
FROM SECTION 357 TO SECTIONS 395–398: VICTIM COMPENSATION AND WITNESS PROTECTION UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 - DOCTRINAL CONTINUITY OR FUNCTIONAL TRANSFORMATION?

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ABSTRACT

The transition from the Code of Criminal Procedure, 1973 (CrPC) to the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) represents one of the most significant changes in India's criminal procedural framework in recent decades. Among the provisions deserving particular attention are those concerning victim compensation, medical assistance and witness protection. Under the CrPC, Sections 357, 357A, 357B and 357C progressively developed a framework through which compensation ceased to be merely an incidental consequence of criminal punishment and acquired an important rehabilitative and victim-oriented character. The BNSS reorganises these principles principally through Sections 395, 396 and 397, while Section 398 introduces an express statutory provision concerning witness protection. This paper examines whether this transition constitutes a doctrinal rupture or represents substantial continuity accompanied by functional transformation. Adopting a doctrinal and analytical methodology, the paper compares the statutory language, institutional mechanisms and judicial principles associated with the two regimes. It argues that the BNSS does not fundamentally abandon the jurisprudential foundations developed under the CrPC. Rather, it preserves the central architecture of court-ordered compensation, State-funded victim compensation, rehabilitation and medical assistance, while introducing certain procedural clarifications, including a two-month period for compensation enquiries and express provision for interim relief. The statutory recognition of witness protection under Section 398 also represents an important institutional development, although it builds upon the Witness Protection Scheme, 2018 previously recognised by the Supreme Court. The paper therefore concludes that the BNSS is best understood as doctrinal continuity accompanied by functional transformation, rather than either complete legislative continuity or substantive rupture. The effectiveness of this transformation, however, will ultimately depend upon institutional capacity, uniform implementation, adequate funding and judicial enforcement.

Keywords: Victim Compensation, Witness Protection, BNSS, CrPC, Restorative Justice, Victimology, Criminal Justice

1. Introduction

Criminal justice systems have always approached the offence from the point of view of the State and the accused. The traditional objectives of criminal procedures such as investigations, prosecutions, trials and sentencing have centred around the State and the accused. Courts usually treated the victim as an afterthought. The emphasis of modern scholarship on criminal justice is shifting ideas about victimology. There is no justification for ignoring the physical, moral, social and economic problems faced by a victim of crime through the judicial process. It is the idea behind victim compensation, rehabilitation, medical assistance and protection of witnesses. The Indian legal system has been moving in this direction gradually. The Code of Criminal Procedure of 1973, Section 357 has taken a step in that direction. The Supreme Court has recognized that the provision was made to support victims and therefore should not be perceived as a minor issue in sentencing. “In *Hari Singh v. Sukhbir Singh*” the Apex Court has highlighted this power and encouraged the courts to use it generously.¹

The process began with the introduction of Section 357A by the Code of Criminal Procedure (Amendment) Act of 2008. Unlike section 357, which used to function mainly through the sentencing judge and fine on the individual, section 357A set up a broader state-backed compensation structure for victims. The provision required state governments, in consultation with the central government, to devise schemes for compensation of victims or their dependents, who had suffered losses or injuries and needed rehabilitation. Section 357B and 357C later addressed issues of additional compensation for certain serious offenses and free medical treatment for victims of specific sexual and acid attack offences. Judicial developments have further consolidated this move. In *Delhi Domestic Working Women’s Forum v. Union of India*, the Supreme Court acknowledged the need for compensation and rehabilitation of victims of sexual violence and ordered a mechanism for compensation to be put in place. In *Ankush Shivaji Gaikwad v. State of Maharashtra*, the Supreme Court reiterated the need for the application of section 357 and stressed on the need for courts to consider compensation while deciding the appropriate punishment for crime.²

¹ Andrew Karmen, *Crime Victims: An Introduction to Victimology* (Cengage Learning, 9th ed. 2013); United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (Nov. 29, 1985); The Code of Criminal Procedure, No. 2 of 1974, § 357, India Code (1974); *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551.

