

# IS THE VICTIM A FORGOTTEN PARTY IN OUR CRIMINAL JUSTICE SYSTEM

— Justice S G Chattopadhyay\*

## ABSTRACT

*The criminal justice system is traditionally structured around the binary of the State and the accused, often relegating the victim to a peripheral role. This paper critically examines the extent to which victims are marginalized in the Indian criminal justice framework, despite being the primary stakeholders in the crime. It explores how procedural laws, institutional practices, and legal interpretations systematically deprioritize victims' rights, participation, and welfare. Drawing from statutory analysis, judicial decisions, and comparative frameworks, the study highlights the limited avenues available for victim representation, compensation, and restorative justice. While recent legal reforms — such as victim compensation schemes and witness protection laws — indicate a shift towards victim inclusion, they remain fragmented and inadequately implemented. The paper argues for a more victim-centric approach that balances the rights of the accused with the need for recognition, participation, and restitution for victims. It advocates institutional reforms, victim impact statements, and restorative justice mechanisms as essential components of a holistic justice process. In doing so, it raises a fundamental question: can justice be truly served if the victim remains a forgotten party in the system designed to redress their harm? The paper concludes by emphasizing the need to reframe criminal justice to center the victim as a critical participant.*

**Keywords:** Compensation, Criminal Justice, Prosecution, Victim, Witness etc.

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## 1. INTRODUCTION

There is a common feeling that the victim, who lies at the core of our criminal justice system, is treated almost as an alien in the system particularly in terms of his/her participation in investigation and trial. His/her role is felt limited to reporting the offence to police and giving statement to police and court. It is felt that during the proceeding; the entire focus is on the offender and the victim remains a forgotten party except where the victim is rich or otherwise influential or the incident somehow arrests public attention. Such feelings of deprivation have sometimes led to private vengeance. Therefore, it is necessary to examine the status of victim in our criminal justice system in the present legal context.

In the historical evolution of the criminal justice system at the international and domestic level, basically two types of rights of the victim have been recognized.

*Firstly*, his/her right to participate in the criminal justice process which includes, inter alia,

- right to know the status of investigation and seek intervention of court when investigation is delayed or it is not properly directed.
- right to hearing in respect of grant or cancellation of bail.
- right to be heard when the State prosecution wants to withdraw.
- right to take part in the trial through lawyer of his or her choice.
- right to produce evidence, oral or/and documentary, with the leave of the court.
- right to ask questions to witnesses or suggest to court to put such questions to witness.
- right to advance arguments.
- right to take part in negotiation for settlement of compoundable offence.
- right to prefer appeal against acquittal without leave of court, against conviction for a lesser offence or inadequate sentence.

*Secondly*, victim's right to seek and receive compensation for the loss and injuries suffered by him/her from the crime which includes, inter alia,

- interim and immediate monetary compensation for psychiatric and medical treatment, rehabilitation etc.

- adequate compensation in terms of money, employment etc. for the loss suffered as a result of the crime.
- appropriate legal aid and assistance for realization of such compensation.

Though the thrust of this paper is an analysis of victim's right to compensation in India, we shall, at the outset, also focus on his/her right of participation in the criminal justice process because such right is an integral part of victimology.

## **2. EVOLUTION OF THE CONCEPT OF VICTIM'S PARTICIPATION IN CRIMINAL JUSTICE PROCESS**

### **2.1 Who is a victim in Indian legal context?**

**2.1.1** Under Section 2(y) of Bharatiya Nagarik Suraksha Sanhita, 2023, in short BNSS corresponding to Section 2(wa) of the Code of Criminal Procedure, 1973, in short CrPC, the victim is defined to mean "a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and includes the guardian or legal heir of such victim." It is noticeable that some changes are brought to the definition of victim in BNSS. The words, 'for which the accused person has been charged' appearing in the definition under CrPC has been omitted from the definition under BNSS which has slightly expanded the scope of the definition. In my view, the definition of 'victim' needs to be further reviewed keeping in mind that under Section 396(4), BNSS corresponding to Section 357-A(4) CrPC, a person shall be treated as a victim for the purpose of compensation, even if, the offender is not traced or identified and no trial takes place. It means that if any person suffers any loss or injury from the violation of any criminal law he or she will be entitled to compensation, even if, none is named as accused while reporting the crime. Therefore, 'accused' may not have any relevance in the definition of victim. The word, 'accused' is not used anywhere in the definition of 'victim' in the UN declaration of the basic principles of justice for victims of crime and abuse of power, 1985. In the said declaration 'victim' is defined more broadly and elaborately in a purposeful manner to provide relief to all victims of crime. It may be considered whether the definition of 'victim' in our domestic law can be further reviewed in the line of the 'definition' provided under the UN declaration of 1985 aforesaid.

**2.1.2** The rights of the victims particularly the right to participate in criminal proceeding gained momentum globally following the United

Nation's Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985. As noted, the declaration adopted by the UN General Assembly on 29.11.1985 defined the victim in much wider terms which is as follows:

“1. Victim means persons who, individually or collectively, have suffered harm, including physical or mental injury emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member States, including those laws prescribing abuse of power.”

2. \* \* \* \*

3. \* \* \* \*”

The definition has, thus, fully captured the value of human life and human dignity. It has proclaimed in the declaration that the responsiveness of judicial and administrative processes to the needs of the victims should be facilitated by-

*Informing the victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information.*

*Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.*

*Providing proper assistance to victims throughout the legal process.*

*Taking measures to minimize inconvenience to victims, protect their privacy, when necessary and ensure their safety, as well as that of their families and witnesses on their behalf from intimidation and retaliation.*

*Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to the victim.*

**2.1.3** At the domestic front, a committee called ‘The Committee on Reforms of the Criminal Justice System’ chaired by Dr. Justice V.S. Malimath was constituted by the Government of India by an order dated 24.11.2000. One of the terms of reference of the committee was;

*to suggest ways and means of developing such synergy among the judiciary, the prosecution and the police as restores the confidence of the common man in the criminal justice system by protecting the innocent and the victim and by punishing unsparingly the guilty and the criminal.*

The Committee held series of seminars across the country, met common man from different walks of life, obtained views of the State Governments, High Courts, Bar councils, the member of Bar, eminent jurists, police, prosecution, forensic scientists, law academic, media. It also consulted various law commission reports, held interaction with scholars and experts from across the globe and made a comparative study of 20 selected countries from different continents and also studied the criminal justice system of UK, USA, Australia, France and other European countries and made its report on 28.03.2003.

