

## **RIGHT TO COMPENSATION UNDER NEW CRIMINAL LAWS IN INDIA**

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### **ABSTRACT**

*In 2023, Indian lawmakers introduced victim-focused provisions in the Bhartiya Nayay Sanhita, 2023, marking progress in addressing victims' rights. However, improvements are needed in areas such as the limited compensation scope, victims' awareness of their rights, complex compensation processes, inconsistencies in awards, inadequate government funding, and the inclusion of marginalized victims. Effective victim compensation laws should be fair, equal, accessible, and enforceable, emphasizing the necessity of clear communication of these principles to all stakeholders. The Indian Police Journal highlights updated legislation aimed at enhancing the effectiveness, equity, and accountability of the justice system, particularly by acknowledging the victim's role in criminal cases. This law prioritizes victims, granting them rights to participate and access information, as well as providing compensatory rights. Key reforms focus on participatory rights, the right to information, and the right to compensation for damages. Prominent figures, including Shree Jai Prakash Agarwal, Shri Ramakant D. Khalap and the Justice Malimath Committee, advocate for 'justice for victims' and reforms in victimology to strengthen victims' roles and improve compensatory justice.*

**Keywords:** Bhartiya Nyaya Sanhita, Compensation, Medical Care, Rehabilitation, Victims-Rights.

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## **INTRODUCTION**

Justice must not only be done, but must also be seen to be done<sup>1</sup> which means that the significance of openness and equity within the legal framework of any country. It indicates that the community ought to observe that the justice is being served without bias, which fosters trust and assurance in the system. The concept is founded over on the idea that even the perception of partiality or injustice can detract from the credibility of the legal procedure, regardless, of whether any true injustice has taken place. The foremost objective of any judicial system is to uncover, affirm and setup the truth, since the advent of any judicial system. Whether the State's duty to the victim, completed, merely, by filing a case, conducting an investigation, initiating prosecution, securing a conviction and to impose a sentence on the accused. On the other hand, this responsibility to the victim persists even after these actions, already been taken by the State. The guiding principle of the administration of criminal justice is to ensure a fair trial and justice not just for the accused, but also for the victim of the crime. This principle requires a careful judicial balancing of the competing interests of the accused, the victim, and society. Justice should be both restorative and rehabilitative for the victim, as well as reformative for the offender. The victim has a valid expectation of receiving financial restitution along with other types of rehabilitative assistance. The duty to compensate the victim remains, even if the legal system is unable to identify the perpetrator or gather enough evidence for a conviction of the guilty party.

To balance this in 2023 a step forward has been took by the Indian Parliament towards victim, by the enactment of New Criminal Laws, i.e., Bhartiya Nayay Sanhita, 2023, Bhartiya Nagarik Suraksha Sanhita, 2023 and Bhartiya Sakshya Adhiniyam, 2023. From 1860 to June 2024, India's criminal justice system was functioning on the foundation of laws made by the British Parliament. From July 1, 2024, the three colonial era laws of the Indian Penal Code, 1860, Code on Criminal procedure, 1973, and Indian Evidence Act, 1872, were repealed by the Indian Parliament. Old criminal laws specifically, the India Penal Code, 1860 was providing the provisions of punishments for various offences, which are grounded in the Indian ethos focusing on justice rather than punishment. Earlier the Indian Penal Code was silent on victim compensation, specifically to the crimes against human body like rape, gang rape or the victims of acid attack. In 2023, a progressive

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<sup>1</sup> Hewart Lord [1924] 1 KB 256. in Rex v. Sussex Justices, Available at <https://www.barandbench.com/columns/the-origins-of-justice-must-be-seen-to-be-done>

step has put forwarded by the Indian legislatures through the introduction of victim centric provisions in Bhartiya Nayaay Sanhita, 2023. However, a notable progress in recognizing and addressing victims' rights, yet, still some areas that need attention. These areas include the limited scope of compensation, a lack of awareness among victims regarding their rights, a complicated and lengthy process for obtaining compensation, inconsistency in compensation awards, insufficient government funding, the necessity for rehabilitation and support services alongside monetary compensation, and the need to include marginalized and vulnerable victims in the system. Change is the law of nature. It means laws regarding victim compensation play a crucial role in the criminal justice system by seeking to offer financial help and support to crime victims. The characteristics of an effective law are fairness, equality, easy accessibility, easy enforceability and simple procedures infused with scientific temperament. Our new criminal laws are rich in these characteristics. These principles and procedures need to be disseminated to all the stakeholders. Indian Police Journal is one of such medium to disseminate this knowledge.<sup>2</sup>

