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With this thought, we hereby present to you

COMPENSATORY JUSTICE FRAMEWORK: CRITICAL ANALYSIS OF VICTIM COMPENSATION SCHEMES UNDER THE BNS REFORM PARADIGM

AUTHORED BY - DEEPAK SHARMA*

I. ABSTRACT

This paper critically analyzes the victim compensation framework under India's new Bharatiya Nyaya Sanhita (BNS) 2023, representing a paradigm shift from colonial-era criminal justice toward victim-centric approaches. The research examines the evolution from discretionary compensation under CrPC Section 357 to mandatory victim compensation schemes, highlighting how BNS integrates compensatory elements directly into substantive criminal provisions rather than treating them as procedural afterthoughts. Through comparative analysis with international frameworks including the UK, US, Germany, and New Zealand, the study identifies BNS's distinctive approach of creating a direct nexus between offender penalties and victim rehabilitation. The paper documents significant innovations in the BNS including community service as a formal punishment option and mandated victim compensation in cases of sexual offenses and acid attacks. While acknowledging progress, the research identifies implementation challenges related to offender insolvency, standardization of compensation, and procedural barriers. The study proposes reform recommendations including a centralized National Victim Compensation Fund, standardized victim need assessment protocols, enhanced procedural participation rights, integrated support services, and robust monitoring mechanisms to strengthen victim compensation outcomes within India's evolving criminal justice paradigm.

KEYWORDS:

Compensatory justice, victim compensation, Bharatiya Nyaya Sanhita, restorative justice, community service.

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II. INTRODUCTION TO COMPENSATORY JUSTICE IN CRIMINAL LAW

Concept and evolution of compensatory justice

Compensatory justice is rooted in the basic idea that when harm is inflicted, it must be repaired. In criminal law, this principle evolved to support the notion that justice is incomplete unless victims receive restitution or compensation for the harm they suffer. Ancient Indian jurisprudence, particularly in texts like Manusmriti and Arthashastra, recognised the significance of restoring victims through fines and community obligations. The focus wasn't just on punishing the wrongdoer but also ensuring the victim's loss is redressed materially and morally¹. Even under British colonial law, the Indian Penal Code 1860 and Code of Criminal Procedure 1898 introduced rudimentary compensation concepts, but they were mostly symbolic or secondary to punishment. Over time, with growing victim-centric jurisprudence, Indian courts gradually began recognising that compensatory justice is not charity but a right². The modern Indian legal framework further evolved through legislative reforms and judicial interpretation. Section 357 of the Code of Criminal Procedure, 1973, was a milestone in this regard. It authorised courts to direct the accused to pay compensation to victims. However, it was discretionary, which limited its scope. The 2009 amendment brought in Section 357A, marking a shift towards a more structured victim compensation regime by mandating state-funded compensation schemes. The judgment in *Ankush Shivaji Gaikwad v. State of Maharashtra*, marked a pivotal moment where the Supreme Court held that courts must apply their mind to compensation in every case and record reasons for awarding or not awarding it. The Court observed that the purpose of Section 357A was to recognize victims as legitimate stakeholders in the criminal justice process³. The recent reforms under the Bharatiya Nyaya Sanhita, 2023 (BNS), aim to codify and streamline this evolving jurisprudence. With the introduction of "community service" and enhanced focus on victim restitution, the BNS attempts to align India's criminal justice regime with the needs of a more humane and rehabilitative justice model. Though the provisions related to compensation are

¹ *MANU*, Manusmriti: Laws of Manu, trans. G. Buhler (Sacred Books of the East, Vol. 25, Oxford University Press 1886).

² Law Commission of India, *152nd Report on Custodial Crimes*, (1994).

³ *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

not yet exhaustively detailed under BNS, its emphasis on victim-centric justice signals a paradigm shift. Compensation is no longer a tokenistic gesture—it is a fundamental tenet of criminal justice that seeks to balance rights, responsibilities, and restoration⁴.

Research Objectives

1. To analyze the evolution of compensatory justice in India from discretionary provisions under CrPC Section 357 to mandatory victim compensation under BNS, identifying key philosophical and structural changes.
2. To conduct a comparative assessment of victim compensation models across jurisdictions including the UK, US, Germany, New Zealand, and Japan to identify best practices and potential areas for improvement in the BNS framework.
3. To identify systemic barriers to effective implementation of BNS victim compensation provisions and develop evidence-based policy recommendations for strengthening the compensatory justice framework in India.

Research Questions

1. How does the victim compensation framework under the Bharatiya Nyaya Sanhita (BNS) 2023 represent a paradigm shift from previous compensatory justice mechanisms in Indian criminal law?
2. What are the comparative strengths and limitations of India's BNS victim compensation approach when evaluated against international compensatory frameworks?
3. What implementation challenges and gaps exist in the BNS compensatory justice provisions, and what policy reforms could address these limitations?

