
VICTIM COMPENSATION UNDER THE INDIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Victims are kept at a very uncomfortable distance to the centre of Indian criminal activity. The prosecution apparatus is turned against the accused; the individual who suffered is, as a rule, an object of the process and not an object whose damages the court is requested to redress. The paper is based on the legal history of the victim reparation in India beginning with the colonial-era Code of Criminal Procedure, 1898 and continuing until the Bharatiya Nagarik Suraksha Sanhita, 2023. It discusses the provisions of Section 357 and 357-A of the Code of Criminal Procedure, 1973 in detail and speculates on how the courts have interpreted these provisions over the decades and whether the reparation schemes operated by the state have been effective in practice. The foreign models such as the United Nations Declaration on victims of crime of 1985 are selectively referred to. The paper is broadly optimistic about the legislative path, but sees continued failure in implementation - inconsistent judicial implementation, schemes that are underfunded, and victims who have little or no idea of what the law formally assures them. These are concluded with recommendations, none of which is really novel, which speaks in itself to the rate of reform in this field.

Keywords: Victim Compensation, Section 357 CrPC, Section 357-A CrPC, BNSS 2023, Criminal Justice, India.

I. Introduction

Formally, Indian criminal law is a dispute between the state and an accused person. The victim the individual who was actually harmed enters the process as a witness and largely exits it the same way. Sentences are pronounced, fines are imposed, convicts sometimes go to prison; but none of that necessarily puts anything back in the victim's pocket, pays the hospital bill, or compensates a widow for the loss of a breadwinner. This has been observed often enough, including by the Supreme Court, yet the problem persists.¹

The problem is not that the law does not say anything on the subject. The Law Commission of India as early as 1978 observed in its 70th Report that the then-existing CrPC was too restrictive in its provisions regarding compensation and it was time to reconsider its provisions.² The Malimath Committee which reported in 2003 further suggested a special compensation fund at the national level.³ These proposals ultimately influenced the 2008 change by adding Section 357-A in the Code of Criminal Procedure which, on one hand, provided a reparation mechanism based on state money instead of depending on whether the criminal had some money in his pocket to give.⁴

The Bharatiya Nagarik Suraksha Sanhita, 2023 replaced the CrPC in July 2024 and was promoted as a thoroughgoing modernisation of criminal procedure.⁵ Whether it has added anything meaningful to victim compensation law, as opposed to merely renumbering existing provisions, is a question worth asking. This paper attempts that inquiry. Part II surveys the historical background; Part III examines the statutory provisions under both the CrPC and the BNSS; Part IV looks at what courts have made of these provisions; Part V assesses the State Victim Compensation Schemes; Part VI draws some international comparisons; Part VII attempts a critical stock-taking; and Part VIII offers recommendations.

II. Historical Development of Victim Compensation in India

A. Pre-Independence and the Colonial Framework

It would be wrong to say that reparation for harm done was entirely absent from pre-

¹Usha Ramanathan, 'Victims, State and Criminal Justice' (2004) 39(4) *Economic and Political Weekly* 4611, 4612.

² Law Commission of India, 70th Report: Compensation to Persons Who Are Victims of Acts for Which Others Have Been Sentenced (1978) para 1.3.

³ Committee on Reforms of Criminal Justice System (Malimath Committee Report), Ministry of Home Affairs, Government of India (2003) Vol I, Chapter 6, para 6.1.

⁴Code of Criminal Procedure (Amendment) Act, 2008 (Act No. 5 of 2009), s 357-A inserted w.e.f. 31 December 2009.

⁵Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023), ss 395-398 (in force from 1 July 2024).

colonial Indian legal thought. The Arthashastra contains passages that can reasonably be read as recognising a duty on the wrongdoer to make good the loss caused to another.⁶ Customary systems in several parts of the subcontinent similarly included some form of restitutive settlement. The trouble is that colonial codification swept most of this aside. The Code of Criminal Procedure, 1898 which governed criminal procedure for nearly three-quarters of a century did have a compensation provision in Section 545, but it was modest to the point of being largely ornamental.