**2.1.4** While canvassing the status of the rights of victims with regard to participation in the criminal justice process in Europe the committee stated as follows:

*“It is interesting to find that the European system assigned a very active role to the victim or his representatives in criminal proceedings. For example, in France, all those who suffer damage on account of the commission of an offence are entitled to become parties to the proceedings from the investigation stage itself. He can assist investigation on proper lines and move the court for appropriate directions when the investigation gets delayed or distorted for whatever reasons. He may suggest questions to the court to put to the witnesses produced in court. He may conduct the proceedings if the public prosecutor does not show due diligence. He can supplement the evidence adduced by the prosecution and put forth his own arguments.....”*

**2.1.5** The committee viewed that if the criminal proceedings have to be fair to both the parties and if the courts were to be properly assisted in its search for truth, the law has to recognize the right of victim’s participation in investigation, prosecution and trial. If the victim is dead or otherwise not available, this right should vest in the next kin of the victim.

**2.1.6** In paragraph 6 of its recommendations the committee recommended as follows:

The victim’s right to participate in criminal trial shall, inter alia, include:

- *To produce evidence, oral or documentary, with leave of the court and/or seek directions for production of such evidence.*
- *To ask questions to the witnesses or to suggest to the court questions which may be put to witnesses.*
- *To know the status of investigation and to move the court to issue directions for further investigation on certain matters or direction to supervisory officer to ensure effective and proper investigation to assist in the search for truth.*
- *To be heard in respect of the grant or cancellation of bail.*
- *To be heard whenever prosecution seeks to withdraw and to offer to continue the prosecution.*
- *To advance arguments after the prosecutor has submitted arguments.*
- *To participate in negotiations leading to settlement of compoundable offences.*

We may, now, look into the statutory arrangements made in our domestic law, namely, Bharatiya Nagarik Suraksha Sanhita, 2003 and refer to the relevant judicial pronouncements with regard to participation of victims in investigation, trial and appeal in India:

## **2.2 Victim's participatory right at the stage of investigation**

### **2.2.1 Right to know the progress of investigation**

Victim's right to know the status of investigation has been recognized under Section 193, BNSS corresponding to Section 173, CrPC. In the old Code, i.e., in Section 173 CrPC, under sub section (2)(ii), the investigating officer was required only to communicate to the first informant, the action taken on the information. No time limit was prescribed and moreover the word, 'victim' was not there in Section 173(2)(ii). But under clause h(ii) of sub section (3) of Section 193, BNSS a period of 90 days has been specified within which the IO has to inform the first informant or the victim the progress of investigation. The phraseology of sub section 3(h)(ii) particularly the manner in which the words 'informant or victim' have been arranged in the provision may create some confusion. Because they have different connotations in criminal jurisprudence. Moreover, informant may not necessarily be the victim in every case. But it is crystal clear that the legislature has intended to put the word 'victim' in sub section (3)(h)

(ii) of Section 193, BNSS to protect the right of the victim to the access to information about his case by informing him about the progress of investigation. It is, therefore, mandatory for the IO to inform the victim about the progress of the case within 90 days from the date of lodging FIR apart from informing the informant in the manner prescribed under sub-section 3(h)(iii) of Section 193 BNSS.

This is, no doubt, a positive step towards protecting the participatory rights of victim during investigation. In order to add meaning to this right, the investigating officers must act vigilantly, the courts should monitor the enforcement of this right of the victims and general awareness should be created about such right. For successfully implementing the provision, the Home Department in every State should call for consolidated report from the Head of Police on quarterly basis to know in how many cases registered during the preceding quarter, the victim was actually informed about the progress of the case along with the feedback of the victim and action taken thereon.

### ***2.2.2 Victim's right to take part in bail hearing***

In so far as victim's right of participation in hearing of bail applications is concerned, the statute does not specially provide any such right to the victim. Only under Section 483 BNSS corresponding to Section 439 Cr.P.C. which deals with special powers of Sessions court and High Court with regard to bail, presence of the informant or any person authorized by him is mandatory during hearing of the bail application relating to the offence of rape of minor girl punishable under Section 65 of Bharatiya Naya Sanhita or gang rape punishable under Section 70 of Bharatiya Naya Sanhita. But that does not imply that victim has a right to participate in the hearing. As already discussed, the law makes it mandatory for the informant to be present. Moreover, the purpose of the presence of the informant is not also laid down in specific terms. This apart, neither under Section 480 BNSS which deals with the powers of Magistrate regarding bail nor under Section 482 BNSS dealing with anticipatory bail, the victim has been given any right to participate in the hearing.

