION AS A CRIMINAL REMEDY**

Ancient legal traditions are the foundation of the concept of compensation as a criminal remedy. The Manusmriti and Arthashastra, two ancient Indian writings, placed a strong emphasis on restitution, requiring criminals to make amends to victims in order to restore social harmony. Islamic law also acknowledged victim-centered remedies, such as diyya, which strengthened the notion that justice entailed making amends to the person who had been harmed.

The court system changed from restorative to punishing methods with the entrance of British control. The victim's role in the process was diminished as crime became primarily seen as an offense against the State. Due to a lack of institutional support and understanding, the Code of Criminal Procedure, 1898's restricted and discretionary compensation provision was rarely used.

Following independence, the notion that victims should be acknowledged and compensated was reinstated by constitutional provisions, especially Articles 14, 21, and 39A. In cases like Rudul Sah (1983) and Nilabati Behera (1993), judicial rulings upheld compensation as a constitutional remedy, particularly when state misconduct was involved.

Systematic reforms were prompted by these events. The Law Commission's and the Malimath Committee's recommendations emphasized the necessity of a systematic, state-funded compensation plan. As a result, Section 357A CrPC was introduced in 2009 and mandated that all states establish Victim Compensation Schemes to assist victims regardless of the offender's financial capacity.

Compensation now plays a significant role in India's transition to a victim-centric legal system. To guarantee that victims receive significant relief and acknowledgment, it combines statutory measures, restorative justice, and constitutional principles.

### III. HISTORY AND DEVELOPMENT OF VICTIM COMPENSATION IN INDIA

The development of penal law during British colonial rule, when the criminal justice system started moving away from restorative techniques and toward a state-centric, punitive paradigm, is strongly linked to the history of victim compensation in India. Section 545(1)(b) of the Code of Criminal Procedure, 1898, which permitted courts to order "payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the court, recoverable by such person in a civil court," is one of the first statutory examples of restitution.

Due to procedural restrictions and the assumption that victims seek relief through civil courts, this provision remained mainly discretionary and unused even while it acknowledged the necessity to financially compensate victims. However, Section 545 established the fundamental notion that victims' harm may be recognized and addressed by the criminal justice system; this principle would subsequently develop into more formalized and required compensation procedures in independent India.

#### *The Law Commission Report and Section 395 of BNNS3b*

A major focus of the 41st Report of the Law Commission of India (1969) was the enforceability of victim compensation, emphasizing that recoverability should be actionable in civil courts similar to remedies available in tort law. The Commission noted that the earlier requirement that compensation must be "substantial" had restricted the scope of relief, excluding cases involving nominal amounts, and it also criticized the courts' infrequent use of this provision, arguing that victims were frequently left without meaningful restitution despite obvious harm.

In response to these suggestions, the Indian government proposed a revamped and more comprehensive compensation system in the Code of Criminal Procedure Bill, 1970. The Statement of Objects and Reasons made it clear that the current provision was insufficient since compensation could only be granted in cases where a fine was levied and only to the extent of that fine. Compensation could be given under the amended language, which was eventually included in Section 395 of the BNNS, regardless of whether a fine was actually issued or not for the offense. Additionally, it made it clear that such compensation may cover any type of loss or injury, whether financial or physical, and that a conviction was necessary. It also mandated that courts take into account the type of injury, how it was caused, the accused's capacity to pay, and other pertinent factors.

These modifications were later included in the 1973 enactment of the CrPC. Its own Statement of Objects and Reasons reflected the spirit of the Bill, but with a different focus: the CrPC stated that its goal was to enable courts to grant compensation "to a larger extent" than was previously allowed, whereas the BNNS version emphasized relief to the poorer segments of society. This signaled a significant change in the direction of bolstering victims' rights in the criminal justice system.