## **WHO IS A VICTIM?**

A victim is an individual or group who has/have experienced mental or physical harm or injury. This harm may include economic losses, infringements on fundamental rights, and violations of existing laws. Additionally, compensation and relief may be granted to the victim's spouse, a dependent relative, or anyone with custody of the victim or their dependents in the event of the victim's death or inability to respond. Victim is a person who himself/ herself faced any Loss/Injury due to any criminal activity.<sup>3</sup>

Initially, the term 'victim' was utilized in Hebrew, Muslim, and Christian scriptures to refer to someone designated for sacrifice rather than to an individual who has experienced loss or harm caused by others. The origin of the word 'victim' can be traced back to the Latin term 'victima'. In 1497, the term 'victim' was first introduced to the English language in the context of killing living beings as part of religious sacrifices. The word was first used to denote a human in English in 1736, in a translation of the New Testament where Jesus Christ is referred to as the expiatory victim, whose suffering redeemed humanity. Variations of the word can also be found in different

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<sup>2</sup> Lokku Ravi Joseph (2024) 'The Indian Police Journal' 'New Criminal Laws' Editorial

<sup>3</sup> Section 2(y) of the Bharatiya Nagarik Suraksha Sanhita,2023

languages, such as *víh*, *wéoh*, *wíg* in Old European, *wíh*, *wíhi* in Old High German, *vé* in Old Norse, *weihs* in Gothic, and *vinakti* in Sanskrit. Nowadays, these terms have shifted away from the idea of sacrifice and are commonly used to describe various types of sufferers, including victims of crime<sup>4</sup>.

In 1947, Benjamin Meldensohn introduced the term 'victimology,' derived from the Latin word 'victima' and the Greek word 'logos.' Meldensohn and Von Hentig are regarded as the pioneers of victimology. From the viewpoint of a defense attorney, Meldensohn classified victims into six categories based on their shared accountability for the offenses committed. In the first category, he classified the completely innocent victims, who happened to be in the wrong place at an unfortunate time when the crime took place. The remaining categories included victims who were seen as having contributed in some way to their own victimization<sup>5</sup>.

## **UNIVERSAL DECLARATION OF HUMAN RIGHTS**

The United Nations General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>6</sup> (henceforth referred to as the "U.N. Declaration"), during its 96th plenary, it marked a significant recognition of the need to establish norms and minimum standards in international law for the protection of victims of crime. According to the U.N.

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<sup>4</sup> John P. J. Dussich, "The Evolution of International Victimology and its Current Status in the World Today", Vol:1 Issue 1 RVJV, January 2015. Cited by Akasheena Patra 'A Critical Analysis of Section 357A CrPC (Now Section 396, BNS) (2025) pub. International Journal of Law Management & Humanities vol. 8 Issue 3 p 4078.

<sup>5</sup>Chetankumar T M & Chetan Irannavar, "VICTIMS RIGHT TO COMPENSATION INTERNATIONAL PERSPECTIVE", Vol: I. Issue XXXVI APJR, February 2016, available at, <http://apjor.com/downloads/0203201624.pdf>, last visited on 15.11.2025

<sup>6</sup> Adopted by UN General Assembly on 29 November 1985.

Declaration, victims of crime have four main rights: compensation<sup>7</sup>, restitution<sup>8</sup>, access to justice<sup>9</sup> and fair treatment, and legal assistance<sup>10</sup>.

The Victim Compensation Scheme represents a crucial benefit for the Indian Justice System. This initiative, tailored to safeguard the rights of victims, is a distinctive effort by the justice system to guarantee that individuals harmed receive the justice they deserve. There remains a pressing need for reform, which has led the current justice system to improve its support by providing financial compensation to those who have suffered harm. The Indian Penal System's insensitivity and lack of awareness regarding the needs of rape victims are highlighted by its failure to meet the emotional needs of these individuals.<sup>11</sup>

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<sup>7</sup> Clause 12 of United Nations General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power stated that, "When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization."

<sup>8</sup> Clause 8 of UN declaration of 1985 stated that, "8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights." While Clause 11 of the Declaration stated that When public officials or other agents operating in an official or quasi-official capacity break national criminal laws, the State whose officials or agents caused the harm should reimburse the victims. The victims should get compensation from the State or the Government successor in title if the Government that was responsible for the victimizing act or omission is no longer in existence.

<sup>9</sup> Clauses 4 and 5 of the UN declaration stated that,-

4. "Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered."

5. "Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms."

<sup>10</sup> "The required material, physical, psychological, and social help through governmental, voluntary, community-based, and indigenous means" makes up a portion of this. Part B of the United Nations Declaration addresses victims of abuse of power "that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights" (Clause 14).