² The Code of Criminal Procedure (Amendment) Act, 2008, No. 5 of 2009, § 7, India Code (amending § 357A of the Code of Criminal Procedure, 1973); The Code of Criminal Procedure, 1973, §§ 357A–357C, India Code; *Delhi Domestic Working Women’s Forum v. Union of India*, (1995) 1 SCC 14; *Ankush Shivaji Gaikwad v. State*

The enactment of BNSS in 2023 and its coming into force on 1st July 2024 creates a new framework in which these provisions can be evaluated. The BNSS has “Order to pay compensation” in section 395, “Victim compensation scheme” in section 396, “Treatment of victims” in section 397, and “Witness protection scheme” in section 398. Hence the central question is not whether there are differing section numbers now.³ The real question here is whether the legal status of both the victims and witnesses is changed significantly. Does the BNSS break with the jurisprudence developed under CrPC or does it carry this jurisprudence while making some modifications in its operation?

This paper argues that the best characterization would be “doctrinal continuity with functional transformation.” The core principle of victim compensation remains intact with the transition. Meanwhile, section 396 BNSS brings in procedural innovations like period of the compensation inquiry being fixed at two months along with special provision for interim relief. Section 398 entitles witness protection with statutory backing which used to derive mainly from judicial instructions and from the Witness Protection Scheme, 2018.⁴ Thus, the developments may not amount to a rupture of the doctrine but can surely present important functional implications for the victims and witnesses.

The existing literature has fairly discussed compensation for victims granted under Section 357 and 357A of CrPC, judicial interventions, and growth of restorative practices. The recent literature has also started discussing the victims compensation scheme under BNSS. For instance, Hershika A.S. and T. Vaishali explored the practical implementation of the victims compensation scheme through statutory and constitutional jurisprudence, thereby signifying the issues of delays, inter-state discrepancies, and lack of awareness, which continues to exist.⁵ Parallely, the recent literature has also explored the framework of BNSS, and its relationship with the earlier provisions of CrPC. However, a great gap in analysis has been created. Most of the upcoming literature either clarifies the new statutory framework, or outlines the development of the compensation of the victims. Little emphasis has been given on the precise

of Maharashtra, (2013) 6 SCC 770.

³ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 395–398, India Code (2023); Ministry of Home Affairs, Government of India, *Notification S.O. 848(E)*, bringing the Bharatiya Nagarik Suraksha Sanhita, 2023 into force with effect from 1 July 2024.

⁴ *Mahender Chawla v. Union of India*, (2019) 14 SCC 615; Witness Protection Scheme, 2018, Ministry of Home Affairs, Government of India; The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 398, India Code (2023).

⁵ Hershika A.S. & T. Vaishali, *Implementation of Victim Compensation Scheme in India: Judicial Trends*, 5(12) Indian Journal of Legal Review 873–886 (2025), available at <https://ijlr.iledu.in/implementation-of-victim-compensation-scheme-in-india-judicial-trends/>.

question whether Sections 357 to 357C CrPC being replaced by Sections 395 to 398 of the BNSS represents doctrinal continuity, substantive laps or functional transformation. The present study addresses this gap by combining the statutory comparison with judicial analysis and restorative justice theory.

The study has four objectives:

1. To examine the evolution of victim compensation under the CrPC.
2. To comparatively analyse the relevant provisions of the CrPC and BNSS.
3. To determine whether the BNSS represents continuity, rupture or functional transformation.
4. To examine whether the new framework strengthens victim-centric and restorative criminal justice.

The study has four questions:

1. To what extent do Sections 395–398 BNSS preserve the principles underlying Sections 357–357C CrPC?
2. What substantive and procedural changes have been introduced?
3. Do judicial principles developed under the CrPC continue under the BNSS?
4. Does the BNSS represent doctrinal continuity or functional transformation?

The methodology used in this research is both doctrinal and analytical. Sources for the study are divided into two major categories: primary and secondary. Under primary sources are the Constitution of India; relevant provisions of Criminal Procedure Code; legislation in relation to criminal investigations; judicial decisions of judges relevant to the area and statutory schemes that are related to the area. In the secondary sources, various books, journal articles and publications are used.