The compensation structure was significantly improved under Section 395 of the BNNS. Judicial power to grant compensation in a greater variety of instances was expanded by the removal of the previous demarcation based on the phrase "substantial." Two significant subsections were also added. Given that fines frequently do not accurately reflect the loss that victims actually endure, subsection (3) permits courts to grant compensation even in cases where no fine is issued as part of the punishment. By enabling Appellate Courts, High Courts, and Courts of Session to issue compensation while exercising revisional powers, subsection (4) broadens the jurisdictional authority for doing so. This makes compensation more accessible and sensitive to the reality of the legal system by guaranteeing that victims may acquire redress even at appellate or revisional stages.

#### ***Other Provisions in the BNNS:***

It is similarly crucial to take into account other BNNS laws that deal with types of "compensation" outside of the typical victim-offender scenario while analyzing the law of victim compensation. For example, Section 396 indicates the legislature's purpose to recognize different dimensions of victimhood and expands the extent of redress accessible to aggrieved individuals. Section 358, which takes a more unusual view of who is considered a "victim," is a significant illustration of this enlarged perspective.

The Supreme Court has stated that since the word "victimization" is not defined in either federal or state law, it must be understood to mean "to make a victim, cheat, or make suffer by dismissal or other unfair treatment." In accordance with this more expansive interpretation, Section 358 permits compensation of up to ₹1,000 to anyone who is the victim of an unjustified arrest. But in order to use this clause, there must be a direct causative connection between the complainant and the arrest—that is, the arrest must have been caused by an informant acting without adequate justification.

In a similar vein, Section 359 expands the concept of compensatory remedies to include non-cognizable offenses. A Court of Session, an Appellate Court, or the High Court using its

revisional powers may order the convicted individual to reimburse the complainant for the costs paid during the prosecution where a complaint pertaining to such an offense results in a conviction.

This order may be made in full or in part and is imposed in addition to any penalty prescribed for the offence. To ensure compliance, the section further empowers the court to impose simple imprisonment for up to thirty days if the convicted person defaults on payment. Collectively, these provisions demonstrate that the BNNS views compensation not only as financial redress for substantive harm but also as a mechanism to address wrongful actions within the criminal process itself.

### ***Analysis of Section 395 of BNNS:***

India's approach to victim compensation has evolved significantly under Section 395 of the BNNS, moving from the old CrPC's restricted, fine-dependent methodology to a more autonomous and victim-centric framework.

The provision recognizes that monetary compensation should be commensurate with the victim's injury rather than the form of punishment and gives judges the authority to grant compensation regardless of whether a fine is included in the sentence. It expands judicial authority and permits compensation even in situations involving smaller or non-pecuniary damages by doing away with the previous restricted application of the term "substantial." By permitting compensation in cases when no punishment is issued and allowing appellate, revisional, and higher courts to issue compensation decisions, subsections (3) and (4) further improve accessibility. A balanced approach that takes into account the requirements of both the victim and the offender is reflected in the variables that courts must take into account, such as the type and degree of the injury, the way in which it was inflicted, and the accused's ability to pay. In general, Section 395 enhances the remedial aspect of criminal law by guaranteeing that compensation serves as a crucial component of restorative justice rather than just a supplement to punishment.

### ***Criticism of Section 395 of BNNS:***

Section 395 of the Bharatiya Nagarik Suraksha Sanhita has been criticized for heavily relying on judicial discretion in the absence of any statutory parameters. The clause permits judges to grant compensation, but it makes no mention of elements like the severity of the injury, the victim's financial situation, or the necessity for long-term rehabilitation. Because of

this, awards differ greatly between jurisdictions, giving the impression that they are arbitrary. The objective of creating a consistent national framework for victim compensation is compromised by this variance.

The provision's lax enforcement mechanism is another issue. Due to procedural obstacles, victims frequently experience protracted delays or partial distribution even when courts grant compensation. There is no explicit requirement for time-bound payments, nor is there a way for state authorities to keep an eye on compliance. Due to a lack of coordination between courts, District Legal Services Authorities (DLSAs), and state treasuries, a large percentage of compensation orders under the previous CrPC structure remained pending, according to earlier studies conducted by the National Judicial Academy and several High Court committees. These systemic inefficiencies are not adequately addressed by Section 395.