In *Jagjeet Singh v Ashish Mishra*<sup>1</sup> one of the questions which fell for consideration before the Hon'ble Supreme Court was whether a 'victim' as defined under Section 2(wa) of the Criminal Procedure Code, 1973 was entitled to be heard at the stage of adjudication of bail application of an

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1. (2022) 9 SCC 321.

accused? The three Judges' bench of the Hon'ble Supreme Court held as under:

First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”

Third; The Hon'ble Apex Court cancelled the bail granted to the respondent accused by the High Court and remanded the matter(s) back to the High Court for fresh consideration on several grounds and one of the grounds was 'denial of victim's right to participate in the proceedings. Even though, the statute does not make any provision, in view of this judgment of the Apex Court. It is, therefore, settled that whenever a victim wants to exercise his right to oppose a bail application, such right cannot be denied to him/her

### ***2.2.3 Victim's right to be heard for withdrawal from prosecution***

The BNSS, 2023 has statutorily recognized the right of the victim to be heard mandatorily by court when the State prosecutor moves a petition for withdrawal from prosecution. In this regard, a proviso has been added to Section 360 BNSS corresponding to Section 321 CrPC which provides that no court shall allow such withdrawal without giving an opportunity of being heard to the victim in a case. The Public Prosecutor, in charge of a case, is allowed to withdraw any case at the investigation or trial stage before the judgment is pronounced in the manner provided under Section 360, BNSS. The victim had no statutory right of hearing in this matter before BNSS came into force. Now it is mandatory for the court to hear the victim before allowing such withdrawal. This is a welcome step in the evolving jurisprudence of victimology. The prosecution and courts must ensure the enforcement of this right of the victims which in the long run will prevent withdrawal of cases on extraneous considerations.

#### ***2.2.4 Victim's right to take part in negotiation for settlement of compoundable offences***

- (i) The persons competent to compound a compoundable offence as per the table under Section 359 BNSS corresponding to Section 320 CrPC, are all victims of those compoundable offences. They only can compound such offences in the manner provided under Section 359 BNSS. Only when such victim is a child or of unsound mind, any person competent to contract on his/her behalf may, with the permission of the court, compound such offence.
- (ii) Even in the plea bargaining of cases which may include a non compoundable offence also, participation of the victim is a must for a mutually satisfactory disposition under Section 291 BNSS corresponding to Section 265-C CrPC where the victim can bargain and negotiate with the accused for adequate compensation.

Even though the purposes and procedures of compounding and plea bargaining are different, there is no wrong if the victim in compoundable offence negotiate with the accused for compensation for the wrongs done by him to the victim to agree to the compounding of the offence particularly when bargaining between victim and accused has been recognized under the law of plea bargaining.

#### ***2.2.5 Victim's participation at the stage of trial***

- (i) Ours is a system of state administered justice and in terms of the statutory provisions victims have a very limited and restricted role to play during the trial of a case. Under Section 248 BNSS corresponding to Section 225 CrPC, every trial before a Sessions court shall be conducted by the Public Prosecutor. Through the proviso to Section 18(8) BNSS, corresponding to Section 24(8) CrPC empowers the court to permit the victim to engage an advocate of his/her choice to assist the prosecution, Section 338(2) BNSS, corresponding to Section 301(2) CrPC restricts the role of victim's counsel by providing that such counsel will act only under the directions of the State prosecutor and such counsel can submit written arguments subject to Court's permission only after the closure of prosecution evidence. However, in respect of trial before a Magistrate, Section 339 BNSS corresponding to Section 302 CrPC provides that the Magistrate trying the case, may permit any person to conduct the prosecution personally or by engaging an advocate. The only rider is

that permission cannot be given to a police officer below the rank of inspector and/or, if such police officer takes part in the investigation of the case, he cannot also be given such permission.

- (ii) Thus, it would appear from the statutory provisions aforesaid that participatory right of victim in Session's trial is very limited under the statute. The issue came up before the Supreme Court as well as before various High Courts on multiple occasions. In *Shiv Kumar v Hukam Chand*<sup>2</sup> a three Judges' bench of the Supreme Court declined to interfere with the decision of the High Court where the High Court held that advocate appointed by the victim would act under the directions of the Public Prosecutor and may file written arguments after the closure of prosecution evidence. Though, by the time the matter came up for hearing before the Apex Court, the trial was over in the Sessions court, the victim being the brother of the deceased pleaded for consideration of the issue for future guidance. The Apex Court in para 14 of the judgment held as under:

"14. It is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged counsel is permitted to act on his behalf. The role which a private counsel in such a situation can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is to act on behalf of the Public Prosecutor albeit the fact that he is engaged in the case by a private party. If the role of the Public Prosecutor is allowed to shrink to a mere supervisory role the trial would become a combat between the private party and the accused which would render the legislative mandate in Section 225 of the Code a dead letter."

Further in paragraph 16, the Apex Court held as follows:

"16. As we are in complete agreement with the observation of a Division Bench of the Andhra Pradesh High Court in *Medichetty Ramakistiah v State of A.P.*<sup>3</sup> we deem it fit to extract the said observation:

"A prosecution, to use a familiar phrase, ought not to be a persecution. The principle that the Public Prosecutor should be scrupulously fair to the accused and present his case with detachment and without evincing any anxiety to secure a

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2. (1999) 7 SCC 467.

3. 1959 SCC OnLine AP 303 : AIR 1959 AP 659.

conviction, is based upon high policy and as such courts should be astute to suffer no inroad upon its integrity. Otherwise, there will be no guarantee that the trial will be as fair to the accused as a criminal trial ought to be. The State and the Public Prosecutor acting for it are only supposed to be putting all the facts of the case before the Court to obtain its decision thereon and not to obtain a conviction by any means fair or foul. Therefore, it is right and proper that courts should be zealous to see that the prosecution of an offender is not handed over completely to a professional gentleman instructed by a private party.”

- (iii) In *Sathyavani Ponrani v Samuel Raj*<sup>4</sup> the one and only issue before the High Court of Madras was ‘whether a victim is entitled to be heard and take part in a criminal proceeding or not’.