2. Evolution of Victim Compensation under the CrPC

The foundation for compensation as a consequence of a court decision was first established by Section 357 of the Code of Criminal Procedure (CrPC), which allowed the courts imposing a

fine to direct that all or part of the fine be paid as compensation for any loss or injury incurred by the commission of the crime. In addition, compensation was permitted in cases where a sentence did not include imposing a fine. The merits of Section 357 lie in its acknowledgment of the fact that criminal adjudication should not end with punishing the offender; the consequences endured by the victim are also important. However, compensation payable pursuant to Section 357 has remained related to the process of sentencing.⁶

The Supreme Court in *Hari Singh v. Sukhbir Singh* was significant for establishing the provision in a victim-oriented way. The Court has established that compensation is one of the means of assuring the victims that they have not been ignored by the justice system. The Supreme Court has provided further development of this principle in its decision in *Ankush Shivaji Gaikwad*. The case is significant as it has established the fact that courts need to pay due attention to compensation and cannot treat Section 357 as a provision of no importance or rare application.⁷

As a result, Section 357 represented a significant shift from the purely punitive justice towards the system in which loss of the victim plays a part in sentencing. Section 357A practically made a revolution in this area by establishing a proper legal scheme of victim compensation funded by the government. In contrast to section 357, which functioned primarily through the sentence, section 357A accepted the view that victims may require compensation regardless of whether the victim is able to recover money from the offender or not.⁸

Under this provision, compensation was provided to victims or their survivors for any damages incurred in terms of loss or injury. This was important since the rehabilitation of the victim no longer fully depended on whether the offender receives a prison sentence. This development marked a critical change in the legal understanding of the State's role. The State came to be seen not only as the party that prosecutes but also as a party that has a responsibility toward the victims of crime and individuals suffering injuries. It was also explicitly mentioned in section 357B that compensation under section 357A is in addition to the fine payable to the victims of

⁶ The Code of Criminal Procedure, No. 2 of 1974, § 357, India Code (1974); *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551; *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

⁷ *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551; *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

⁸ The Code of Criminal Procedure, No. 2 of 1974, §§ 357, 357A, India Code (1974); The Code of Criminal Procedure (Amendment) Act, 2008, No. 5 of 2009, § 7; *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551; *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14.

serious crimes including acid attacks and aggravated sexual offenses.⁹

The key point of section 357B was that the concept rejected the need for victims to make a choice between state compensation and the statutory fine. Section 357C requires public and private hospitals to provide free medical assistance to victims of particular crimes including sexual offenders and acid attack suspects as well as to invite law enforcement authorities. The significance of this provision can be explained with reference to the understanding that justice cannot be delayed until the completion of the trial.¹⁰

Although specific measures implied in sections from 357 to 357C could be summarized in the following way:

Penalty-focused compensation → state compensation → rehabilitation → medical aid.

3. Victim Compensation and Witness Protection under the BNSS

The section in question is Section 395 of the BNSS, which most closely resembles Section 357 of the CrPC. This section provides an opportunity to the courts to provide that the entire or a part of the fine may be paid out as expenses incurred during prosecution or as compensation for loss or injury. There is no doubt it gives power to grant compensation even where fine has not been imposed. Therefore, we see that the framework remains largely unchanged. In addition, Section 395 maintains the correlation between the criminal compensation and any civil proceeding which follows. This means that if there has already been compensation awarded in the criminal proceeding it must be considered in any subsequent civil suit.¹¹

Thus, we should not think about the provision as introducing new concept of compensation. In essence, it maintains the fundamental principles of Section 357. Section 396, which is of paramount importance in order to explore if the BNSS has brought any functional changes. Under this provision, every State Government has to devise a scheme for compensation of victims or their relatives who have suffered losses or injuries with the help of the Central Government. It will be noted that this provision is the continuation of Section 357A, but it

⁹ The Code of Criminal Procedure, No. 2 of 1974, §§ 357A–357B, India Code (1974); The Code of Criminal Procedure (Amendment) Act, 2008, No. 5 of 2009, §§ 7–8; *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14.

¹⁰ The Code of Criminal Procedure, No. 2 of 1974, §§ 357B–357C, India Code (1974); *Laxmi v. Union of India*, (2014) 4 SCC 427; *Parivartan Kendra v. Union of India*, (2016) 3 SCC 571.