<sup>11</sup> Mishra Vani (2025) Indian Journal of Law and Legal Research, "Retribution to restoration: evaluating victim Rights in the Bharatiya nyaya Sanhita", Page No..4250

Compensation refers to financial relief given to an individual whose rights have been violated. The Oxford Dictionary<sup>12</sup> defines compensation as "something, usually money, granted to someone in acknowledgment of loss, suffering, or injury." Compensation serves as a remedy in civil lawsuits. In contrast, criminal cases primarily focus on penalizing the offender to establish a deterrent effect on both the offender and society as a whole. Generally, in a criminal case, the victim does not receive anything from the punishment of the offender, apart from the assurance that the person who violated their rights has faced consequences. Nevertheless, compensation can also be granted in specific criminal cases when permitted by legislation for the sake of justice.

## **BACKGROUND**

The Criminal Justice System operates on an adversarial model. India's legal structure consists of laws, regulations, and judicial precedents that govern criminal behavior and its consequences. Grounded in the rule of law, the Criminal Justice System is a mix of colonial influence and local legal traditions, with its primary emphasis on the prosecution and punishment of offenders, while giving minimal consideration to the needs and rights of victims. The Indian Penal Code (IPC), which established in 1860 during the period of British colonization, outlines various crimes and sets forth the associated penalties. In addition to the IPC, there are specialized laws that address specific types of criminal behavior, including the Code of Criminal Procedure (Cr.P.C.), the Indian Evidence Act, and specific legislation addressing offenses against women, children, and marginalized groups. Recent criminal laws are focusing more toward the rights of victims, aligning with the principles established by the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. The updated legislation seeks to enhance the victim focus, responsibility, and efficiency of the criminal justice system, with a particular emphasis on offenses against women, children, and the state. 'Justice means fairness, fairness means truth, truth means reality, and the search for truth gives a legal system its moral dimension, otherwise, the likely winner will be the one with the most money & the cleverest lawyers.<sup>13</sup>,

Justice Cardozo of the US Supreme Court rightly stated that the rights of the accused must also extend to the accuser. The principle of fairness should not be so excessively constrained that it

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<sup>12</sup> Edition 2012

<sup>13</sup> Beulah Shekhar & Sajith Mohammed Salem, (2024) 'New Laws in India –A ray of Hope for Victims of Crime'

becomes trivial; we must ensure that the balance remains accurate. The Bhartiya Nayay Sanhita, 2023 represents the adaptation of colonial criminal law in India. A three member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The other members on the Committee were Justice Leila Seth, former judge of the High Court and Gopal Subramanium, former Solicitor General of India.<sup>14</sup>

## **NEW DAWN FOR VICTIM CENTRIC APPROACH**

The enactment of Bharatiya Nyaya Sanhita 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), and Bharatiya Sakshya Adhiniyam 2023 (BSA) represents a pivotal moment in Indian legal history, reinforcing the principle that laws must evolve to ensure contemporaneity and relevance. Now, a new era has begun which firmly grounded on the principles of 'Citizen First-Justice First-Dignity First'<sup>15</sup>. A holistic victim centric approach towards empowering victims ensuring justice has introduced by the parliament by providing the various provisions like rehabilitation, medical expenses and monetary help etc. in Bhartiya Nayay Sanhita, 2023.<sup>16</sup>

Victim-centric reforms in the Indian criminal justice system have generally been in the form of three rights, participatory rights, right to information, and right to compensation for the harm suffered. Shree Jai Prakash Agarwal and Shri Ramakant D. Khalap<sup>17</sup> during the 4<sup>th</sup> session of the committee and the Justice Malimath Committee Report<sup>18</sup> identified 'justice to victims' and victimology as crucial areas of reform and made recommendations, focussing on increasing victims' participatory role and for better compensatory justice.

The Committee very early in the deliberations recognized that victims do not get at present the legal rights and protection they deserve to play their just role in criminal proceedings, which tend to result in disinterestedness in the proceedings and consequent distortions in criminal justice

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<sup>14</sup> Verma J.S (2013) Report on the Amendments to Criminal Law, Page No. 01

<sup>15</sup> Sharma Rajeev Kumar, (2024) 'New Criminal Laws' 'The Indian Police Journal' Pg. No. Editorial

<sup>16</sup> Ministry of Home Affairs BPRD(2024) Page No. 1-2 available at <https://bprd.nic.in/uploads/pdf/202402200732062866143VictimCentricApproach.pdf>

<sup>17</sup> Agarwal Jai Prakash and Khalap Ramakant D.(1996) 154th Report of Law Commission Pg. No. 1