The High Court had taken up the issue as a matter of considerable public importance, reconciled the relevant provisions of the Code of Criminal Procedure (Now BNSS, 2023) and concluded that though any plea of the victim contrary to the prosecution case would not be permissible during trial, engaging a lawyer in terms of the proviso to Section 24(8) CrPC (now the proviso to Section 18(8) BNSS, 2023) would mean permitting the victim to argue along with the Public Prosecutor and also in a given case even to examine a witness, of course with the permission of the court. The High Court summarized its conclusions as under:

“71. On a consideration of the above said principles and after analysing the provisions *vis-à-vis* the various judgments, the following conclusions are arrived at:

- i. Section 301 CrPC is not a bar for entertaining an Application to intervene in an Application filed under Section 437 or Section 438, CrPC.
- ii. Section 301 and Proviso under Section 24(8) are mutually complimentary and not conflicting with each other and therefore, there is no bar for engaging a lawyer to assist the prosecution.
- iii. The discretion of the Court in invoking Proviso under Section 24(8) is a judicial discretion.
- iv. The judicial discretion of the Court will have to be exercised keeping in mind the objects and reasons for the introduction

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4. 2010 SCC OnLine Mad 3758.

of Proviso to Section 24(8) which is to provide an adequate opportunity to the victim to take part in the Criminal proceeding.

- v. Engaging a lawyer in accordance with Proviso under Section 24(8) would mean permitting him to argue along with the Public Prosecutor and also in a given case even to examine a witness, of-course with the permission of the Court.
- vi. The Court shall not allow any plea contrary to the case of the prosecution at the instance of the victim while assisting the prosecution.
- vii. The Court can reject a request for engaging a lawyer by the victim if it is of the opinion that it lacks *bona fides*.
- viii. While considering the Application, the Court has to keep in mind, the nature of the offence, the injuries suffered by the victim, the position of the victim as well as the Accused and the circumstances under which the offence has been committed.
- ix. The word 'victim' would also include a legitimate and genuine person representing a victim.
- x. When an application is filed by any other person other than the guardian seeking to represent the victim, the Court has to consider the *bona fides*, legitimacy and genuineness of the representative capacity while deciding such an application.
- xi. In a given case the Trial Court can also call upon a victim to engage a lawyer if in its opinion the same is required for the proper conduct of the case.
- xii. In a given case the Court can on its own appoint a lawyer if it is of the opinion the same is required for the proper conduct of case.
- xiii. When an Application is made seeking permission under the Proviso to Section 24(8), the same cannot be rejected without even numbering the same but should be considered on merits.
- xiv. An order rejecting an application seeking permission to assist the prosecution must be supported by reasons.”

- (iv) Similar question also arose for consideration before the Hon'ble Supreme Court in *Rekha Murarka v State of W.B.*<sup>5</sup> in which the Apex Court held that the role of the victim's counsel cannot extend to making oral arguments and examining witnesses, as it is not in the text of CrPC. The Apex Court was of the view that permitting a free hand to victim's counsel would go against the scheme envisaged under Cr.P.C. The Hon'ble Apex Court was of the view that victim can take part in the hearing without tampering with the balance inherent in the scheme of CrPC (now BNSS) and held as follows:

“11.3. At the same time, the realities of criminal prosecutions, as they are conducted today, cannot be ignored. There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over two-three courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victimcentric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the Appellant that the introduction of the proviso to Section 24(8) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to Section 372 of the CrPC is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of the CrPC should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.

11.4. In this regard, given that the modalities of each case are different, we find that the extent of assistance and the manner of giving it would depend on the facts and circumstances of each case. Though we cannot detail and discuss all possible scenarios that may arise during a criminal prosecution, we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in Section 301(2), the private party's pleader is subject to the directions of the Public Prosecutor. In our considered opinion, the same principle should apply to the victim's counsel under the

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5. (2020) 2 SCC 474.

proviso to Section 24(8), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points *through* the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of the CrPC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

11.5. However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channeling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 CrPC or Section 165 of the Indian Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in *Uma Saha v State of Tripura*,<sup>6</sup> that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself.”

- (v) In later decision in *Jagjeet Singh case*<sup>7</sup> a three Judges' bench of the Hon'ble Supreme Court while deciding, as one of the issues, whether a victim is entitled to hearing during adjudication of a bail application discussed the rights of the victims to participate in the criminal justice process. In this case, the Apex Court apart from relying on its earlier decisions also referred to UN Declaration of Basic Principles of Justice For victims of Crime and Abuse of Power, 1985, some of the specific legislations with regard to protection of the rights of the victims of some European countries, 154<sup>th</sup> report of the Law Commission of India on the aspect of compensatory justice and the 2003 Report of the Committee on the Reforms of Criminal Justice System and held as under:

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6. 2014 SCC OnLine Tri 859.

7. (2022) 9 SCC 321.

“22. It cannot be gainsaid that the right of a victim under the amended CrPC are substantive, enforceable, and are another facet of human rights. The victim’s right, therefore, cannot be termed or construed restrictively like a *brutum fulmen*. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the CrPC. The presence of “State” in the proceedings, therefore, does not tantamount to according a hearing to a “victim” of the crime.

23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.

24. The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in Special Acts like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that:

24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”

What follows from the discussion is that the victim is no more an alien or a forgotten party in Indian Criminal Justice System. Recognition of victim's right to know about the progress of investigation within a given timeframe (90 days from the date of lodging FIR) under Section 193(3) (h)(ii) BNSS will provide the victims an opportunity to raise voice or seek interventions of court when the investigation is not done in proper directions, important witnesses are not examined or otherwise distorted by the investigating agency. It will also give the victim chance to assist the investigating agency in the quest for truth. Mandatory hearing of the victim for withdrawal of a criminal case is no doubt a salutary provision which has been introduced to BNSS, 2023. The courts should hear the victim and take his/her submissions into consideration before allowing a petition for withdrawal of cases on extraneous considerations. In terms of the Supreme Court's Judgment in *Jagjeet Singh case* victim has a legally vested right to be heard at every step post the occurrence of an offence". Supreme Court has categorically held in *Jagjeet Singh case* that victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. (emphasis supplied) Now it is the duty of the police, prosecution, courts and the victims themselves to further advance the participatory rights of the victim.