III. VICTIM COMPENSATION SCHEMES IN PRE-BNS ERA

Historical Development: From CRPC 1973 (Section 357, 357a) To State Schemes

The legal fabric for victim compensation in India took its initial form under Sections 357 and 357A of the Criminal Procedure Code, 1973. Initially, victim-centric jurisprudence was limited; Section 357 empowered courts with discretionary authority to award compensation directly to victims. Yet, this section did not mandate compensation as an enforceable right. Courts granted compensation

⁴ Bharatiya Nyaya Sanhita, 2023, (Act 45 of 2023)

only in exceptional scenarios, dependent entirely on judicial discretion and often constrained by the accused's financial position. This led to severe inconsistencies in compensation practices, leaving most victims without adequate redressal or rehabilitation. Judicial precedents highlighted the restrictive nature of this provision, such as in the case of *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551, where the Supreme Court underscored the necessity for liberal interpretation of Section 357 urging judges to proactively award compensation⁵.

Subsequent to legislative recognition, states began formulating their own compensation schemes. These schemes varied significantly from state to state in terms of compensation amount, eligibility criteria, and procedural aspects. For instance, the Maharashtra Victim Compensation Scheme, 2014 explicitly categorizes offences, laying down detailed guidelines on victim identification, claim processes, and quantum of compensation payable. In contrast, the Uttar Pradesh Victim Compensation Scheme, 2014 placed greater emphasis on speedy procedural redressal, ensuring that victims received compensation swiftly and without procedural impediments. However, disparities persisted in these state-wise implementations, underscoring the fragmented nature of compensatory justice in the pre-BNS framework⁶.

Judicial activism and precedents:

- ***Ankush Shivaji Gaikwad v. State of Maharashtra [(2013) 6 SCC 770]***

The Supreme Court in *Ankush Shivaji Gaikwad v. State of Maharashtra* created a turning point in victim compensation jurisprudence. The Court held that it is the duty of every criminal court to apply its mind to Section 357 CrPC in all cases and not just upon the insistence of the prosecution or the victim. It clarified that the power under Section 357(3) is not discretionary in spirit though framed in enabling terms. The Court observed that compensation is an important part of justice delivery and not a gesture of mercy. This case elevated victim compensation from a peripheral concern to a central obligation. The Court even laid down that non-consideration of compensation amounts to legal error and is subject to appellate scrutiny. The ruling was unique in its insistence on mandatory judicial reasoning behind non-grant of compensation. This decision also indirectly extended the spirit of Article 21 to victims of crime by linking compensation with the fundamental right to live with dignity.

⁵ *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551.

⁶ Maharashtra Victim Compensation Scheme, 2014; Uttar Pradesh Victim Compensation Scheme, 2014.

The Court emphasized the state's responsibility to ensure that the legal process does not become purely offender-centric. It considered the financial position of the accused as a factor, but not a barrier. Even symbolic compensation was advised where the accused was indigent. This made the intent behind Section 357(3) purposive. The Court's interpretation ensured that even in cases where no fine is imposed, the victim may still be compensated. *Ankush Shivaji Gaikwad* thus expanded the scope and accessibility of compensatory justice within the criminal framework and created a foundational precedent for victim-centric jurisprudence in India.

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

The Supreme Court in *Laxmi v. Union of India* confronted the horror of acid attacks and used the case to reform compensation policies. The Court noted that the trauma inflicted on acid attack survivors is permanent and life-altering. Compensation schemes at that time lacked uniformity. Victims were often left to the mercy of underfunded or inconsistent state mechanisms. The Court directed all States and Union Territories to provide a minimum compensation of ₹3 lakhs to acid attack victims. This directive was binding under Article 142 and rooted in the Court's commitment to ensure dignity under Article 21. It was one of the earliest instances where the Court moved from symbolic to structured compensation in serious offences. The Court recognised that mere conviction was inadequate reparation. Medical costs, reconstructive surgery, psychological trauma, and loss of livelihood required an institutional response. The directive helped shape state-level compensation schemes and led to the adoption of dedicated schemes like Delhi's Victim Compensation Scheme. In this ruling, the Court reinforced the principle that the state owes a duty to repair the harm when it fails to prevent grievous crimes. It shifted the focus from conviction-based compensation to incident-based compensation. This widened the jurisprudential scope of compensatory justice, linking it to victim rehabilitation and restorative approaches.