Section 545 permitted the courts to instruct that part of any fine, which would be imposed on a guilty individual, would go to the injured party.⁷ It was ineffective due to two structural issues. First, it was completely parasitic in the payment of a fine, unless a fine was paid, or a small one, this source of compensation would be negligible. Second, it was seen by the courts as an additional consideration that was optional as opposed to being a commonplace consideration. Victims, who were not aware of the existence of the provision, could scarcely complain of deprivation of its benefits and the majority were not aware of it.

B. Post-Constitution Developments

The coming into force of the Constitution opened new possibilities, though they took decades to materialise. Article 21's guarantee of life and personal liberty was gradually expanded by the Supreme Court to cover a broad range of state obligations. The 1983 decision in *Rudul Sah v. State of Bihar* which concerned illegal post-acquittal detention rather than crime victimisation as such is regularly cited as establishing the principle that monetary compensation can be awarded by the Court for violations of fundamental rights.⁸ This was constitutionally significant, though its practical application to ordinary crime victims was indirect and slow.

The Law Commission's 70th Report, published in 1978, took stock of Section 545 and found it wanting.⁹ The Commission argued that courts should treat reparation as a standard sentencing question rather than an afterthought. The 154th Report, nearly two decades later, pushed the argument further: any arrangement relying on the convicted person to supply the

⁶Kautilya, *Arthashastra* (R. Shamasastri tr, 4th edn, Government Press 1929) Book III, Chapter 20. See also P Olivelle, *King, Governance and Law in Ancient India* (Oxford University Press 2013) 211-213.

⁷ Code of Criminal Procedure, 1898, s 545(1)(b); Ratanlal & Dhirajlal, *The Code of Criminal Procedure* (19th edn, LexisNexis 2010) 1224-1226.

⁸*Rudul Sah v State of Bihar* AIR 1983 SC 1086 [8]-[10] per Chandrachud CJ.

⁹Law Commission of India, 70th Report (n 2) paras 4.7-4.11.

money will fail in a country where a large proportion of those convicted have very little.¹⁰ The Malimath Committee in 2003 agreed, and added the proposal for a national-level fund.¹¹ These reports accumulated without much legislative response until the 2008 amendment, which took up the state-funding idea but stopped short of a national fund.

III. The Statutory Framework

A. Section 357, Code of Criminal Procedure, 1973

Section 357 of the CrPC was an improvement on Section 545 of the 1898 Code, but it retained the same fundamental architecture.¹² Under sub-section (1) of the court sentencing, which consisted of a fine, it may specify that a portion of the fine be given to the victim. Sub-section (3) would have been more helpful: it authorised the court to order a payment to the offended party even in the case where no fine was a constituent of the sentence, but the court believed that such an order was justified by the facts.¹³ On paper, this was a fairly wide-ranging power. In practice, it was not commonly and uniformly used by courts.

It was not what the provision said but more how it was handled in the day-to-day operation of the criminal courts. Indian trial courts are likely to sentence in a short time. Compensation to the victim is not an issue that naturally comes to mind, unless a particular person brings it up and, in many instances, no one does.¹⁴ This was remarked on by the Supreme Court. In the case of *Delhi Domestic Working Women v. Union of India*, the Court regretted that there was no effective system in place to compensate rape victims and ordered the government to come up with the right guidelines. In *Hari Singh v. Sukhbir Singh*, it declared that the omission to even contemplate the issue of compensation itself was an error of law. These observations were clearly stated, but trial courts dealing with hundreds of cases did not always get the message.

B. Section 357-A: Reparation from Public Funds

The 2008 amendment added section 357-A, which altered the terrain in a significant manner. It stipulated that each state government develops a scheme of compensation to the

¹⁰Law Commission of India, 154th Report: Code of Criminal Procedure, 1973 (1996) paras 10.1-10.8.

¹¹Malimath Committee Report (n 3) Vol I, para 6.9.