### 2.3 Victim's Right to Appeal

**2.3.1** The proviso to Section 413, BNSS corresponding to the Proviso to Section 372 provides that the victim shall have a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court. It is now a settled position of law that there is no need for a victim to obtain leave to appeal against the order of acquittal. The Apex Court dealt with the issue also in *Naval Kishore Mishra v State of U.P.*<sup>8</sup> and held as follows:

"7. It is, however, submitted by her that the question whether the victim would also have to seek leave as would be a situation envisaged under Section 478 CrPC as in the case of the State has been considered and is no more res integra in view of the recent judgment of this Court in *Mallikarjun Kodagali v State of Karnataka*,<sup>9</sup> where this Court opined that there is no need for a

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8. (2019) 13 SCC 182.

9. (2019) 2 SCC 752.

victim to apply leave to appeal against the order of acquittal while preferring an appeal under Section 372 proviso to CrPC.

8. In the aforesaid circumstances, it is contended that since the right to appeal would be available, it is different from the appeal filed by the State seeking leave to appeal and, thus, the appeal filed by the victim in the present case ought not to have been dismissed at the threshold only on the ground that no leave has been granted to the State to appeal against the order of acquittal.

10. The aforesaid plea is naturally supported by the learned counsel appearing for the appellant.

11. We are in agreement with the aforesaid plea since the extracted portion of the impugned order shows that the only reason recorded for dismissing the appeal of the victim (in fact styled as leave to appeal) was on the ground that leave had not been granted to the Government to file the appeal. The legal position enunciated in *Mallikarjun Kodagali* would show that the appellant had a right to file the appeal and in fact no leave has to be sought in such a situation. Thus, the appeal has to be dealt as a regular appeal.”

In my view, the victims should also be heard mandatorily before releasing convict on parole.

## **2.4 Victim’s right to compensation**

**2.4.1** In India victim’s right to compensation was recognized under Sections 357(1)(b) and 357(3) Cr.P.C. which have been replaced by Sections 395(1)(b) and 395(3) BNSS, 2023 respectively. But under Section 357(1)(b) Cr.P.C. the compensation was limited to the amount of fine only, if under the penal provision fine formed a part of sentence and that too could not be realized until the appeal was decided. Moreover, if the convict opted to suffer the default sentence due to inability to pay the fine, there was no scope of realization of fine and payment of compensation under this provision. In the cases in which fine does not form a part of sentence, compensation can be granted under Section 357(3) CrPC [now Section 395(3) BNSS] which is independent of any other provision and there is no limit to the amount of compensation payable under this provision. Bu the problem was in its enforcement. Because for non-payment of compensation under Section 357(3) Cr.P.C. [now Section 395(3) BNSS] no default sentence has been prescribed in the statute. The difficulty was removed after Supreme Court

in *Hari Singh v Sukhbir Singh*<sup>10</sup> examined the issue and held that since the imposition of compensation under Section 357(3) was on account of social concern, the court could enforce the same by imposing sentence in default. The decision was reiterated by the Apex Court in *Vijayan v Sadanandan K.*<sup>11</sup> In this context the Hon'ble Supreme Court held as under:

“27. As we have mentioned hereinbefore, when the decision of this Court in *Hari Singh case, (1988) 4 SCC (Cri) 984* was holding the field, the learned Single Judge of the High Court had wrongly relied on the decision of the Kerala High Court in *Rajendran case*.<sup>12</sup> The power to impose a default sentence in case of non-payment of compensation under Section 357(3) CrPC has been duly recognized by this Court and the arguments advanced to the contrary on behalf of the petitioner must, therefore, be rejected.”

Further, in Para 32 of the judgment, the Court held as under:

“32. The observations made by this Court in *Hari Singh case, (1988) 4 SCC (Cri) 984* are as important today as they were when they were made and if, as submitted by Dr. Pillay, recourse can only be had to Section 421 CrPC for enforcing the same, the very object of sub-section (3) of Section 357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory.”

**2.4.2** In *Hari Singh case*, the Apex Court recommended that all Courts should exercise the power available under Section 357 Cr.P.C. (now Section 395 BNSS) liberally so as to meet the ends of justice. But the power under Section 357 CrPC was used sparingly by the courts. The Supreme Court in *Ankush Shivaji Gaikwad v State of Maharashtra*<sup>13</sup> examined the issue and held as under:

“33. The long line of judicial pronouncements of this Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid-1960s and gained momentum in the decades that followed. Interestingly the clock appears to have come full circle by the lawmakers and courts going back in a great measure to what was in ancient times common place. Harvard Law Review (1984) in an article on *Victim*

10. (1988) 4 SCC 551 : (1988) SCC (Cri) 984.

11. (2009) 6 SCC 652.

12. *Rajendran v. Jose* 2001 (3) Kerala Law Times 431.

13. (2013) 6 SCC 770.

*Restitution in Criminal Law Process: A Procedural Analysis* sums up the historical perspective of the concept of restitution in the following words:

“Far from being a novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to compensate the victim, but to protect the offender from violent retaliation by the victim or the community. (emphasis supplied) It was a means by which the offender could buy back the peace he had broken. As the State gradually established a monopoly over the institution of punishment, and a division between civil and criminal law emerged, the victim’s right to compensation was incorporated into civil law.”

**2.4.3** In *Ankush Shivaji Gaikwad case*, the Apex Court held that it was mandatory for every criminal court in India to apply its mind about the application of Section 357 CrPC (now Section 395 BNSS) and to record reasons for awarding/refusing compensation, the court held as under:

“66. To sum up: while the award or refusal of compensation in a particular case may be within the court’s discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation.....”

**2.4.4** In the said judgment, the Hon’ble Supreme Court also cited its earlier decision in *Maru Ram v Union of India*<sup>14</sup> and held as follows:

“29. More than four decades back Krishna Iyer, J. speaking for the Court in *Maru Ram case*, in his inimitable style said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment said the Court, not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn.”

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14. (1981) 1 SCC 107 : 1981 SCC (Cri) 112.