- ***Delhi Domestic Working Women's Forum v. Union of India [AIR 1995 SC 92]***

In *Delhi Domestic Working Women's Forum v. Union of India*, the Supreme Court broke new ground by recognizing the right of rape survivors to receive immediate compensation, irrespective of trial outcome. The Court acknowledged that victims of sexual assault suffer immense psychological and social harm, and such damage begins long before the criminal justice process concludes. The case was a PIL brought forward on behalf of six domestic workers who were gang raped. The Court observed the absence of institutional support and proposed setting up a Criminal Injuries Compensation Board. It ruled that compensation should

not be seen as ex gratia but as a right flowing from public duty.

The judgment focused on structural deficiencies—insensitive policing, delays in legal aid, and re-victimisation during trials. It highlighted the need for multi-disciplinary support including legal, psychological, and financial aid. The Court's recommendations led to incorporation of victim compensation into various Law Commission Reports and later CrPC amendments. The judgment also broadened the constitutional basis of victim rights, linking them to Articles 14, 15 and 21. It was instrumental in cementing the idea that access to justice includes relief and rehabilitation, not just punishment of the offender. This case remains a seminal precedent shaping the victim-centric reforms in India, including Section 357A and the ongoing emphasis under the BNS reform paradigm.

IV. BNS 2023 AND THE SHIFT IN PARADIGM

Introduction to the Bharatiya Nyaya Sanhita, 2023: objectives and philosophy

The Bharatiya Nyaya Sanhita, 2023 ("BNS") represents an ambitious and transformative departure from India's colonial-era criminal laws. Enacted to replace the Indian Penal Code, 1860 ("IPC"), the BNS fundamentally recalibrates the underlying philosophy and objectives guiding criminal justice in India. Central to its vision is a movement away from the punitive and retributive approaches characteristic of the IPC. Instead, the BNS prioritizes restorative justice principles and victim-centric measures, ensuring victims' rights and welfare are central to judicial consideration. This marks a clear ideological shift towards inclusivity and rehabilitation in criminal jurisprudence, positioning the victim as a critical stakeholder within the justice delivery mechanism⁷.

The primary objective of the BNS emerges distinctly in its commitment towards decolonizing and indigenizing criminal law. By dismantling the archaic legal language inherited from colonial rule, the Sanhita adopts terminology and concepts reflecting India's contemporary socio-cultural and ethical milieu. This legislative reform underscores the necessity of aligning criminal statutes with modern constitutional ideals, thereby enhancing the credibility, accessibility, and effectiveness of

⁷ Supra Note 4

the criminal justice framework. An essential feature in this context is the simplification of complex provisions, aimed at improving comprehension and practical applicability of laws by the ordinary citizen. Such measures intend to foster greater trust and transparency in the criminal justice administration, reinforcing the rule of law through community participation and awareness⁸.

Moreover, the foundational philosophy of BNS explicitly expresses restorative and reformatory justice as central beliefs. As opposed to IPC's intrinsic orientation towards punishment as deterrence, the BNS focuses on accountability along with rehabilitation. It emphasizes reintegrating offenders into society through community involvement and reparative action. In this context, there is a recognition on the part of BNS of community service orders as a possible alternative punishment. Such an approach allows offenders to commit a piece to social welfare and it turns to be more effective for real reformation process. This marks a move away from incarceration, acknowledging its relatively low usefulness as a tool for rehabilitation. Thus, the criminal justice model approaches the true restoration of social peace, where reconciliation replaces revenge and punishment⁹.

The BNS also distinctly enhances victim protection and compensation frameworks. It explicitly mandates structured victim compensation schemes integrated within procedural laws, moving beyond the earlier discretionary provisions under Section 357 and Section 357A of CrPC, 1973. The new legislative framework acknowledges the state's moral and legal responsibility to compensate victims adequately, irrespective of offender's financial capability. Provisions within the BNS explicitly secure prompt interim and final compensations, protecting victims against prolonged suffering and economic hardship. This reflects a substantive advancement in victim rights jurisprudence, foregrounding victim interests and dignity as fundamental objectives of criminal law reform¹⁰.

BNS's approach to victim-centric justice

The Bharatiya Nyaya Sanhita (BNS) 2023 represents a significant departure from its predecessor, the Indian Penal Code of 1860, particularly in its approach to victim-centric justice. The new legislative framework embodies an evolving understanding of criminal justice that places the

⁸ Renjith Thomas, "Bharatiya Nyaya Sanhita, 2023: A Critical Perspective," SSRN (Apr. 12, 2024), <https://ssrn.com/abstract=4898463>.

⁹ Amol Deo Chavhan, "Philosophical Foundation of Bhartiya Nyaya Sanhita 2023," 12 IICRT 3951, 3954 (2024).

¹⁰ Tekan Alias Tekram v. State of Madhya Pradesh, (2016) 4 SCC 461.

victim at the center of the remedial paradigm. Section 358 of the BNS repeals the Indian Penal Code but preserves certain rights and proceedings, ensuring that the transition to the new framework doesn't adversely affect victims seeking remedies under existing proceedings.¹¹ This preservation of rights demonstrates a conscious effort to maintain continuity in victim protection while introducing progressive reforms.