¹¹ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 395, India Code (2023); *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

contains important changes in terms of procedural aspects.¹²

If compensation under Section 395 is insufficient for rehabilitation or if the case ends with acquittal or discharge but rehabilitation is still needed, the trial court can suggest awarding compensation. Third, where the offender is not located or identified, the injured party or their dependants can directly apply to the State or District Legal Services Authority. One particularly relevant provision is sub-section (5), which lists the requirement that the authority will complete the compensation inquiry within two months. Section 396(6) also allows for immediate first aid, free medical treatment, and other interim assistance so that the victim would suffer less. These stipulations are important because they deal with one of the main shortcomings of victim compensation historically - the gap between the legal availability and practical attainability.¹³

Section 397 BNSS maintains the core principle outlined in Section 357C CrPC. It prescribes that public and private hospitals must provide victims of certain offenses immediate first aid or medical treatment free of charge and inform the police. There is, however, an important drafting twist in replacing IPC with BNSS references. The statutory framework is now integrated with the new substantive criminal law. This should be treated more as a legislative restructuring than a doctrinal break. The practical significance of Section 397 has been already demonstrated by judicial activism. In *S.V. v. State*, the Delhi High Court tackled the problems of the survivor concerning the availability of free treatment in a private hospital and reiterated the obligation under Section 397 BNSS. The Court also insisted on the need for the sensitization of medical facilities and stressed that free treatment was not dependent upon a prior referral under the victim compensation scheme.

This provides an important insight: the continuity of statutory language does not imply a continuity of practical effect. Implementation and judiciary enforcement can turn in an active statutory principle into a more solidly functioning right. Section 398 BNSS provides that every State Government has to enact and announce the Witness Protection Scheme for the State with a view to securing the protection of witnesses. This provision is significant as the witness protection mechanism had been largely developed through judicial activities before.

¹² The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 395–396, India Code (2023); The Code of Criminal Procedure, No. 2 of 1974, §§ 357–357A, India Code (1974).

¹³ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 396(3)–(6), India Code (2023); The Code of Criminal Procedure, No. 2 of 1974, § 357A(3)–(6), India Code (1974).

Specifically, in *Mahender Chawla v. Union of India*, the Supreme Court admitted the effectiveness of the Witness Protection Scheme, 2018 and ordered its introduction until adequate legislation was passed.

The BNSS thus transforms an important mechanism recognized in judicial practice into a statutory obligation. This represents one of the brightest examples of the functional transformation performed within the clearly victim-oriented background. Nevertheless, only statutory recognition does not guarantee effective protection. There is a significant challenge of implementation. In February 2026, the Supreme Court commented that some states and Union Territories had failed to enact the Witness Protection Scheme required by Section 398 and compelled the relevant authorities to comply with the legal obligation. Thus, Section 398 illustrates both the opportunities and limitations of the BNSS: Parliament has created the clearest statutory requirement, but the practice still depends on the institutional compliance on the state level.

4. CrPC vis-à-vis BNSS: Doctrinal and Functional Comparison

The most useful way to assess the transition is to distinguish continuity of principle from change in operation.

Issue	CrPC	BNSS	Assessment
Court-ordered compensation	Section 357	Section 395	Substantial continuity
State victim compensation	Section 357A	Section 396	Continuity with procedural refinement
Additional compensation	Section 357B	Reflected through BNSS/BNS framework	Restructuring
Medical treatment	Section 357C	Section 397	Substantial continuity
Untraced offender	Section 357A	Section 396(4)	Continuity
Acquittal/discharge	Section 357A	Section 396(3)	Continuity
Interim relief	Section 357A framework	Expressly recognised in	Functional enhancement

Issue	CrPC	BNSS	Assessment
		§396(6)	
Enquiry period	No equivalent express two-month requirement	Section 396(5)	Procedural enhancement
Witness protection	Primarily judicially developed framework	Section 398	Institutional transformation

The provisions in Section 395 of the BNSS closely resemble the provisions outlined in Section 357 of the CrPC. The courts still hold the key power to order for the payment of compensation, and the principle of both compensation and fine has remained almost the same. This ensures the continuity of doctrinal process. As a result, the transition does not introduce the concept of criminal compensation afresh but carry forwards a concept that has been developed through judicial pronouncements over time. The concept of Section 396 remains similar to Section 357A.¹⁴

The two acts recognize:

- The responsibility of the state
- The rehabilitation of the victims
- The payment of compensation in cases where recovery is not possible from the offender
- In case where one is unable to track the offender down
- The involvement of legal services authorities in the process.