**2.4.5** Apart from this provision, few other provisions of BNSS prescribe compensation for victims. Under Section 399 BNSS corresponding to Section 358 CrPC, compensation can be paid by court to persons groundlessly arrested up to a maximum amount of rupees one thousand. Under Section 273 BNSS corresponding to Section 250 CrPC, the Magistrate is empowered to ask the complainant in private complaint or the informant in a police case to pay compensation to the person against whom accusation has been brought without any reasonable ground. Amount of compensation in such cases shall not exceed the amount of fine, which the Magistrate is empowered to impose. Besides, under Section 5 of the Probation of Offenders Act, 1958, court is empowered to ask the convict to pay compensation to the victim while releasing the convict on probation.

**2.4.6** But the greatest infirmity in the compensation law was that there was no provision to compensate the victims in the cases which ended in acquittal or the cases in which identity of the accused could not be established. Victims had to wait for compensation till the accused was punished and convicted and if there was appeal until the appeal was decided. There was no law to provide immediate relief to the victims regardless of the conviction of the accused until the salutary provision of Section 357-A (now Section 396 of the BNSS) was inserted in CrPC by amendment in 2009 w.e.f. 31.12.2009. There is a historical perspective behind this legislation. In *Ankush Shivaji Gaikwad case* the Supreme Court has succinctly viewed that the paradigm shift from retribution to restitution began in the mid-1960s and gained momentum in the decades that followed.

**2.4.7** Several salutary legislations like criminal injuries compensation scheme, 1964 in England, Victim and Witness Protection Act, 1982 in USA were made which made it compulsory to award monetary compensation to victims in every case of death, injury, loss, or damage as a part of convict's sentence. The UN General Assembly also recognized victim's right to compensation by passing a resolution titled "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" on 29.11.1985. As already discussed, the said declaration gave a very extensive definition of victim which is as under:

*1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.*

*2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.*

*3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.*

**2.4.8** The UN declaration contained provisions for victims on 'Access to Justice and fair treatment', 'restitution', 'compensation' and 'assistance' for 'victims of crime and abuse of power'. With regard to monetary compensation for victims, the declaration contained that when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to victims and for this purpose to establish, strengthen and expand national funds for compensation to victims.

**2.4.9** Thereafter came the 154th report of the Law Commission of India in 1997 which recommended for reviewing the principles of compensation to crime victims in India. The commission viewed that compensation should not be limited only to fines, penalties and forfeitures realized. "The State should accept the principles of providing assistance to victims out of its own funds..." For a better perspective it would be appropriate to again refer to the judgment of the Apex Court in *Ankush Shivaji Gaikwad case*, para 47 of which reads as under:

"47. The 154th Law Commission Report on CrPC devoted an entire chapter to "Victimology" in which the growing emphasis on victims' rights in criminal trials was discussed extensively as under:

"7. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimisation and protection of victims of crimes. Crimes often entail substantive harm to people and not merely symbolic harm to the social order. Consequently, the needs and rights of victims of crime should receive priority attention in

the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.

9.1. The principles of victimology have foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) forms the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates, inter alia, that the State shall make effective provisions for 'securing the right to public assistance in cases of disablement and in other cases of undeserved want'. So also, Article 51-A makes it a fundamental duty of every Indian citizen, inter alia, 'to have compassion for living creatures' and to 'develop humanism'. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology.

9.2. However, in India, the criminal law provides compensation to the victims and their dependents, only in a limited manner. Section 357 of the Code of Criminal Procedure incorporates this concept to an extent and empowers the criminal courts to grant compensation to the victims.

11. In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds....”

**2.4.10** Thereafter, we have a plethora of judicial pronouncements on the issue which have led to the introduction of Section 357-A in CrPC (now Section 396 of the BNSS) w.e.f. 31.12.2009. Compensation under this provision is payable to all victims of crime irrespective of conviction or acquittal of the accused. Such compensation may be paid only if the victim is identified. Identification of the offender or trial is not necessary. Even after this salutary provision was introduced in CrPC (Now BNSS), Supreme Court in *Suresh v State of Haryana*<sup>15</sup> found that the compensation provided under the victim compensation scheme framed under Section 357-A was arbitrarily low. The Court issued direction for upward revision of the quantum of compensation and held as under:

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15. (2015) 2 SCC 227.

“15. It has been brought to our notice that even though almost a period of five years has expired since the enactment of Section 357-A CrPC, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.

16. We are of the view that it is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing, it is obligatory on the part of the court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.”

**2.4.11** There is no doubt that the limitations of Section 357 Cr.P.C. (now Section 395 BNSS) have been overcome by introducing and operationalising Section 357A Cr.P.C. (now Section 396, BNSS). In terms of this provision, where the offender is not traced or identified, but the victim is identified and where no trial takes place, the victim or his dependants may make an application to the State or District Legal Services Authority for award of compensation. And where the accused is identified and a trial takes place leading to the conviction of the accused, if the trial court at the conclusion of trial, is satisfied that compensation awarded under Section 395 BNSS, corresponding to Section 357 Cr.P.C. is not adequate for rehabilitation of the victim, or where the trial ends in acquittal or discharge of the accused, the trial court may recommend to the State Legal Services Authority or District Legal Services Authority for award of compensation. The concerned Legal Services Authority after due enquiry determines the amount of compensation within two months for payment to the victim.

**2.4.12** Apart from prescribing monetary compensation under Section 357-A, Section 397, BNSS corresponding to Section 357 C provides that all hospitals, public or private, whether run by Central Government or State Government, local Government or any other person are bound to provide free medical treatment to rape victims and all other victims of sexual assault.

**2.4.13** Section 398 BNSS has been newly introduced which is also pertinent in this discussion because it provides that every State Government shall prepare and notify a witness protection scheme for the State for protection of witnesses. Obviously, the victim, if alive, is the prime witness of a case. Section 398 BNSS, thus, advances the right of victims to protection by introducing the witness protection scheme, under Section 398, BNSS.