The victim-centric approach of the BNS manifests prominently in provisions addressing sexual offences, where several substantive changes reflect a more empathetic understanding of victim trauma. Notably, Section 72 prohibits the disclosure of identity of victims in cases related to sexual offences under Sections 64, 65, 66, 67, 68, 69, 70, or 71. This prohibition extends to publishing or printing any matter related to court proceedings on such offences without prior permission from the court, as stipulated in Section 73.¹² These provisions safeguard victim privacy and dignity, acknowledging the social stigma often attached to sexual offences in Indian society. As held in *Nipun Saxena v. Union of India*, the right to privacy of victims forms an essential component of the right to life under Article 21 of the Constitution, and the BNS provisions operationalize this constitutional protection.¹³ The Supreme Court has consistently emphasized that secondary victimization through public disclosure of identity can compound trauma and inhibit access to justice.

The BNS demonstrates heightened sensitivity toward gender-based violence by expanding the scope of offences and enhancing punishments. Section 64 delineates punishments for rape with aggravated circumstances carrying more severe penalties. Section 65 specifically addresses rape of victims under sixteen and twelve years of age, with the latter carrying potential death penalty. The statutory recognition of the vulnerability of minor victims reflects the judicial wisdom expressed in *Alakh Alok Srivastava v. Union of India*, where the Supreme Court acknowledged the need for special protection mechanisms for child victims.¹⁴ Furthermore, Section 124, addressing acid attacks, provides for compensation to be paid to the victim for meeting medical expenses and rehabilitation. The provision explicitly mentions that “such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim,” and “any fine imposed

¹¹ Supra Note 4 S.358.

¹² Supra Note 4 Ss. 72-73.

¹³ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

¹⁴ *Alakh Alok Srivastava v. Union of India*, (2018) 16 SCC 291.

under this sub-section shall be paid to the victim.”¹⁵ This direct allocation of monetary penalties to victim rehabilitation represents a concrete shift toward restorative justice within the punitive framework.

Organized crime and terrorism victim rights are another important progress we witnessed in our victim centered reform at the BNS. Section 111 is about organized crime, and section 113 concerns terrorist acts, and both sections include punishment and compensation provisions that pay attention to the victims. The proviso to Section 111(2) prescribes a minimum amount of fine which can be used for the benefit of the victim.¹⁶ Provisions addressing human trafficking (Section 143), for example, include serious penalties on the understanding that fines collected can facilitate victim rehabilitation. Legislation towards the inclusion of this principle is found in the BNS (the Delhi High Court in *Court on its Own Motion v. Union of India* reiterated the importance of comprehensive rehabilitation measures to trafficking victims)¹⁷ This integrated perspective is in accordance with international norms established in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, to which India is a signatory.

The other side, the procedural, is provided by the Bharatiya Nagarik Suraksha Sanhita (BNSS) which is intended to supplement the BNS and facilitate a victim-centric justice system. The BNSS expands this power as described in section 357 in relation to awarding compensation to victims.¹⁸ A holistic knowledge of victim needs in the whole criminal justice system is shown by this interlocking legislative programming. These legislative instruments collectively evoke a policy response that transcends a punitive approach towards offenders and underscores the necessity of responding to victim trauma, rehabilitation needs, and reintegration challenges.

This change is indicative of the jurisprudential shift described by the Supreme Court in *Mallikarjun Kodagali v. State of Karnataka*, in which the Supreme Court acknowledged that “criminal jurisprudence has transitioned from containing offender-centric to a victim-centric approach.”¹⁹ The BNS therefore marks not just a legislative amendment but a paradigm shift in the philosophy of Indian criminal justice.

¹⁵ Supra Note 4 S. 124(1).

¹⁶ Supra Note 4 S. 111(2).

¹⁷ *Court on its Own Motion v. Union of India*, W.P.(C) No. 2612/2021 (Delhi H.C.) (Oct. 21, 2022).

¹⁸ *Bharatiya Nagarik Suraksha Sanhita* (Act 47 of 2023), § 357.

¹⁹ *Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752, 760.

C. Detailed study of provisions relating to victim compensation and restitution under BNS

The Bharatiya Nyaya Sanhita, 2023 (BNS), in many ways, is a landmark transformation from the colonial legacy of the Indian Penal Code, 1860. This legislative overhaul includes multiple measures that materially affect victim compensation and restitution. The section of the BNS dealing with punishment for rape in certain cases (Section 65 at the link above) explicitly provides for compensation to the victims. It requires that any fine “shall be just and reasonable to meet the medical expenses and rehabilitation of the victim” and, notably, further states that such a fine “shall be paid to the victim.”²⁰ Importantly, these monetary penalties now flow directly back toward the rehabilitation of victims, which is a significant step forward from the previous regime. The use of mandatory language in this provision – using “shall” instead of “may” – establishes a statutory right in favour of the victims themselves instead of merely creating a discretionary power, in a manner that significantly strengthens the victims’ right to compensation.