<sup>18</sup> Malimath V.S. Malimath (2003) Committee on Reforms of Criminal Justice System Government of India' Pg.75

administration. At the time of interaction with the police, the Judges, the prosecution and defense lawyers, jail officials and the general public, the concern for victims was quite pronounced by the committee and a view was canvassed that unless justice to the victim is put as one of the focal points of criminal proceedings, the system is unlikely to restore the balance as a fair procedure in the pursuit of truth. Furthermore, it was pointed out that support and co-operation of witnesses will not be forthcoming unless their status is considerably improved along with justice to victims. This perception was strengthened while the Committee examined the systems prevalent in other jurisdictions. The U. N. system also wanted member countries to guarantee rights of victims of crime through their respective legal systems. In the circumstances, the Committee resolved to give adequate importance to the idea of justice to victims of crime in the scheme of reform to be recommended. The entire chapter of the report is specifically addressed to rights of victims with a view to solicit their maximum support to criminal proceedings and to restore the confidence of people in Criminal Justice System.<sup>19</sup>

## **THE BHARATIYA NYAYA SANHITA, 2023 AND COMPENSATION TO THE VICTIM**

The Bhartiya Nyaya Sanhita (BNS), 2023, marks a significant change in India's criminal justice framework by focusing on victims' rights and improving compensation processes. This new law supersedes the colonial-age law<sup>20</sup> and seeks to promote a more victim-centered approach to justice. A crucial aspect of the BNS is its commitment to achieving justice for victims by implementing different initiatives that guarantee compensation, accelerate trials, and enhance legal protections. The BNS recognizes the essential role of supporting crime victims in addition to conventional punitive actions. It establishes an organized system for victim compensation, guaranteeing that those affected by serious crimes obtain both monetary aid and rehabilitative help. This approach conforms to international standards for safeguarding victims and acknowledges that genuine justice cannot be achieved without confronting the challenges victims encounter. Through the incorporation of compensation within its legal structure, the Sanhita ensures that victims do not face financial and emotional difficulties alone. In addition, the BNS enhances legal protections for

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<sup>19</sup> *Ibid.*

<sup>20</sup> Indian Penal Code, 1860

victims, especially in instances of sexual violence, domestic violence, and other crimes impacting at-risk populations. It strengthens procedural protections to encourage victim participation in legal proceedings, protect their dignity, and guarantee equitable treatment from law enforcement. Moreover, the Sanhita employs tactics designed to minimize delays in the justice system, avert extended trauma for victims, and ensure swift resolution of their complaints. A unique feature of the BNS is its victim compensation system, which aims for improved efficiency and effectiveness compared to earlier models. The law requires the swift allocation of compensation funds and holds the legal system responsible for adherence. This clause not only acknowledges the financial difficulties faced by victims but also supports their recovery and reintegration into the community.

The implementation of the victim compensation program is having the expectations to occur in partnership with state agencies and legal aid organizations, establishing a comprehensive support network. Additionally, the BNS improves witness protection protocols, recognizing the significance of victim statements in securing convictions. The legislation provides safeguards against threats and pressure, allowing victims and witnesses to participate in legal processes without apprehension. By strengthening these safeguards, the BNS enables victims to pursue justice with confidence. An examination of the BNS alongside previous legal frameworks underscores its forward-thinking position on victim rights. Although previous laws provided minimal provisions for compensation to victims, the BNS creates a more structured and legally binding system. Chapter V of Bhartiya Nayay Sanhita 2023, containing several provisions as amended by the Parliament, provides the provisions of compensation to the victim of rape<sup>21</sup>.

The Bharatiya Nyaya Sanhita, stated that,

Sub section (1) of section 65 clearly stated that whoever commit the crime of rape against a woman who has not attain the age of 16 years, be punished with the rigorous imprisonment of minimum 20 years and which may convert into the life imprisonment or till the natural death of the offender, and with fine, too.

Two provisos are included in sub section (1) of Section 65, and when interpreting the first one, it is very clear in the provision's language.<sup>22</sup>

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<sup>21</sup> Section 65, Subsection (1) of the Bharatiya Nyaya Sanhita, 2023.

<sup>22</sup> Ibid.

The language of first proviso is very clear that while the courts are imposing the fine upon the offender of rape, it must be kept in mind by the court, that the fine imposed by the court is ‘just and reasonable, or sufficient by which victim may bear her medical expenses, and, for the rehabilitation, also. It is very clear by the interpretation of the ‘just and fair’ that the court will ensure that the amount of fine should be fair, equitable, and not arbitrary or we can say that the financial status of the offender should also be kept in the mind by the court, while imposing the fine. It is a key principle underpinning the ***Doctrine of Reasonableness*** and, often, applied to interpretations of Article 14 of the Indian Constitution<sup>23</sup>, which guarantees equality before the law.