¹²Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s 357.

¹³Ibid s 357(1).

¹⁴*Delhi Domestic Working Women's Forum v Union of India* (1995) 1 SCC 14 [14] per Verma J.

victims, in consultation with the Central Government, whereby compensation was to be paid irrespective of the outcome at trial. The District Legal Services Authority or the State Legal Services Authority was to administer the scheme, and victims could do so directly or by court referral.¹⁵

The most significant aspect of Section 357-A is the one that it does not demand. It does not necessitate that the offender be identified, tried, and found guilty. This was a major deviation to Section 357 which in effect only operated on conviction.¹⁶ Theoretically, a victim of an unsolved robbery or an unidentified aggressor may have access to the scheme. The term theoretically is suitable as access in reality was much more complex, as it is addressed below.¹⁷

In *Suresh v. State of Haryana*, the Supreme Court held that Section 357-A provides right and not possibility and instructed states that had not yet informed their schemes to do so to do so without delay.¹⁸ A number of states had just been sitting on the legislative requirement over the years.¹⁹ This judicial prod was essential, and that in itself speaks volumes as to what was meant by Parliament and what is followed through by the executive.

C. Sections 357-B and 357-C

Two subsequent additions deserve mention. Section 357-B clarified that compensation awarded under Section 357 or Section 357-A was payable over and above any fine imposed for acid attack or gang rape offences under the IPC.²⁰ The legislature recognised that in cases of severe bodily harm the conventional sentencing calculation was simply insufficient. Section 357-C addressed a different but related problem: it required every hospital government-run or private to give urgent clinical care to acid attack and rape survivors without first seeking a deposit or upfront payment.²¹ It is worth noting that enforcement of Section 357-C has also been patchy; reports of hospitals refusing treatment or demanding deposits before proceeding continued even after its enactment.²²

¹⁵Ibid s 357-A(2) and (3).

¹⁶ Ibid s 357-A(4). This sub-section decouples compensation from conviction; see Malimath Committee Report (n 3) para 6.7.

¹⁷ Ibid s 357-A(2) and (3).

¹⁸ *Hari Singh v Sukhbir Singh* (1988) 4 SCC 551 [8]-[9] per Ahmadi J.

¹⁹ *Suresh v State of Haryana* (2015) 2 SCC 227 [11]-[13] per Misra J.

²⁰ CrPC (n 13) s 357-B, inserted by the Criminal Law (Amendment) Act, 2013 (Act No. 13 of 2013).

²¹ CrPC (n 13) s 357-C; *Laxmi v Union of India* (2014) 4 SCC 427 [16]-[18].

²² CrPC (n 13) s 357-A(1).

D. The Bharatiya Nagarik Suraksha Sanhita, 2023

The BNSS reproduces the earlier reparation provisions with few changes. Sections 395, 396, 397, and 398 of the new code track the content of Sections 357, 357-A, 357-B, and 357-C of the CrPC respectively.²³ The more notable textual change is found in Section 2(y), which defines 'victim' in terms that explicitly bring in the guardian or legal heir of the person directly harmed.²⁴ This matters in cases of murder or cases where the victim is incapacitated and cannot pursue a claim personally. Under the old CrPC, the position of legal heirs was less clear.

There is also language in the BNSS that makes it more obvious that any court that chooses not to grant compensation has to document the reasons as to why it has chosen not to grant compensation. It is questionable whether this will truly impact judicial behaviour in the trial court level. The lax wording of the CrPC was frequently read by the Supreme Court to imply an obligation to answer the question, and never was the chasm between the interpretation of the Supreme Court and the practice on the ground quite bridged. A slight modification in the text of the BNSS is hardly going to achieve what years of apex court instructions have failed to do.

The BNSS has been criticised, not unreasonably, for being largely an exercise in renumbering rather than reforming. On victim compensation specifically, the most glaring omission is the continued absence of a national fund. The Malimath Committee made that recommendation in 2003. Two decades and a complete code replacement later, it remains a recommendation.