Section 70 of BNS further expands the compensation system in cases where the victim is a gang-raped, the BNS highlights. This provision also specifies that fines imposed “shall be just and reasonable to meet the medical expenses and rehabilitation of the victim” and “shall be paid to the victim.”²¹ The legislature conveys a uniform corpus of policy orientation towards restitution of sexual offences through this emphasised compensatory aspect, reiterating it over varied chains within the sections. Judicial support for such an approach can be found in the Supreme Court’s ruling in *Bodhisattwa Gautam v. Subhra Chakraborty*, which held that courts could grant interim compensation payable to rape victims, also during the pendency of criminal trials.²² The BNS achieves this by effectively codifying this judicial development, turning a court-conceived remedy into a statutory right. This transformation marks a paradigmatic shift away from seeing criminal proceedings as punitive in nature, towards seeing restorative potential.

Likewise, as for section 124 of the BNS which deals with grievous hurt by use of acid, it too has express provision for victim compensation. The clause requires that any penalty levied “shall be just and reasonable to meet the medical expenses of the treatment of the victim” and “shall be paid to the victim.”²³ Such provision recognizes that acid attacks survivors have unique

²⁰ Supra Note 4 S. 65(1)

²¹ Supra Note 4 S. 70(1)

²² *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

²³ Supra Note 4 S. 124(1)

rehabilitation needs, including prolonged medical treatment, surgeries, and psychosocial support. In *Laxmi v Union of India*, the Supreme Court had in the past also directed state governments to issue schemes for consideration and rehabilitation of acid attack victims.²⁴ BNS provision makes these court-directed policies statutory requirements, and a much deeper foundation for supportive policies for victims of crime. As treatment of acid attack victims involves very high medical and non-medical costs, special compensatory provisions must, therefore, be made to cater such victim need, and the BNS addresses such victim need through specific legislative intervention.

Addition of community service and compensation as new forms of punishment [Ref: BNS §4(f)]

The Bharatiya Nyaya Sanhita, 2023 in a way marks a watershed moment in the Indian criminal jurisprudence by way of bringing in community service as a formal punishment under Section

4(f). This is a significant philosophical shift within the Indian penal system from a retributive approach to a rehabilitative and restorative approach. Section 4 makes a clear list of the punishments contemplated under the Sanhita, including “Community Service” as a separate category alongside the traditional punishments of imprisonment, death penalty and fine.²⁵ This legislative innovation addresses decades of judicial commentary calling for alternatives to incarceration in appropriate cases, especially for first-time offenders and youth and for non-violent crimes.

The concept of community service as punishment finds application in several specific provisions throughout the BNS. Section 303(2) introduces a revolutionary approach to petty theft. It provides that in cases where the value of stolen property is less than five thousand rupees, a first-time offender “shall upon return of the value of property or restoration of the stolen property, shall be punished with community service.”²⁶ This mandatory language leaves little room for judicial discretion, effectively making community service the default punishment for minor theft by first-time offenders who make restitution.

The BNS further incorporates community service as a punishment option for public intoxication under Section 355, which stipulates that whoever appears intoxicated in a public place causing annoyance “shall be punished with simple imprisonment for a term which may extend to twenty-

²⁴ *Laxmi v. Union of India*, (2014) 4 SCC 427.

²⁵ Supra Note 4 S. 4(f)

²⁶ Supra Note 4 S. 303(2)

four hours, or with fine which may extend to one thousand rupees, or with both or with community service.”²⁷ The inclusion of community service as an alternative to fine or imprisonment for this minor social offence reflects a pragmatic approach that recognizes the limited deterrent value of brief incarceration or small fines. Similarly Section 226, addressing attempt to commit suicide to compel or restrain exercise of lawful power by public servants provides for punishment with “simple imprisonment for a term which may extend to one year, or with fine, or with both, or with community service.”²⁸ These provisions collectively demonstrate a nuanced legislative understanding of proportionality in punishment, where the severity of the sanction aligns with the gravity of the offence.

The BNS does not explicitly define the parameters of “community service” leaving courts with considerable discretion in determining its scope, duration and nature. This flexibility, while allowing for case-specific tailoring, may present challenges in implementation without supplementary guidelines. In *Re: Inhuman Conditions in 1382 Prisons*, the Supreme Court has emphasized the need for structured alternatives to imprisonment, noting that unguided discretion can lead to inconsistent application.²⁹ Countries with established community service programs, such as the United Kingdom, typically provide detailed statutory frameworks defining eligible offences, service hours, and monitoring mechanisms. The United Kingdom's Criminal Justice Act 2003 for instance offers comprehensive guidelines on community orders.³⁰ The absence of such details in the BNS may necessitate either judicial development of standards or supplementary legislation to ensure effective and uniform implementation.