**2.4.14** In terms of Section 357-A Cr.P.C. (now Section 396 BNSS) every State Government in co-ordination with the Central Government has framed victim compensation scheme, in short VCS. The Central Government has also framed Central Victim Compensation Fund (CVCF) Guidelines to provide one time grant to the State VCS.

**2.4.15** Every State Victim Compensation Scheme contains a commencement Clause, a definition Clause, object of the scheme, eligibility for grant of compensation, procedure for grant of compensation, who will be the implementing authority, how the quantum of compensation will be determined, limitation for submitting claim, who will be the appellate Authority etc. The scheme also contains a schedule laying down the minimum and maximum amount of compensation in respect of various offences.

**2.4.16** But the amount of compensation payable for various crimes varies from State to State depending on the resources of the concerned State. There is no uniform amount either for interim or final compensation. The victims particularly the victims of rape and other sexual offences, victims of Acid attack and the victims suffering from serious bodily injuries as a result of crime cannot wait. They need immediate compensation for treatment and rehabilitation. Pursuant to the direction of the Apex Court in *Nipun Saxena v Union of India*,<sup>16</sup> the National Legal Services Authority (NALSA) set up a committee which prepared a compensation scheme for women victims/survivors of sexual assault/other crimes-2018.

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16. (2020) 18 SCC 499.

**2.4.17** The said scheme has a schedule of compensation for women victims of rape, gang rape, pregnancy on account of rape, victims of Acid attack and injuries resulting from other crimes etc.

**2.4.18** In Paragraph 12 of the scheme, it is provided that interim relief to the victim shall not be less than 25% of the maximum amount of final compensation payable to the victim. For Acid attack victims, the scheme provides that acid attack victims shall be paid Rs 1 lakh within 15 days of the matter being brought to the notice of SLSA/DLSA. Within next two months, if not earlier, an additional sum of Rs 2 lakhs shall be paid to the victim until final compensation is paid.

**2.4.19** Timely grant of compensation will depend on availability of fund. In different States different mechanisms have been adopted for creation of fund. For example, in Tripura, victim compensation scheme, paragraph (4) of the scheme has made provision as to how the scheme will be created. It provides that 20% of the wages of the convicts shall be deducted and credited to the VCF besides other contributions from individual/organizations and grants from State Government and Central Government. One time grant received from the Central Government under CVCF shall also be credited to State victim compensation fund. In my view, deduction of convict prisoners' wages will not be appropriate because a convict sentenced to RI earn wages by rendering labour to support his family. Only the fine realized from the convicts can be used for creation of fund to compensate the victims.

**2.4.20** NALSA's Compensation Scheme for women victims/survivors of sexual assault/other crimes-2018 in paragraph 3(2) provides that the 'Women Victims Compensation Fund' shall comprise the following:

- (a) Contribution received from CVCF Scheme, 2015.
- (b) Budgetary allocation in the shape of Grants-in-aid to SLSA for which necessary provision shall be made in the Annual Budget by the Government;
- (c) Any cost amount ordered by Civil/Criminal Tribunal to be deposited in this Fund.
- (d) Amount of compensation recovered from the wrong doer/accused under clause 14 of the Scheme;

- (e) Donations/contributions from International/National/Philanthropist/Charitable Institutions/Organizations and individuals permitted by State or Central Government.
- (f) Contributions from companies under CSR (Corporate Social Responsibility).

**2.4.21** The same mechanism can be adopted in all VCS for raising fund. Apart from other sources, individual donations may be a great source for inflating such fund, provided required awareness is created.

**2.4.22** The following table published by the National Legal Services Authority in NALSA NEWSLETTER in its special edition (Issue No. 3) of July, September, 2024 represents the statistical data about the disbursement of compensation to victims under various heads across the country from 1st January 2024 to 1st September 2024:

Sl. No.	SLsAs	Number of Applications for victim Compensation received	Number of Victims who were granted Interim Compensation	Number of Victims who were granted Final Compensation	Total Number of Victims who were granted interim or final compensation	Number of Acid Attack Victims who were granted Interim Compensation	Number of Acid Attack Victims who were granted Final Compensation	Total amount of compensation granted to acid attack victims	Number of Victims of Sexual Abuse granted Interim Compensation	Number of Victims of Sexual Abuse granted Final Compensation	Total amount of compensation granted to Victims of Sexual Abuse	Number of other victims who were granted Interim Compensation	Number of other victims who were granted Final Compensation	Total amount of compensation granted to other victims	Total Amount of Compensation Disbursed
1	Andhra Pradesh	94	11	64	75	0	0	0	7	53	17755000	0	1	500000	4555000
2	Andhra Pradesh	34	0	9	0	0	0	0	0	3	225000	0	6	2850000	3075000
3	Assam	596	76	382	462	5	6	3115000	64	160	52049000	28	225	68384000	142233629
4	Bihar	745	64	367	431	9	7	4300000	55	259	129065000	5	88	23500000	86295000
5	Chhattisgarh	2664	457	1369	1741	1	2	10884001	307	742	372461800	84	386	71420000	239629700
6	Goa	0	1	0	1	0	0	0	0	0	0	0	0	0	250000
7	Gujarat	679	128	272	336	26	11	7105000	336	189	66390000	17	41	13770005	64807500
8	Haryana	336	70	267	322	5	5	4200000	64	244	86129638	10	47	6555005	77294638
9	Himachal Pradesh	112	33	42	75	0	0	0	31	39	10953344	4	3	550000	138283
10	Jharkhand	984	201	413	708	7	0	3150000	165	211	126191521	4	3	550000	13828344
11	Karnataka	346	18	328	346	0	4	1300000	17	211	82608001	1	114	41155000	56792000
12	Kerala	922	80	118	167	9	0	2200000	54	98	49405000	1	4	4100000	2275000
13	Madhya Pradesh	920	36	508	462	0	0	0	40	411	79225334	1	145	33117009	78976700
14	Maharashtra	192	38	180	217	2	2	500000	476	68	15152000	4	91	12569998	35085500
15	Manipur	79	33	47	77	0	0	0	16	0	7612500	13	23	11850000	16142500
16	Meghalaya	250	52	18	70	0	0	0	51	17	11060000	1	1	450000	11510000
17	Mizoram	127	15	54	29	0	0	0	18	40	15925000	0	10	1380000	10770000
18	Nagaland	13	0	3	3	0	0	0	0	3	250000	0	0	0	250000
19	Odisha	1380	507	386	893	11	0	1350000	374	318	192387000	61	99	56255000	235119500
20	Punjab	308	38	230	227	0	2	850000	36	140	52406250	3	101	16250000	69506250