IV. Judicial Interpretation

A. Constitutional Basis and the Apex Court

Courts particularly the Supreme Court have been the more active force in shaping victim compensation law compared to Parliament. The Court has read Section 357(3) as carrying something close to a mandatory flavour, even though the text says 'may'. It has invoked Article 21 to fill gaps that the statute leaves open. And it has occasionally issued directions in

²³BNSS, 2023 (n 5) ss 395-398; Vakul Sharma, *Bharatiya Nagarik Suraksha Sanhita, 2023: A Commentary* (1st edn, LexisNexis 2024) 512-521.

²⁴BNSS, 2023 (n 5) s 2(y).

public interest proceedings that effectively compelled state governments to act.²⁵

In *Maru Ram v. Union of India*, Krishna Iyer J observed, in terms that were memorable if not immediately operative, that crime victims had a legitimate claim on the state's protective attention.²⁶ In *State of Gujarat v. Hon'ble High Court of Gujarat*, the Court acknowledged that the interests of victims are not simply absorbed into the interests of the prosecuting state.²⁷ The acid attack litigation, culminating in *Laxmi v. Union of India*, produced the most concrete judicial intervention: the Court set a floor for compensation in acid attack cases, mandated free medical treatment, and gave state governments specific deadlines to revise their schemes.²⁸

B. How Courts Have Read the Sentencing Power

The judicial history of Section 357(3)'s open-ended standard is worth tracing briefly. In *Palaniappa Gounder v. State of Tamil Nadu*, a Constitution Bench framed the provision as being about justice to victims, not merely sentencing arithmetic.²⁹ In *Balraj v. State of U.P.*, Ahmadi J said the provision should be used 'liberally' a word that appears in several subsequent judgments and is frequently cited but not always followed.³⁰

The Court also set some limits. In *State of Rajasthan v. Rajendra Kheria*, it cautioned that compensation must reflect actual loss and should not be used as a punitive device against the convict.³¹ This is a sensible concern, though it sits in some tension with the rehabilitative purpose of compensation. The most comprehensive statement of the law came in *Ankush Shivaji Gaikwad v. State of Maharashtra*, where the Court directed that every sentencing court must address the compensation question and record reasons if it declines to award anything.³² *Ankush Shivaji Gaikwad* is now the leading authority on the point, though its reach into district courts across the country has been uneven.

C. High Courts and the Enforcement Problem

High Courts are constantly entangled in matters of scheme implementation in dispute.

²⁵ See Priya Mathur, 'Victim Compensation in India: An Analytical Study' (2013) 55(2) *Journal of the Indian Law Institute* 201, 218-219.

²⁶ *Maru Ram v Union of India* (1981) 1 SCC 107 [38] per Krishna Iyer J.

²⁷ *State of Gujarat v Hon'ble High Court of Gujarat* (1998) 7 SCC 392 [22].

²⁸ *Laxmi v Union of India* (2014) 4 SCC 427 [19]-[24].

²⁹ *Palaniappa Gounder v State of Tamil Nadu* AIR 1977 SC 1323 [6].

³⁰ *Balraj v State of UP* (1994) 4 SCC 29 [7] per Ahmadi J.

³¹ *State of Rajasthan v Rajendra Kheria* (2011) 9 SCC 54 [9].

³² *Ankush Shivaji Gaikwad v State of Maharashtra* (2013) 6 SCC 770 [13]-[17] per Thakur J.

The typical scenario is that a victim receives compensation by the recommendation of a trial court or determination in a DLSA case, the relevant authority fails to pay, or takes too long to pay, and subsequently the victim or his or her legal aid organisation takes the case to the High court, which gives directions to pay. According to its own review data, NALSA suffers from endemic delays in disbursements and from administrative bottlenecks. The Supreme Court has also been compelled to step in to writ suits for states to submit compliance reports. It goes against the grain to have to fight these authorities over something created by them in the first place.