Its ongoing offender-centric focus is another drawback. Due to the fact that compensation is mostly dependent on conviction, victims may not be compensated in situations including acquittals, hostile witnesses, or tainted trials. This runs counter to victimology's more general objectives, which support compensation regardless of criminal results. Even in cases when offenders are unidentified or untraceable, state-funded compensation is encouraged by international standards like the UN Declaration of Basic Principles of Justice for Victims of Crime (1985). However, Section 395 does not conform to these criteria.

Furthermore, the financial reality that many criminals are impoverished is not adequately addressed under Section 395. Compensation orders are merely symbolic and provide no real relief in the absence of a strong state-funded substitute. Additionally, the offering does not prioritize social, medical, or psychological rehabilitation services. This limited approach has been recognized as out of date and inadequate since victim compensation is now perceived as a comprehensive support system rather than just financial consolation.

Lastly, confusion results from the Legal Services Authorities Act's victim compensation plans and Section 395's unclear cooperation. Many practitioners contend that the system is still disjointed despite the BNNS reforms' supposed integration into a single national mechanism. Therefore, even though Section 395 represents progress, its efficacy as a victim-centric remedy is limited by its conceptual and practical flaws.

#### **IV. VICTIM COMPENSATION AND INTERPLAY WITH FUNDAMENTAL RIGHTS**

In India, the idea of victim compensation is intimately related to the fundamental rights framework included in Articles 14, 21, and 32 of the constitution. The right to live with dignity,

access justice, and get effective remedies for violations of life and personal security have all been added to Article 21—the right to life and personal liberty—by the Supreme Court. In seminal rulings like *Rudul Sah v. State of Bihar* (1983) and *Nilabati Behera v. State of Orissa* (1993), the Court ruled that when basic rights are violated, constitutional courts may grant monetary compensation as a public law remedy. These court rulings prepared the way for compensation to be acknowledged as the State's constitutional duty as well as a statutory right.

Additionally, victim compensation is consistent with Article 14, which requires equality before the law. Particularly for socioeconomically disadvantaged groups who lack the means to seek legal remedies, a system that fails to pay victims despite demonstrated injury would lead to structural inequity. In order to prevent victims from being further harmed by the unfair costs of the criminal justice system, compensation systems function as instruments of restorative justice. The State must guarantee equal access to restorative procedures, the Supreme Court has often stressed, especially in situations involving sexual offenses, trafficking, wrongful prosecution, custodial assault, and other violations of bodily integrity.

Furthermore, Articles 32 and 226 give constitutional courts wide powers to enforce fundamental rights, including granting compensation where statutory schemes are inadequate or absent. This interplay reinforces the idea that victim compensation is part of the broader constitutional guarantee of meaningful justice. The judiciary has observed that criminal law, when focused solely on punishing offenders, fails to fulfil its constitutional purpose unless it also addresses the suffering, rehabilitation, and dignity of victims. Consequently, statutory provisions like Section 395 of the BNNS must be interpreted in a manner consistent with constitutional values, ensuring that compensation is effective, accessible, and sufficient to restore the victim's rights.

In this way, victim compensation is a constitutional need based on human dignity rather than just a remedial clause. By acknowledging that criminal harms directly impact victims' fundamental rights, it closes the gap between punitive justice and restorative justice. Therefore, in order to ensure that every victim of a basic rights violation receives meaningful restitution, the State must institutionalize strong and consistent compensation mechanisms in accordance with the constitution's commitment to justice, non-arbitrariness, and dignity.

## **V. FINDINGS OF THE MALIMATH COMMITTEE REPORT**

India's approach to victims' rights underwent a significant change with the release of the Malimath Committee Report (2003), formerly known as the Committee on Reforms of

Criminal Justice System. The Committee observed that the criminal justice system in India was overwhelmingly offender-centric and ignored the needs, rights, and suffering of victims in favor of inquiry, prosecution, and punishment. It highlighted how, despite being the main participants in the process, victims were reduced to the role of passive witnesses. The Committee contended that the justice system fails in its basic goal of guaranteeing justice and accountability if victims' physical, psychological, and financial suffering is not sufficiently addressed.