The inclusion of compensation as a form of punishment under BNS represents a complementary shift toward victim-centric justice. Though not explicitly listed in Section 4 as a standalone punishment, compensatory elements are integrated throughout the BNS, particularly in provisions addressing sexual offences, acid attacks, and organized crime. Section 65, dealing with punishment for rape of minors, mandates that any fine imposed “shall be just and reasonable to meet the medical expenses and rehabilitation of the victim” and “shall be paid to the victim.”³¹ Similar language appears in Section 70 addressing gang rape and Section 124 on acid attacks. This

²⁷ Supra Note 4 S. 355

²⁸ Supra Note 4 S. 226

²⁹ *Re: Inhuman Conditions in 1382 Prisons*, (2018) 18 SCC 555.

³⁰ Criminal Justice Act, 2003, c. 44, § 177 (U.K.).

³¹ Supra Note 4 S. 65(1)

integrated approach to compensation contrasts with established models where victim compensation remained procedurally distinct from penal sanctions on offenders. By embedding the financial penalties in the substantive criminal provisions the BNS puts more direct link between the offender being held to account and the victim being redressed.

V. COMPARATIVE LEGAL ANALYSIS

Comparative study of victim compensation frameworks:

The various victim compensation schemes in different jurisdictions illustrate how harm arising from criminal conduct can be redressed differently. The recently reported Bharatiya Nyaya Sanhita (BNS) 2023 is a paradigm shift from Indian Penal Code 1860 as it explicitly adds compensatory provision in substantive criminal law. Section 65 of the BNS provides, in cases of rape, that fines “shall be just and reasonable to meet the medical expenses and rehabilitation of the victim,” and it specifically directs that such a fine “shall be paid to the victim.”³² This distinguishes it radically from the arrangements in the United Kingdom that are captured by its Criminal Injuries Compensation Scheme (CICS) which operates as a stand-alone scheme operating independently of the criminal process on a tariff-based structure coordinated by the Criminal Injuries Compensation Authority. Under the UK scheme, compensation amounts are set out in boxes and are standardised according to the category of injury caused, with this process not directly linked to any punishment handed down to the offender.³³ Such differentiation highlights the conceptual variance—India’s recent framework establishes a direct nexus between the penalties on the offenders and those who suffer a loss, whereas the UK system operates on the state which essentially is a party independent of the liability of the offender.

The United States has a much more patchwork solution for victims, and the monetary schemes for compensating victims can differ widely from state to state. The federal Victims of Crime Act (VOCA) created the Crime Victims Fund, which is funded largely with federal criminal fines, forfeited bail bonds, and special assessments.³⁴ This fund is used to provide grants to state victim compensation programs, which then use those grants to augment their funds with state funding. California’s victim compensation program, among the most expansive in the US, pays for medical

³² Supra Note 4 S. 65(1)

³³ Criminal Injuries Compensation Act, 1995, c. 53 (U.K.).

³⁴ Victims of Crime Act, 34 U.S.C. §§ 20101-20111 (2018).

costs, therapy, loss of income and funeral costs up to set amounts. Unlike BNS provisions described above, however, eligibility typically hinges on victims reporting crimes quickly and cooperating with law enforcement, requirements that are not explicitly included in India's new framework.³⁵ This leads to a hybrid US system that combines penalties for offenders with state funding, all the while placing procedural requirements on victims who wish to seek compensation.

Germany's victim compensation system offers another unique model featuring an adherence principle. The German Code of Criminal Procedure provides victims with a possibility to assert their civil claims directly in the framework of the criminal proceedings by means of the Adhäsionsverfahren (adhesion procedure).³⁶ This procedural integration enables victims to receive compensation orders with the criminal judgment, without having to instate a separate civil trial. In addition, the German system offers state compensation, under the Crime Victims Compensation Act (Opferentschädigungsgesetz), for physical and psychological injuries caused by violent acts. Germany adopts a dual-track alongside India reliance on BNS framework model is a system that integrates compensatory components within the actual criminal provisions, rather than through procedural mechanisms of adhesion. But both systems are based on an acknowledgment that criminal and civil remedies need not be wholly separate worlds.

The most notable approach comes from New Zealand, which has an accident compensation scheme that provides comprehensive no-fault compensation for personal injuries (including those from criminal acts). The Accident Compensation Act 2001 provides a no-fault compensation system covering medical, rehabilitation and income costs regardless of the cause of injury.³⁷ This scheme nearly wipes out all personal injury litigation, including personal injury claims arising from criminal victimization. Although it provides universal coverage, this approach separates compensation from offender accountability, a connection that India's BNS explicitly maintains via its fine-allocation provisions. The New Zealand model, which centers on victim support, offers a welfare-based solution, unlike the more offender-focused compensatory system in India.