However, there are some changes in Section 396 where it explicitly provides that the inquiries should be completed in two months and the provision for interim relief has been included. The changes may seem procedural in nature but this procedure can have substantive implications in the legislations directed at helping the victims. The process in timelines and the provision for interim relief can be extremely helpful for victims who require immediate financial assistance or help for medical treatment since any delay can change the effectiveness of the

¹⁴ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 395–396, India Code (2023); The Code of Criminal Procedure, No. 2 of 1974, §§ 357–357A, India Code (1974); *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551; *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

provisions mentioned in the statute.

The change can, therefore, be referred to as functional transformation. One of the major aspects of Section 396 is that the provisions clearly state that compensation can be ordered even in cases where there may have been acquittals or discharge in matters relating to compensating victims requiring rehabilitation. This calls attention to the difference in criminal responsibility and victim rehabilitation. An acquittal does not necessarily imply that the victim has been spared from harm. Monetary compensation from the victim compensation program serves a purpose distinct from punishing offenders. The compensation system emphasizes rehabilitation rather than proving the criminal culpability of the offender.

This idea is in line with the progress of victim compensation as seen in the context of Section 357A, thus demonstrating that victim compensation has gone through the process of consistency. Section 396 (4) allows the identified victim/dependent to approach the State or DLSA if the offender is untraceable. This is conceptually significant as it separates the rehabilitation of the victim from the criminal investigation being successful. Hence, this principle continues the movement initiated by Section 357A from compensating an offender to rehabilitating victims.¹⁵

The interim relief concept represents something important within the BNSS framework. Section 396 (6) provides for immediate First Aid and medical help at no cost to the victim. This is aligned with the principle that victims shall not have to wait till the end of long Proceedings for getting basic help.

The practical aspect is quite important, taking into consideration the fact that it takes a lot of time for criminal proceedings to be completed, while medical expenses incurred, job loss, psychological trauma, and rehabilitation needs arise immediately. Thus, delay in providing remedy can make the remedy ineffective. Thus, the fact of a clear mention of the interim relief in the law is a significant practical improvement.

Section 397 saves the principle from Section 357C. Both articles require public and private hospitals to admit relevant victims and provide treatment free of charge. The only drafting

¹⁵ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 396(4), India Code (2023); The Code of Criminal Procedure, No. 2 of 1974, § 357A(4), India Code (1974); *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14.

difference is the substitution of IPC Crimes with corresponding BNS Crimes. This is mostly a continuation of laws, however, judicial practice under BNSS shows that there is real potential for improvement. Witness protection is different from compensation for the victims. Compensation deals with the consequences of victimization, whereas protection of witnesses is connected with dangers associated with the process of witness testimony. Before BNSS, the Supreme Court recognized already that witness protection is very important and adopted Witness Protection Scheme 2018.¹⁶

Section 398 states the above-mentioned principle in a clear statutory form. Therefore, it becomes obvious, that BNSS does not create witness protection in itself, but rather is following the chain: Judicial recognition → Witness Protection Scheme, 2018 → statutory recognition under Section 398.

5. Judicial Continuity and Restorative Justice

The shift from one procedural statute to another poses a significant interpretative issue: what becomes of judicial principles developed in the repealed CrPC? The change in statute numbering does not mean that the jurisprudence is wiped out. If the new provision preserves the wording, purpose and structure of the old one, the judicial reasoning from older provisions may still apply, depending on the wording and context of the new law. Section 357 jurisprudence provides an illustrative example of this. In *Hari Singh*, the Supreme Court characterized compensation as a way to give reassurance to victims and as a positive response to crime. The Court reinforced the significance of compensation as part of sentencing in the case of *Ankush Shivaji Gaikwad*.¹⁷

The principles obtained from the analyzed cases are not dependent on the number of Section 357 itself. Rather, they are based on the idea that criminal justice must take into consideration the suffering of victims. In the same way, the case of *Delhi Domestic Working Women's Forum* illustrated that compensation and rehabilitation can be linked to constitutional principles and the obligation of the State to help victims of serious crime. These show that BNSS inherited

¹⁶ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 397–398, India Code (2023); The Code of Criminal Procedure, No. 2 of 1974, § 357C, India Code (1974); *Mahender Chawla v. Union of India*, (2019) 14 SCC 615; Witness Protection Scheme, 2018, Ministry of Home Affairs, Government of India.