Second provision of sub section (1) of this section is directing to the courts that the amount of fine, which has already been imposed by the court upon the accused of the rape, should be ‘just and fair’ and shall be handed over to the victim of rape or to the family of the victim, mandatorily. Earlier the offender was supposed to submit the fine to the court. By the enactment of Bharatiya Nyaya Sanhita, 2023, the steps taken by the legislature is showing the victim centric approach of the policy makers.

While, Sub section (2) of section 65 of the Sanhita, stated that the accused who commit the crime of rape against a woman who has not attain the age of 12 years, mandatorily be punished with the rigorous imprisonment of minimum 20 years and which may convert into the life imprisonment or till the natural death of the offender, and with fine, or death.<sup>24</sup>

Again, the sub section (2) of this section having the two proviso and both of the provisos are having the same meaning as are given in sub section (1) of Section 65 of the Bharatiya Nyaya Sanhita, 2023.

The Bharatiya Nyaya Sanhita, 2023 speaks about the Gang rape<sup>25</sup> and punishments related thereto-

Keeping in mind to the victim of gang rape, the parliament while enacted the Sanhita, provides the provisions of punishment minimum of 20 years and may convert into life imprisonment and the offender shall be liable for fine. Sub section (1) of this section considers every person be guilty

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<sup>23</sup> Article 14 of the Indian Constitution, 1950

<sup>24</sup> Sub Section (2) of Section 65 of the Bharatiya Nyaya Sanhita, 2023

<sup>25</sup> Section 70 of the Bharatiya Nyaya Sanhita, 2023 -Punishments for Gang Rape

and responsible for the offence of gang rape. Every offender of the gang rape shall face a strict imprisonment term of at least 20 years, which may be changed to life imprisonment or extend until the offender's natural death, along with a monetary penalty as well.

The sub section (1) of section 70 is also having two provisos. The wording of the first proviso is quite explicit, stating that when the courts impose a fine on an individual convicted of rape, they must consider that the fine should be 'just and reasonable,' allowing the victim to cover her medical costs and rehabilitation. It is evident from the understanding of 'just and fair' that the court will ensure the imposed fine is equitable, reasonable, and not arbitrary, considering the financial situation of the offender while deciding the amount. This is a fundamental principle at the heart of the Doctrine of Reasonableness and, frequently applied in interpretations of Article 14 of the Indian Constitution, which ensures equality under the law.

The second proviso of sub-section (1) of this section instructs the courts that any fine imposed on a person convicted of rape must be 'just and fair' and is required to be disbursed to the victim or, if applicable, their family. Previously, the offender was obligated to pay the fine to the court. With the introduction of the Bharatiya Nyaya Sanhita, 2023, the actions taken by the legislature reflect a victim-oriented approach by lawmakers.

According to subsection (2) of Section 70<sup>26</sup> of BNS, if multiple individuals conspire to commit gang rape against a woman who is under the age of 18, all shall be the offenders of gang rape. These offenders will face a minimum imprisonment of 20 years, which can be extended to life imprisonment, along with a fine; additionally, the court may impose immediate sentencing.

Once more, the subsection (2) of this section contains two provisos, both of which carry the same significance as those specified in subsection (1) of Section 70 of the Bharatiya Nyaya Sanhita, 2023.

A most heinous form of attack on women, which is commonplace in several Asian and African countries, is the throwing of acid on women for a multitude of reasons, including alleged adultery, turning down advances from men, and also as a form of domestic violence. Acids and other corrosive substances are thrown on women or administered to them, thereby causing death or

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<sup>26</sup>Sub Section (2) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

physical and psychological damage with unfathomable consequences. The 226<sup>th</sup> Report of the Law Commission of India<sup>27</sup>, which dealt particularly with this offence stated:

“Though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him.<sup>28</sup>”

Section 124<sup>29</sup> of the Bharatiya Nyaya Sanhita, 2023 speaks that, anyone, who, intentionally and willfully commits the permanent or partial harm or deformity of any part of other individual's body, or burns, incapacitate, disfigured, disables to someone, or inflicts serious injury by throwing the acid. Additionally, the section states that anyone who arranges for acid to be used on another person or uses any other method with the knowledge that it will harm the victim's health or life or cause vertigo, will be sentenced to at least ten years in prison, with the possibility of a life sentence, as well as a fine.