³⁵ Cal. Gov't Code §§ 13950-13974.5 (West 2021).

³⁶ Strafprozeßordnung [StPO] [Code of Criminal Procedure], §§ 403-406c, translation at https://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html (Ger.).

³⁷ Accident Compensation Act 2001, No. 49 (N.Z.).

Japan's compensation system also shows a different way with its Crime Victim Benefit Payment System. The system offers uniform benefits to victims of intentional crimes that cause death or serious injury, or to their surviving family members.³⁸

The Japanese model consists of three types of benefits: 1) the survivor benefit, which is paid to the families of the deceased victims, 2) the serious injury and disease benefit, and 3) the disability benefit. These payments are adjusted based on the victim's age and income at the time of victimization. The Japanese system, unlike India's new approach through the BNS, operates wholly independently of criminal penalties on the offender. Compensation amounts are fixed according to victim characteristics rather than being keyed to the precise penalties imposed in individual cases.

For this reason, South Africa, with its post-apartheid victim compensation framework, offers an instructive contrast. Under the Criminal Procedure Act, compensation orders can also be ordered by a court on behalf of property and personal injuries. But South Africa has no full-fledged, state-funded victim compensatory scheme, leaving many gaps in support for victims.³⁹ This impetus has led to calls for reforms and the crafting of a National Policy Framework for Victim Empowerment. The South African experience points to the difficulties that arise in providing meaningful victim compensation when state resources are limited — a point relevant to India as it operationalizes the BNS provisions.

Australia has created a hybrid model, with victim compensation schemes administered by states, but supplemented by federal funding. For example, the New South Wales Victims Support Scheme offers financial support, counseling services, and recognition payments to victims of violent crimes.⁴⁰ These schemes have no bearing on criminal proceedings but may include the means to recover payments made by offenders. The Australian model therefore retains aspects of state responsibility and individual culpability but the relationship is not as tight as the BNS provisions of India. The Australian system also includes recognition payments that acknowledge the trauma experienced by victims—a symbolic element not explicitly addressed in India's new framework.

³⁸ Crime Victim Benefit Payment Law, Law No. 36 of 1980 (Japan).

³⁹ Criminal Procedure Act 51 of 1977, § 300 (S. Afr.).

⁴⁰ Victims Rights and Support Act 2013 (NSW) (Austl.).

The BNS provisions represent a distinctive approach by integrating victim compensation directly into substantive criminal law rather than treating it as a separate procedural matter. This integration is particularly evident in offences like acid attacks (Section 124), where the legislation explicitly directs that fines shall be “just and reasonable to meet the medical expenses and rehabilitation of the victim” and “shall be paid to the victim.”⁴¹ This approach differs from most international models, which typically separate the imposition of criminal penalties from the determination of victim compensation. The direct linkage in the BNS creates a more immediate connection between offender penalties and victim redress, potentially enhancing both the symbolic and practical dimensions of compensation. However, it also raises questions about the adequacy of compensation when offenders lack financial resources—a challenge addressed in other jurisdictions through state-funded supplementary schemes.

VI. POLICY RECOMMENDATIONS AND REFORM PROPOSALS

The Bharatiya Nyaya Sanhita (BNS) 2023 represents a significant advancement in victim compensation, yet several critical interventions could further strengthen its implementation. A centralized National Victim Compensation Fund should be established to supplement offender-paid compensation, particularly in cases where offenders lack financial capacity. This fund could be financed through a combination of budgetary allocations, penalties collected in cases without identifiable victims, and corporate social responsibility contributions.⁴² The New South Wales Victims Compensation Fund in Australia offers an instructive model, utilizing both government funding and recovered offender payments to ensure victims receive timely assistance regardless of offender solvency.⁴³ Such a fund would address the inherent limitation of offender-centric compensation schemes that often fail victims when perpetrators are impecunious or unidentified.

Legislative clarification regarding community service implementation is urgently needed. While the BNS introduces community service as a punishment option under Section 4(f), it provides minimal guidance on implementation parameters. Supplementary legislation or rules should delineate eligible offences, service hour calculations, supervision mechanisms, and compliance

⁴¹ Supra Note 4 S. 124(1)

⁴² HUMAN RIGHTS WATCH, *EVERYONE BLAMES ME: BARRIERS TO JUSTICE AND SUPPORT SERVICES FOR SEXUAL ASSAULT SURVIVORS IN INDIA* 56-58 (2017).