V. State Victim Compensation Schemes

A. Coverage and Compensation Amounts

All states and union territories have now framed schemes under Section 357-A, though several took considerably longer than the legislature presumably intended.³³ The schemes follow a broadly similar structure: they list covered offence categories, specify eligibility, prescribe compensation ceilings, and set out a claims procedure. But the amounts differ quite substantially from state to state.³⁴ For rape, the minimum ranges from roughly Rs. 3 lakhs in some states to Rs. 10 lakhs in others. Acid attack victims face a similarly wide range. There is no obvious rationale for these differences they reflect the varying degrees of seriousness with which different state governments have engaged with the obligation.³⁵

B. Why the Schemes Often Do Not Work

NALSA's data consistently shows that a large proportion of victims entitled to compensation under state schemes never apply.³⁶ The primary reason is simple: they do not know they are entitled to anything. Police officers who deal with victims at the earliest stage of a case are often unaware of the scheme or do not consider it their business to inform victims about it. Lawyers, if the victim has one at all, may similarly overlook the scheme, particularly in cases where the trial has concluded and legal representation has ended.³⁷

³³NALSA Annual Report 2022-23 (n 35) 48-49.

³⁴ National Legal Services Authority v Union of India (Writ Petition (Civil) No 55 of 2016), order dated 2 May 2018.

³⁵Rajan Nair, 'State-Funded Victim Compensation: Promise and Practice after Section 357-A CrPC' (2016) 28(1) National Law School of India Review 45, 58-63.

³⁶NALSA Annual Report 2022-23 (n 35) 51.

³⁷ National Legal Services Authority, Annual Report 2022-23 (NALSA 2023) 47-53.

The documentation needed to apply to the scheme can be time-consuming for those who know what it is and decide to apply. All these are necessary copies of the FIR, medical certificates, proof of income or identity and can be hard for a person who has just been the victim of a serious crime to get together, especially if they are illiterate or come from a poor or rural background. In addition to the documentation issue, there is the question of how much money does the fund have? There are several states reporting under funding.³⁸ Victims that do manage to get a win may still have months to wait for payment. There is no national backstop - if a state fund runs out, there is no way to access central funds.³⁹

C. Centralised Initiatives

The Central Government's 2015 scheme for women victims of sexual assault set minimum compensation norms across offence categories and required state schemes to be revised upward to meet them where they fell short.⁴⁰ This was a useful intervention that moderated some of the more egregious inter-state disparities. NALSA has issued model guidelines for specific victim categories acid attack survivors, trafficking victims, children and these have informed state-level revisions in a number of cases.⁴¹ These are meaningful efforts, but they address symptoms rather than the underlying problem of fragmented, under-resourced, and inconsistently administered schemes.

VI. A Comparative Perspective

A. The UN Declaration, 1985

India voted for the adoption of the 1985 UN Declaration on victims of crime,⁴² which affirms that offenders should make restitution to victims⁴³ and that states should provide financial compensation when offenders cannot.⁴⁴ On paper, India's legal framework acknowledges these principles. In practice, the qualification 'when offenders cannot' is doing a great deal of work. The state-scheme mechanism was created precisely to address this gap, but

³⁸ British Columbia Victim Services and Crime Prevention, Victim Assistance Program: Policy and Procedures Manual (Ministry of Public Safety 2022).

³⁹ Malimath Committee Report (n 3) para 6.9.

⁴⁰ Ministry of Women and Child Development, Central Victim Compensation Fund Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes (2015), para 4.

⁴¹ NALSA, Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes (2018 revision).

⁴² United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res 40/34, UN Doc A/RES/40/34 (29 November 1985).

⁴³ UN Declaration, 1985 (n 6) para 8.