In addition, subsection (1) of section 124 of the BNS contains two additional conditions, each of which is mentioned in Sections 65 and 70 of the Bharatiya Nyaya Sanhita, 2023, respectively. These conditions mean that, when the court is hearing and deciding an acid attack case, it will be necessary and required for the court to pass an order of an appropriate amount of fine in order to cover the costs of the victim's rehabilitation as well as their medical treatment. Not only this, it is also mentioned in the Sanhita (BNS) that the amount of fine should be handed over to the victim of acid attack.

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<sup>27</sup> July 2009, <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/Uploads/2022/08/2022081066.pdf>

<sup>28</sup> ‘Proposal for the inclusion of acid attacks as specific offences in the Indian Penal Code and a law for compensation for victims of crime’, Law Commission of India, July 2009 at p. 3. J.S. Verma J. Committee, “Report of the Committee on amendments to Criminal Laws” published on January 23, 2013 pg. 146

<sup>29</sup> Section 124 of the Bharatiya Nyaya Sanhita, 2023.

## **COMPENSATION TO THE VICTIM OF CRIME UNDER BHARATIYA NAGRIK SURAKSHA SANHITA, 2023**

The BNSS is designed to streamline and expedite criminal proceedings, aligning with Article 21 of the Indian Constitution, which guarantees the right to a speedy trial. One of the key features of the BNSS is the enhancement of the FIR filing process, making it more user-friendly and eliminating bureaucratic hurdles. By prioritizing digital documentation, online submissions, and virtual court appearances, the BNSS aims to minimize delays and enhance transparency, thereby reinforcing the constitutional principle of efficiency in the administration of justice. Additionally, the BNSS bolsters protections for victims by ensuring timely compensation and support services, while promoting a victim-centered approach. This focus on the needs of victims aligns with the constitutional ideals of justice and equality, ensuring that their rights are safeguarded, adequately.<sup>30</sup>

The main differences between the previous and current laws regarding procedures introduced by the BNSS are mainly evident in the established timelines. BNSS 4 stipulates a deadline for delivering judgments within 30-45 days following the conclusion of arguments and permits only two adjournments during the trial. Notification to the Victim/Informant by the Police.

The BNSS imposes a duty on the police to keep the victim or informant updated on the investigation's progress, including via electronic communication, within a span of 90 days. Additionally, it allows for further investigation after the filing of the charge sheet, but this continued investigation is limited to 90 days unless extended by court approval. Moreover, the police are required to file the First Information Report (FIR) within fourteen days if they determine merit in a preliminary inquiry. The concept of zero FIR been officially recognized by the BNSS, enabling victims or informants to file a zero FIR at any police station. This provision is especially advantageous for individuals in urgent or dangerous situations, as it promotes prompt police response and assists in the swift preservation of evidence.<sup>31</sup>

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<sup>30</sup> Singh Gurmit Lt. Gen. (2024) Conference of Governors, "Implementation of Three Criminal Laws" Page No.4-5

<sup>31</sup> *ibid.*

Victim is allowed to hire an attorney of their choice to aid in the prosecution. Nevertheless, the attorney's authority is restricted, and they can only submit written arguments after the evidence has been documented, unless the court provides consent.<sup>32</sup>

A victim who is at the point of submitting the First Information Report has the right to receive a copy of the recorded information immediately, without any charges.<sup>33</sup> The victim may also provide information through electronic communication, which must be documented by the officer in charge of the police station once the informant signs it within three days of submitting the information.<sup>34</sup> If the officer responsible declines to document the information provided by the victim, the victim can forward this to the relevant Superintendent of Police. If the information is still not documented, the victim may submit a request to the Magistrate.<sup>35</sup>

Any incidents involving violations under sections 64 to 71 and 74 to 79 and 124 of the Bharatiya Nyaya Sanhita, 2023, a female police officer should document the victim's statements.

Either if the victim became disable temporarily or permanently, this information should be collected at the victim's home or another suitable location of their preference, and in the presence of an interpreter or a special educator.

If the officer in charge at a police station decides to submit a final report that closes a case, a notification must be sent to the victim/informant informing them of the closure.

According to section 339 of B NSS (section 302 of Cr.P.C), the court may allow an advocate to represent the victim during the prosecution.

In *Shiv Kumar v. Hukam Chand*<sup>36</sup>, the issue addressed by a three-Judge Bench of the Hon'ble Supreme Court of India was whether an aggrieved individual has the right to appoint his or her own lawyer to conduct the prosecution, even with a Public Prosecutor present. The Hon'ble Supreme Court observed that "the role of the Public Prosecutor was to uphold the law and assemble a solid prosecution; and that the involvement of a private attorney would inevitably compromise the fairness and impartiality essential to a proper prosecution." In this case, the advocate designated by the aggrieved party attempted to conduct cross-examination of a witness, which the trial court

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<sup>32</sup> Sub Section (8) of section 18 of Bharatiya Nagrik Suraksha Sanhita, 2023.