⁴³ Victims Rights and Support Act 2013 (NSW) pt 4 (Austl.).

monitoring.⁴⁴ The United Kingdom's Community Order framework offers a valuable template, specifying activity requirements, unpaid work parameters, and rehabilitation components that could be adapted to the Indian context.⁴⁵ These specifications would transform community service from an abstract concept into an operationalizable sanction that fulfills both rehabilitative and compensatory goals within the justice system.

We need standardized victim need assessment protocols to base compensation on. Current BNS provisions require that fines “shall be just and reasonable shall be for the rehabilitation of the victim” but do not offer a methodology for determining suitable amounts. This assessment would include medical, psychological, economic, and social impacts of victimization and would bring consistency and adequacy in the compensation to victims.⁴⁶ New Zealand also has an injury categorisation system within its accident compensation framework that provides a useful example of how a standard assessment tool can be used to facilitate fair compensation, while allowing for individual consideration of victims’ circumstances.⁴⁷ This would eliminate the arbitrariness in compensation determinations but also ensure that the unique victim needs are adequately captured.

VII. CONCLUSION

The Bharatiya Nyaya Sanhita, 2023 is a historic game changer for the value of Victims Compensation in Indian Criminal Justice System. This legislative amendment clearly delineates a significant departure from the colonial legacy of a criminal justice system predominantly centered upon the rights of offenders to one that holistically encompasses the restoration of both parties as being crucial to its framework. That compensatory elements be integrated directly into substantive penal provisions, as opposed to considered mere procedural afterthoughts, marks a paradigmatic shift in criminal justice philosophy. These provisions operationalise the constitutional principles enunciated by the Supreme Court in cases such as Ankush Shivaji Gaikwad, where victim compensation was recognized as a facet of the fundamental right to life

⁴⁴ P.S. Narayana, Implementation Challenges of Non-Custodial Sanctions in India, 4 INT'L J. CRIM. JUST. SCI. 175, 178-79 (2020).

⁴⁵ Criminal Justice Act, 2003, c. 44, §§ 177-180 (U.K.).

⁴⁶ MINISTRY OF WOMEN AND CHILD DEVELOPMENT, REPORT OF THE HIGH-LEVEL COMMITTEE ON THE STATUS OF WOMEN IN INDIA 212-15 (2015).

⁴⁷ Accident Compensation Act 2001, sch 1, pt 4 (N.Z.).

with dignity under Article 21.⁴⁸ The BNS transmutes judicial innovativeness into legislature commitment by statutorily providing that: the fine levied for certain offences “shall also be just and reasonable” for victim rehabilitation and “shall be paid to the victim”.

When comparing different compensation frameworks, the unique angle taken by the BNS is the direct connection between the consequences suffered by the offender and the restoration of the victim. Unlike state-funded schemes that exist in jurisdictions like the United Kingdom and New Zealand, the Indian framework focuses not only on offender accountability but also addresses the needs of victims. This dual-focus approach aligns with restorative justice principles that seek to repair harm while maintaining offender responsibility. But the BNS's reliance on offender capacity for doing harm results in implementation challenges in circumstances where perpetrators are either financially bankrupt or remain unidentified, a limitation that looked to be turned into a strength, by drawing on state-funded mechanisms as used to some degree in hybrid implementation in Australia and Germany.⁴⁹

The introduction of community service as a formal punishment option under Section 4(f) further enriches the compensatory landscape by providing non-monetary means of addressing the social dimensions of crime. This innovation acknowledges that criminal harm extends beyond individual victims to affect community wellbeing, requiring corresponding reparative measures. Yet the absence of detailed implementation guidelines for community service risks inconsistent application and diminished effectiveness—a gap that requires urgent attention through supplementary regulations or judicial guidance.⁵⁰ The United States federal probation system's community service guidelines offer instructive parameters that could be adapted to the Indian context, including service hour calculations based on offence gravity, compliance monitoring mechanisms, and procedures for addressing non-compliance.

The victim-centric provisions in the BNS represent significant progress but remain constrained by broader systemic challenges within the Indian criminal justice system. Delayed trials, inadequate victim support services, and implementation disparities across states may undermine the practical

⁴⁸ Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770.

⁴⁹ G.S. BAJPAI, VICTIMOLOGICAL DEVELOPMENTS IN INDIA: REFLECTIONS ON VICTIM COMPENSATION POLICY 45-47 (2019).

⁵⁰ RANBIR SINGH & G.S. BAJPAI, VICTIM JUSTICE AND CRIMINAL JUSTICE REFORMS IN INDIA 142-45 (2020).

realization of the legislative intent. The effectiveness of the new compensatory framework will ultimately depend on complementary reforms addressing these structural barriers. Nevertheless, the BNS provisions establish a foundation upon which more comprehensive victim support systems can be built through both legislative refinement and judicial interpretation.⁵¹

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