¹⁷ *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551; *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770; The Code of Criminal Procedure, No. 2 of 1974, § 357, India Code (1974); The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 395, India Code (2023).

not only a statutory provision but also the developed jurisprudence. The development of victim compensation is closely associated with the value of the protection of life and personal liberty provided by Article 21 of the Constitution. Victimization can lead to violations of the bodily integrity, dignity, livelihood, psychological health and social life of the person.¹⁸

Thus, the victim-centered approach treats victim compensation not only as a money payment but as a part of restoring the person's capacity to live a dignified life. This is especially true for cases of sexual violence, acid attacks, serious bodily injuries and other crimes with the long-term consequences. Traditionally, retributive justice raises the question of how serious the punishment should be. Restorative justice asks not only this but also what harm had been inflicted and how to remedy it.

The concept of victim compensation can be related to the second question. It cannot change the physical or psychological injuries suffered by the victims but it can help with:

paid medical assistance;

rehabilitation;

loss of income;

receiving education;

providing housing;

psychological help;

long-term care.

The transition from Section 357 to Section 357A and now to Section 396 reflects the change in the philosophy of criminal justice.

6. Critical Analysis: Doctrinal Continuity or Functional Transformation?

The shift from the Code of Criminal Procedure, 1973 (CrPC) to the Bharatiya Nagarik Suraksha

¹⁸ *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14; INDIA CONST. art. 21; *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746; *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

Sanhita, 2023 (BNSS) requires an analysis that goes beyond just a number change. It is important to note that BNSS replaces Sections 357, 357A, 357B and 357C of CrPC with Sections 395, 396 and 397 of BNSS in new provision Section 398 which talks about witness protection which raises the question regarding the extent of change that has occurred in law. A simple comparison can lead one to think that BNSS has only basically repeated the previous framework. But this approach does not consider some procedural and institutional changes. The main argument of the study is that BNSS has not made a complete doctrinal break, and the exact situation would be more accurately described as the continuity of doctrine together with changes in practice.

The continuity of doctrine is clear from the fact that the main concept of victim compensation included in CrPC has survived. Section 395 BNSS has retained the concept of Sec 357CrPC under which the court has power to order payment of compensation to the victim of the crime. This also indicates the continuation of the significance of the concept of compensation in the sentencing process. The core principle of law that the interests of individuals receiving damages should be recognized by the criminal process survives as can be seen from the BNSS. A change in numerical nomenclature does not automatically lead to a change in the principle of law.¹⁹

A similar continuity can be seen with regard to State-sponsored compensation to the victims. Section 396 BNSS substantially holds on to the framework established under Section 357A Code of Criminal Procedure. The State still has the primary responsibility of formulating the victim compensation scheme and providing compensation to the victim or dependants of the victim who suffered in any way. This provision also retains the principle of how the compensation can also be availed even in situations when the accused has not been found or has committed a crime and has left the jurisdiction. This is an important point because it shows that the issues of compensation are separate from success in the criminal prosecution of a person. The victim is not supposed to suffer confined to seeking help from the State. Principle of rehabilitation is also substantially retained under the BNSS. The mechanism of compensation for victims provided for under the BNSS does not limit itself only to relieving the organizations of their immediate financial burden. The main idea of the scheme is to restore and rehabilitate the victim as much as possible. The BNSS signifies the evolutionary

¹⁹ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 395–398, India Code (2023); The Code of Criminal Procedure, No. 2 of 1974, §§ 357–357C, India Code (1974); *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551; *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

continuation of legal principles that were developed under Sections 357 and 357A of CrPC.

The BNSS introduces new features that may establish functional changes in the implementation of victim compensation. Section 396 clearly states that the inquiry regarding the compensation has to be completed within two months. This time limit is very important since one of the long-standing issues with victim compensation is delay. In fact, the victim's right to recover any kind of compensation may not be addressed until the lengthy administrative or judicial process is concluded. However, by establishing a time limit for completing the inquiry, the BNSS tries to make compensation more relatable and accessible nearly at all times.

Through Section 396, the BNSS also recognizes interim relief which is another important development in this regard. Victims of serious crimes usually incur expenses immediately after the occurrence of the crime, especially with regard to medical treatment, psychological help, loss of work, and so forth. Delays in criminal procedures may serve to defeat the whole purpose of victim compensation. Therefore, the recognition of interim relief is an important functional development since it implies that victim compensation should be independent from the problems of prolonging criminal proceedings.