Sl. No.	SLsAs	Number of Applications for victim Compensation received	Number of Victims who were granted Interim Compensation	Number of Victims who were granted Final Compensation	Total Number of Victims who were granted interim or final compensation	Number of Acid Attack Victims who were granted Interim Compensation	Number of Acid Attack Victims who were granted Final Compensation	Total amount of compensation granted to acid attack victims	Number of Victims of Sexual Abuse who were granted Interim Compensation	Number of Victims of Sexual Abuse who were granted Final Compensation	Total amount of compensation granted to Victims of Sexual Abuse	Number of other victims who were granted Interim Compensation	Number of other victims who were granted Final Compensation	Total amount of compensation granted to other victims	Total Amount of Compensation Disbursed
21	Rajasthan	3049	709	766	1404	15	4	3412500	463	534	214400000	248	248	233	8705000
22	Sikkim	0	0	10	10	0	0	0	0	9	2250000	0	2	1400000	3650000
23	Tamil Nadu	512	70	95	95	1	0	300000	76	44	37121487	14	30	12180500	40959587
24	Telangana	159	27	88	115	4	0	400000	23	75	26782500	0	24	4100000	3282500
25	Tripura	35	9	22	25	4	0	100000	8	21	8850000	2	1	600000	3115000
26	Uttar Pradesh	464	51	109	160	0	9	3481000	0	84	15154900	0	67	5776000	24411900
27	Uttarakhand	255	62	33	52	0	1	700000	33	28	12660000	0	5	2300000	13060000
28	West Bengal	300	119	81	200	18	8	14150000	80	63	31955000	21	10	14450000	60595000
29	A&N Islands	2	1	0	1	0	0	0	0	0	0	0	0	0	0
30	Chandigarh	32	0	30	30	0	3	900000	0	17	5752500	0	7	2950000	9602500
31	Dadra & Nagar Haveli	0	0	0	0	0	0	0	0	0	0	0	0	0	0
32	Daman & Diu	6	1	1	2	0	0	0	1	0	0	0	1	2900000	0
33	Delhi	2939	1045	1939	2984	9	4	2980000	907	258	281282500	138	1681	423279000	704561500
34	Jammu & Kashmir	63	55	8	63	0	0	0	52	6	12862000	3	2	700000	13562000
35	Ladakh	1	0	0	0	0	0	0	0	0	0	0	0	0	0
36	Lakshadweep	0	0	0	0	0	0	0	0	0	0	0	0	0	0
37	Puducherry	0	0	0	0	0	0	0	0	0	0	0	1	500000	500000
	TOTAL	18598	4010	8239	11783	126	68	63377501	3754	4345	2016362275	685	3635	898411554	2231482155

Acknowledgment: NALSA NEWSLETTER July-September 2024 (Issue No. 3)

### 3. CONCLUSION

The scar of victimisation particularly for those who fall victim to sexual offence is permanent. No amount of compensation is enough to heal the scar completely. But adequate and timely compensation in terms of money coupled with effective counselling can to some extent help them to get rid of the trauma and restore their faith in the supportive role of the State. The Acid attack victims, victims of murder and other victims of crime as well are in no less need of appropriate interim and final compensation. It is necessary to build up a strong supportive system nationwide to support the victims of crime not only in terms of money, the package of compensation must include medical as well as rehabilitative remedies fairly and quickly. Here it would be appropriate to further refer to the observation of the Hon'ble Supreme Court in *Ankush Shivaji Gaikwad* where the Apex Court observed as under:

“54. ... The power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the criminal justice system if despite the legislature having gone so far as to enact specific provisions relating to victim compensation, courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation....”

### 4. SUGGESSTIONS

NALSA's report in the Table specifically shows in how many cases of Acid attack, sexual abuse and other offences victims were given interim and final compensation in States across the country during the 3 quarters for a period from 1st January to 1st September 2024. The figures appearing in the table raises hope and compared to earlier statistics it appears that number of applications are on the increase and award of compensation is also going up. But still a lot more needs to be done. The following suggestions may be considered:

- (i) Creation of awareness about the victim's right to compensation in massive scale.
- (ii) Simplification of the victim compensation schemes.
- (iii) Publication of ad from the SLSA/DLSA/concerned department of the State Government inviting donations from philanthropists, organizations etc. and taking initiative to gather fund under CSR.

- (iv) Every hospital, nursing home etc. public or private should prominently display a notice board declaring that treatment of victims of sexual offence is not charged. (Section 397 BNSS).
- (v) Donations/Contributions to victim compensation fund should be certified for income tax benefits.
- (vi) For women victims, as per NALSA's compensation scheme for women victims/survivors of sexual assault/other crime even the SHO of the concerned police station may write to the SLSA/DLSA in Form I, along with copy of FIR, medical report if available to compensate the victim. The State Governments may issue administrative orders separately so that every SHO discharges this solemn duty to ensure that every victim gets interim compensation.

Let us go forward with a humble mindset and a pledge to help the victims more and more. Better if we remember the famous saying of Charles F. Kettering who said “we are just at the beginning of progress in every field of human endeavour.”<sup>17</sup>

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17. Quoted from L E Watson, *Light from Many Lamps*.