<sup>33</sup> Section 173 of B NSS, 2023

<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.*

<sup>36</sup> (1999) 2 ANDH LT (CRI) 433

allowed, but this decision was overturned in a revision by the High Court, which then permitted only the submission of written arguments after the evidence had concluded. Reiterating the stance of the High Court, the Hon'ble Supreme Court remarked that in Magistrate courts, any individual (excluding police officers below the rank of Inspector) is permitted to carry out the prosecution. However, such leniency is not allowed in Sessions courts as specified by Section 225 Cr.P.C, which explicitly mandates that a Public Prosecutor must lead the prosecution.

In *Zahira Habibulla H. Sheikh v. State of Gujarat*<sup>37</sup>, the Hon'ble Supreme Court mentioned that a Public Prosecutor often might not have access to the facts that the victim knows. Furthermore, a Public Prosecutor is primarily influenced by the police rather than by the victim directly. It is also important to note that, in a changing society, the nature of crimes adapts to new circumstances. This adaptability is why various special laws have been introduced, such as the Dowry Prohibition Act, Negotiable Instruments Act, and Domestic Violence Act, which not only address offenses against society but also have a personal aspect since the victim is in the best position to articulate the alleged wrongdoing. As emphasized by the Hon'ble Apex Court in the previous ruling, it is vital that justice not only be achieved but also be seen to be achieved. Additionally, with the victim's intention to aid the prosecution, there should be no harm done, as the goal is simply to assist rather than replace the role of the prosecution. Moreover, considering the large number of cases and the existing backlog, it is sometimes practical for a Public Prosecutor to concentrate solely on a particular case.

In *Lalsuonglien and Others v. State of Manipur*<sup>38</sup>, the Manipur High Court observed that sexual assault on minor must take a note of the gravity of the offence, severity of mental and/or physical harm or injury suffered by the victim and also facing the social stigma, agony and trauma and the victims could not recover completely from the said unnatural incident till date, and directed to the State to pay interim compensation of Rs.7 Lakhs to every victims.

In *District Collector v. District Legal Service Authority*<sup>39</sup> is the case in which it was directed by the court that victim of crime is having the right to get the compensation even if the offender is not

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<sup>37</sup> (2004) 4 SCC 158.

<sup>38</sup> AIR Online 2019 Mani. 65

<sup>39</sup> 2021 (1) KLT at p. 400-410

traced or identified and the trial has not taken place.<sup>40</sup> In this situation a duty upon the State to pay the compensation and stated that Section 357 A (1) (4) & (5) Cr. P.C., 1973, is a substantive law not a procedural law.

In Kanwar Pal Singh Gill v. State,<sup>41</sup> the appellant submitted that the complainant has no intention of withdrawing Rs. 2 Lakhs ordered to be paid to her by way of compensation and that the amount may be given to any women's organization engaged in doing service for cause of women. The Chief Justice of the High Court of Punjab and Haryana authorised to deal with the said compensation amount in the appropriate manner as prayed for by the complainant.

Section 396<sup>42</sup> of the Bharatiya Nagrik Suraksha Sanhita, 2023 provides that when a court enforces a fine (or incorporates a fine into a sentence) it may also specify that the fine be allocated for different purposes. The purposes which may cover the expenses of the prosecution, providing restitution to victims for losses or injuries resulting from the offense, offering compensation to families in cases where the crime resulted in death, reimbursing individuals who inadvertently received stolen property, compensation cannot be distributed until the period for appeal concludes or until any appeals are resolved (if relevant). The court may also mandate that the offender pay compensation directly to the victim. Appellate courts and higher-level courts also have the authority to issue such compensation orders.

While Section 396<sup>43</sup> of BNSS, 2023 provides that the every state government, in collaboration with the central government, should develop a program to allocate funds for compensating crime victims who require rehabilitation. Courts have the ability to recommend financial compensation for victims. The District or State Legal Services Authority will determine the compensation amount to be granted. Trial courts may suggest compensation even in cases of acquittal when the victim requires rehabilitation. Victims or their dependents are eligible to seek compensation if the perpetrator remains unidentified. Legal Services Authorities can issue compensation following an investigation within a two-month timeframe. These authorities can also mandate immediate

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<sup>40</sup> Sec 357 A (1) (4) & (5) Cr. P.C., 1973

<sup>41</sup> 2005 S.C.C. (Cr.) 1420 at pp. 1423, 1424

<sup>42</sup> Section 395 of Bharatiya Nagrik Suraksha Sanhita, 2023

<sup>43</sup> Section 396 of Bharatiya Nagrik Suraksha Sanhita, 2023

medical assistance for the victim at no cost. Compensation provided by the state government is in addition to any fines imposed on the victim under other legal provisions.