The Committee's main conclusion was that a thorough victim compensation structure must be institutionalized immediately. It noted that current laws, such as Section 357 of the CrPC, were insufficient to offer significant relief, hardly used, and poorly implemented. The Committee suggested that compensation should not be contingent on the imposition of fines and that courts should be mandated to take compensation into account in all cases. Furthermore, the Committee recommended the creation of a government-funded victim compensation program because many offenders are unable to pay damages. This will provide prompt and sufficient financial assistance for medical care, rehabilitation, and loss of livelihood for victims of major crimes, such as homicide, sexual assault, and brutal assault.

Additionally, the Malimath Committee emphasized the necessity of broadening the term of "victim." It was advised to include victims' families, dependents, and anybody who experiences psychological anguish or financial loss as a result of the crime, acknowledging that harms are not just confined to direct physical hurt. The significance of victim involvement in the criminal justice system was also emphasized in the report. It made the case for providing victims a stronger voice through procedures including enabling their attorney to support the prosecution, improving information availability, and making sure that victims' concerns are taken into account when decisions are made about bail, sentencing, and parole.

The Committee's emphasis on restorative justice was another significant finding. It suggested changing the system's focus from only punishing results to more comprehensive strategies meant to make amends. In addition to compensation, this contained methods for offender-victim mediation in certain situations, counseling, and rehabilitation. The Committee contended that restorative practices better serve victims' interests, lower recidivism rates, and foster community healing—goals that regular criminal prosecutions frequently fall short of.

The Committee concluded by emphasizing the necessity of consistency, accountability, and transparency in victim-related procedures. It placed a strong emphasis on developing victim



support services at the district level, teaching police, prosecutors, and judges on victim-sensitive procedures, and creating precise criteria for compensation assessment and distribution. The report's main findings demonstrated a paradigm shift: from a system in which victims are marginalized participants to one in which they are key recipients of justice. In the end, the Malimath Committee's conclusions served as the basis for further statutory reforms, such as victim compensation plans under Section 357A CrPC and developments under the BNSS and related statutes.

## **VI. ISSUES REGARDING IMPLEMENTATION**

The application of victim compensation in India still faces significant structural and procedural obstacles notwithstanding progressive legislative provisions. The courts' uneven application of compensation provisions is one of the main problems. Significant differences exist between states and districts due to the considerable variations in judicial discretion. Compensation is frequently not taken into account by many courts while sentencing, and orders are frequently only given in extraordinary circumstances. This contradiction contradicts the objective of developing a unified victim-centric framework under the BNNS.

The delay in compensation payout is another significant issue. Victims sometimes encounter protracted bureaucratic procedures, delays in verification, and poor cooperation between district legal services authorities (DLSA), police, and hospitals, even in cases where compensation is granted. Delaying payment defies the fundamental purpose of the program in situations involving sexual offenses or serious crimes, where prompt financial support is essential. Furthermore, the persistence of administrative inaction is made possible by the lack of explicit deadlines and accountability systems.

The incapacity of criminals to make payments is a grave worry. Although a significant portion of offenders are impoverished, Section 395 BNNS still views the offender as the principal source of compensation. In these situations, victims receive no redress since compensation orders are not enforced. Although there are state-funded victim compensation programs, they are frequently underfunded, updated infrequently, or applied inconsistently throughout states, which leads to insufficient or delayed financial assistance.

Procedural and awareness-related challenges also exist. Victims frequently don't know about their rights, whether compensation is available, or how to ask for it, especially if they come from underprivileged populations. Despite their legal duties, police and magistrates may neglect to advise victims of their rights. Additional obstacles that deter victims from seeking

compensation include FIR dependencies, medical certifications, and documentation requirements.