⁴⁴ *Ibid* para 12.

its inadequate funding and patchy implementation mean India falls well short of the Declaration's standard of 'adequate' compensation.⁴⁵

B. Foreign Models

There are three foreign events to be noted briefly. The Criminal Injuries Compensation Authority in the UK administers a tariff-based scheme, helping to provide a monetary compensation entirely outside of the criminal trial process for individuals who have been injured by violent crime, without the need for the offender to be convicted or even identified.⁴⁶ The United States has state-based programmes which are supplemented by a central fund financed from fines and penalties imposed on convicted offenders in federal court, thereby replenishing itself and expanding to very large scales. Following a long process of gestation, South Africa passed a dedicated Victims of Crime Act in 2024. The provincial schemes in Canada also provide relatively easy access and more generous ceilings than most state schemes in India.⁴⁷

Two differences stand out. First, these systems generally do not insist on a conviction before compensation is considered. India's Section 357-A nominally allows compensation in the absence of a conviction, but DLSAs are reluctant to award it in such cases. Second, these systems are funded through dedicated revenue streams rather than annual state budget appropriations.⁴⁸ This makes them less vulnerable to year-on-year fiscal pressures and political attention cycles. India's scheme-based approach has neither of these features.

VII. Critical Analysis

A. Discretion and Its Costs

The term 'may' in Section 357(3) (retained as 'may' in Section 395(3) of the BNSS) has been the most impactful in the Indian victim compensation legislation. It is interpreted as a discretion to be exercised or not, depending on the court or courts' judgment. The Supreme

⁴⁵ Victims of Crime Act 1984 (USA), 34 USC ss 20101-20111; Office for Victims of Crime, Crime Victims Fund: Annual Report 2023 (US Department of Justice 2023) 3.

⁴⁶ Criminal Injuries Compensation Act 1995 (UK), s 1; Criminal Injuries Compensation Authority, Guide to the Criminal Injuries Compensation Scheme (CICA 2020) 4-6.

⁴⁷ British Columbia Victim Services and Crime Prevention, Victim Assistance Program: Policy and Procedures Manual (Ministry of Public Safety 2022).

⁴⁸ Nishtha Shrivastava, 'Victimology in Indian Criminal Law: A Study of Emerging Trends' (2015) 36(1) Indian Journal of Criminology and Criminalistics 1, 9-11.

Court has issued this dictum many times that it should always be exercised on the side of the victim, but the same cannot be said for the sessions and magistrate courts which face the bulk of the criminal business. In busy dockets and long cases, judges will often rush through to settle sentences. The question of compensation may not be raised at all, unless counsel raises the question.⁴⁹

The BNSS's provision requiring a court to record reasons when it decides not to award compensation⁵⁰ is an improvement on the CrPC's silence on the point, but it is a modest one. Requiring reasons is not the same as presuming in favour of compensation. A court can record brief, unhelpful reasons and still leave the victim with nothing. What is actually needed is a shift in how courts understand the sentencing process away from a purely state-offender frame and towards genuine acknowledgment of the victim's losses. Textual tweaks cannot achieve this by themselves.

B. Psychological Harm and the Gap in the Law

Compensation under Indian law is conceived almost entirely in economic terms: lost income, medical bills, funeral costs. The psychological consequences of crime and the evidence that these can be severe and lasting, particularly for victims of violent or sexual offences⁵¹ go largely unaddressed. A handful of state schemes earmark a nominal sum for psychiatric or counselling support, but it bears no resemblance to what a course of actual treatment would cost. The point is made worse by the weakness of India's public mental health infrastructure, which means that even a victim who receives money labelled for this purpose may find no accessible service to spend it on.⁵²

This is not a straightforward problem to solve, given the state of India's mental health infrastructure. But acknowledging the gap would at least be a start. The BNSS does not acknowledge it. Law Commission reports and committee recommendations have addressed it only in passing.⁵³ For victims of sexual violence, human trafficking, or prolonged domestic

⁴⁹ Republic of South Africa, Victims of Crime Act 17 of 2024; Dee Smythe, 'South Africa's Long Road to a Victims' Act' (2023) 140 South African Law Journal 210.

⁵⁰BNSS, 2023 (n 5) s 395(3).

⁵¹World Health Organization, Mental Health Action Plan 2013-2030 (WHO 2021) 22-24.

⁵² Nair (n 38) 67-68.