In the case of *Laxmi v. Union of India & others*<sup>44</sup>, the Supreme Court directed all States and Union Territories to execute the following directives by issuing necessary orders or notifications:

- a. A minimum compensation of Rs. 3 lakh shall be given to every victim of acid attacks.
- b. Neither government nor private hospitals are permitted to deny treatment to acid attack victims. These victims are to receive free medical care, which encompasses medicines, food, bedding, and reconstructive surgeries at the respective hospitals.
- c. A Criminal Injuries Compensation Board should be established within the District Legal Services Authority (DLSA). This board will consist of the District Judge and other co-opted individuals deemed helpful by the District Judge, particularly including the District Magistrate, the Superintendent of Police, and the Civil Surgeon or the Chief Medical Officer of the District or their appointed representatives. This entity will operate as the Criminal Injuries Compensation Board for all relevant matters.

In *State v. Nagaraja*<sup>45</sup>, the court has determined that it would benefit the victim if the accused is ordered to pay a fine of Rs. 50,000/- within two months of the judgment. This amount is to be submitted to the trial court, which will distribute it to Bharathi (PW-12), the daughter of the deceased, once the period for appealing the judgment has elapsed. Bharathi will receive the amount on behalf of her two siblings and will ensure it is shared equally among them. If the accused fails to pay the fine as stipulated, they will serve an additional three years of simple imprisonment.

In *Anita Tahkur v. State of J. & K.*<sup>46</sup> the Supreme Court determined that when there is a clear violation of fundamental rights, victims of police misconduct are entitled to compensation. It was concluded that the appellant was targeted for prosecution with malicious and intentional motives, likely for the complainant to settle personal grievances, and that the Police colluded with the wrongdoers; thus, the State is obligated to compensate the appellants for the gross infringement of their fundamental rights, particularly since they were unjustly confined for an extended period<sup>47</sup>.

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<sup>44</sup> (2014) 4 SCC 427

<sup>45</sup> AIR Online 2019 Kant. 2334 (Kant).

<sup>46</sup> (2016) 15 S.C.C. 525

<sup>47</sup> *Santosh Kumar Dohare (Dead) v. State of M.P.* 2018 Cr. L.J. 3276 at p. 3284 (MP)

On the other hand, Section 397<sup>48</sup> of the Bharatiya Nagrik Suraksha Sanhita, 2023 talks about the all-healthcare facilities, whether public or private, are required to offer complimentary initial medical care or treatment to victims of specified crimes. The crimes covered include assault, theft, criminal breach of trust, and sexual offenses involving minors.

## **CONCLUSION**

The recently enacted Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagraik Suraksha Sanhita, 2023 and the Bharatiya Sakashay Adhiniyam, 2023 signifies a shift from previous legal traditions. Earlier, Indian Penal Code, 1860, the Criminal Procedure Code, 1973 and Indian Evidence Act, 1872 prioritized the safeguarding of government revenue, protection of rail transportation, and the interests of the British monarchy, the new laws emphasize crimes against women and children, offenses affecting bodily integrity, national security, military-related crimes, electoral offenses, and the counterfeiting of currency and government documents. These updated criminal laws have been developed in accordance with the principles of the Indian Constitution. The restructured legal framework has designed to ensure prompt and transparent justice through the implementation of various initiatives. To guarantee swift justice through these regulations, there are set timeframes for the police, attorneys, and judiciary. The use of technology at every phase of crime-scene investigation and trial is a fundamental aspect of the reforms. This approach not only promotes transparency and accountability in police investigations but also improves the quality of evidence, protecting the rights of both victims and the accused. An analysis of the new criminal law reforms reveals that which are centered on three crucial rights for victims: the right to participate, the right to be informed, and the right to seek compensation. Specifically, in the Bharatiya Nyaya Sanhita 2023, the esteemed Home Minister has announced that a victim-centric law established. For the first time, the rights of victims have been acknowledged within a legal framework. This represents a fresh viewpoint. While much work remains, this is still a significant advancement. Numerous amendments have also been made to the Evidence Act. The reform process lasted approximately four years, during which there was extensive dialogue. Throughout this period, many individuals shared their opinions on various elements.

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<sup>48</sup> Section 397 of Bharatiya Nagrik Suraksha Sanhita, 2023