Lastly, systems for monitoring and evaluation are still inadequate. Data on the quantity of compensation applications submitted, approved, or denied, as well as the sums disbursed, are few. Effective implementation is further hampered by the lack of regular audits, uniform standards for calculating compensation, and coordinated support services. Together, these gaps show that although India's legal framework for victim compensation has undergone substantial development, administrative, financial, and procedural flaws continue to impede its practical efficacy.

## **VII. RECOMMENDATION**

In India, victim compensation schemes must be viewed as a more expansive and all-encompassing organization than the one outlined in Section 395 of the BNNS. The system must incorporate criminal remedies, civil liabilities, rehabilitative aid, victim engagement, and state accountability into a cohesive program rather than viewing compensation as a simple extension of sentencing. *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) 6 SCC 770 underlined that compensation is a fundamental right that needs to be actively enforced rather than a token gesture.

To conform to international standards on victims' rights and restorative justice, India's current victim compensation system needs significant modification. In order for restructuring to be effective, victims must be actively involved in developing policies, creating processes, and evaluating the success of programs in addition to being beneficiaries. With the help of this participatory model, compensation can become a rights-based, empowering system rather than a reactive one.

One important suggestion is to ensure an outcome-centric strategy in order to solve the systemic problems found in the provisions related to Section 395. All States must work together to develop, approve, and announce a standard scale for evaluating eligibility and the amount of pay in order for the country to succeed. States must also expedite the application process and raise public knowledge of victim compensation programs. When there are several relief options available, they should be viewed as complementary, and victims shouldn't be deterred or prohibited from using multiple programs at once. Additionally, applicants must have access to a prompt, transparent redressal procedure that enables timely appeals in the event that compensation is rejected.

For victims, procedural rigidity continues to be a significant obstacle. Strict regulations, such as required medical records, frequently cause financial aid that is desperately needed to be delayed. This needs to be fixed by explicitly defining provisions for interim compensation so that victims can get help right now. The majority of current programs concentrate on financial compensation, ignoring socioeconomic support, psychiatric treatment, and long-term rehabilitation. Furthermore, many survivors—children in particular—do not become aware of the abuse until a significant amount of time has passed, at which point any tangible proof may have vanished. Therefore, the legislation must allow for flexibility and amnesty for claims that are filed after the stringent statute of limitations.

Lastly, there has to be more cooperation between the judiciary, police, DLSA, and SLSA—the main institutions of the justice system. Every authority should proactively advise victims of their right to compensation and support them during the application and follow-up phases. In order to ensure that the system functions with a victim-centric vision at every stage, courts in particular should exercise their mandate to propose compensation if the circumstances merit such support.

## **VIII. CONCLUSION**

India's efforts to create a strong framework for victim compensation represent a significant shift from a system that historically gave the perpetrator priority to one that now more fully recognizes the interests and rights of victims. Significant legislative progress has been made with provisions like Section 395 of the BNNS and state-specific compensation plans, but their efficacy is nevertheless constrained by uneven implementation, procedural obstacles, and low awareness. These gaps show that although the legal framework has grown, it is still unable to provide victims with timely and significant relief.

A truly effective victim compensation regime demands more than statutory recognition—it requires a holistic, victim-centric approach that integrates financial relief with psychological support, rehabilitation, and long-term assistance. International standards highlight the importance of prompt interim compensation, simplified procedures, and strong institutional coordination, areas where India must further strengthen its framework. Ensuring accessibility, reducing administrative delays, and enhancing sensitivity among justice institutions are essential steps toward building a system that upholds victims' dignity and supports their recovery.

The transformation of disparate legal provisions into a cohesive, transparent, and accountable institutional structure is ultimately what will determine the future of victim compensation in India. This calls for standardizing state programs, defining precise remuneration rules, and guaranteeing uniform implementation across the country. The criminal justice system fulfills its actual goal when victims receive justice not only by having the culprit punished but also by having their pain acknowledged and their well-being restored. Therefore, strengthening victim compensation involves a moral and constitutional commitment to a more just and compassionate judicial system, not only a legal change.