⁵³Anuradha Tiwari and Rajesh Singh, 'Victim Rights and Restorative Justice in Indian Criminal Law' (2019) 4(2) Journal of Law and Social Transformation 87, 99-101.

abuse, the absence of any meaningful psychological support component in the compensation framework is a serious deficiency.

C. Who Actually Gets Compensated

According to NCRB data, members of the Scheduled Castes and Scheduled Tribes are over-represented among victims of violent crime but under-represented among those who do obtain compensation.⁵⁴ This does not come as a surprise. The obstacles to using the scheme, such as awareness, documentation, physical distance to DLSAs, mistrust of official institutions, are even more adversely impacting already marginalised groups. A tribal woman who survives a sexual assault is hindered in accessing an FIR, medical records, travelling to a DLSA, and a bureaucratic process without the assistance of legal aid.⁵⁵ The legislation gives her a right; it is extremely difficult to exercise within the system.

Legal aid is available in theory, but it is primarily oriented towards representation in court proceedings, not towards helping victims navigate compensation applications. The result is that the scheme benefits flow more easily to victims who are relatively more resourced those in urban areas, those with access to NGO support, those whose cases attracted attention.⁵⁶ This inverts the intended purpose of any reparation arrangement.

VIII. Conclusions and Recommendations

Taken on its own terms, the legal position in India is not indefensible. Inserting Section 357-A in 2008 was a real shift in the right direction. The Supreme Court has nudged courts repeatedly towards taking the victim's losses seriously at the sentencing stage. The BNSS has carried these gains forward and made minor additions.⁵⁷ The problem is execution. A right that is formally available but practically inaccessible is not much of a right.

Five recommendations follow from the foregoing analysis. They are not new several have appeared in Law Commission reports or committee recommendations before. The fact that they still need to be made reflects how slowly the system moves.

⁵⁴ British Columbia Victim Services and Crime Prevention, *Victim Assistance Program: Policy and Procedures Manual* (Ministry of Public Safety 2022).

⁵⁵ National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs 2023) Table 9.1.

⁵⁶ Nair (n 38) 67-68.

⁵⁷ *Suresh v State of Haryana* (n 22); *Ankush Shivaji Gaikwad* (n 34) [16].

First, Parliament ought to establish a central reparation fund which is maintained by a portion of the fines and penalties imposed in criminal courts across all levels. Such a national pool would bring to an end the inter-state imbalance in available amounts, will act as a safety net when the funds available in individual state funds are exhausted, and will end the reliance on the scheme of what any individual state government decides to appropriate during any given budget cycle. There is no doubt about the lawfulness of doing so.

Second, Section 395 BNSS should be amended so that directing a reparation payment becomes the baseline expectation at sentencing rather than an option a court may or may not exercise. If a court decides against making any such direction, it should be required to give reasons that actually engage with the particular circumstances not simply a stock observation that the convict has no assets. This reversal of the default better reflects where the burden ought to lie.

Third, legal assistance should be formally extended to the post-trial reparation application stage. At present, NALSA's primary mandate is representation in court. What many victims need is someone to help them fill out a scheme application, gather supporting documents, and follow up with the relevant authority tasks that lie outside the courtroom but are equally important. Designated officers at the district level, with this specific responsibility, would go some way towards addressing the problem.

Fourth, police officers should be formally required, as part of standard procedure, to inform victims of their right to apply for compensation under the state scheme. The information gap is significant and fixable. An instruction in the police manual, backed by supervision, costs almost nothing.

Fifth, compensation for psychological harm needs to be brought within the scheme in a meaningful way not as a token add-on but as a component calculated on the basis of what treatment actually costs and tied to accessible delivery mechanisms. This requires coordination between the law and health ministries that has not previously occurred.

None of these recommendations require constitutional amendment or novel legal thinking. They require political attention and administrative follow-through. Whether the BNSS, presented as a break from colonial-era criminal procedure, will actually produce that kind of attention to victim rights remains to be seen.