The BNSS also shows functional transformation by recognizing witness protection in one of its provisions. Thus, before the BNSS, witness protection in India was greatly developed through judicial decisions, particularly, through the Supreme Court decision on Witness Protection Scheme of 2018. Section 398 of BNSS requires the state governments to develop and implement Witness Protection Scheme. Legal recognition of witness protection changes its status since it also creates a statutory obligation in this respect.²⁰

The distinction between doctrinal continuity and functional transformation is of great importance. Doctrinal continuity implies retention of the principle itself while functional transformation means changes in its application. In terms of victim compensation, the BNSS preserves the core idea originally formulated in the CrPC but at the same time implements a number of technical procedures capable of making this idea more effective. In this respect, the two-month inquiry limit and interim relief provisions serve as examples of functional changes in the operation of victim compensation. At the same time, Section 398 represents institutional

²⁰ The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 396(6), India Code (2023); *Mahender Chawla v. Union of India*, (2019) 14 SCC 615; Witness Protection Scheme, 2018, Ministry of Home Affairs, Government of India; The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 398, India Code (2023).

transformation since it creates a legal basis for witness protection.

Thus, the BNSS does not represent the break in the victim compensation system based on the CrPC. The absence of fundamental differences between the two laws cannot be treated as an implication that the BNSS is not innovative. Thus, it can be stated that the BNSS is a reform of evolutionary nature since the core idea of victim compensation has been preserved but its implementation has been changed.

7. Witness Protection as a Parallel Dimension of Victim-Centred Justice

Compensation for victims of crime and the protection of witnesses are related, yet distinct, legal concepts. Compensation is primarily concerned with the aftermath of a crime in terms of providing support for rehabilitation and compensation to victims to recover from harm. Witness protection, on the other hand, focuses on protecting persons who are involved in the justice system from threats, intimidation, and coercion. The inclusion of witness protection in the BNSS expands the discussion from compensation for the victim of the crime to the protection of witnesses of a crime. This is important as the criminal justice system that is oriented toward victims cannot be achieved through compensation alone; there need to be systems in place that enable victims of crime and witnesses to participate in the process.

The traditional view of the criminal justice system treats witnesses primarily as evidence gatherers for the prosecution. However, the success of the criminal trial process depends on the ability of witnesses to testify cleanly and plainly. Where witnesses face threats, intimidation, or economic or social pressure, it results in the failure of the criminal trial; witness hostility is often motivated by fear, not willingness to cooperate. Therefore, witness protection is closely associated with broader issues of access to justice, fairness of trials, and the rule of law. Prior to the entering into force of the BNSS, the Supreme Court of India has contributed significantly to the recognition of the necessity of having a mechanism for witnesses' protection on a systematic basis. In the case of *Mahender Chawla vs Union of India*, the Court accepted the Witness Protection Scheme of 2018 and ordered to make it effective at the time and until the legislation is adopted. That showed that prevention of witness intimidation has become an essential component of the criminal justice system in India and Section 398 BNSS is the legislation that institutionalized a principle that has already undergone judicial development.²¹

²¹ *Mahender Chawla v. Union of India*, (2019) 14 SCC 615; Witness Protection Scheme, 2018, Ministry of

Under Section 398, it is the responsibility of every State to adopt the Witness Protection Scheme in its territory. The importance of this requirement stems from the fact that the executive will have to create an institutional system for the protection of witnesses. This means that a legal basis is created for witness protection which becomes systematic. Status of the witness protection law is particularly valid when the victim of the crime is also a key witness. In various crimes, the individual who experienced damage had to testify about the context of the crime. As a result, the victim of the crime fulfills the dual role of being the victim and the witness. Therefore, compensation and witness protection serve different but complementary purposes. While the former tries to fix the aftermath of the crime, the latter acts to prevent further consequences of being involved in the criminal process.

Nevertheless, the presence of the law on the witness protection does not mean that the measures of its implementation are effective. The adoption of the legislation does not guarantee physical protection, confidentiality measures, help in relocation or other protective means. Such effectiveness also depends on the financing of the witnesses' protection program, availability of trained personnel, threat assessment mechanisms, and coordination of the work among the police, prosecution, judiciary, and state bodies. Continuous attention from the side of judiciary to the implementation of Section 398 proves that effective implementation remains an issue.

The witness protection system gives rise to questions regarding the relationship between the accountability on the part of the state and judicial control. While the states are responsible for providing the witness protection schemes, it is also the task of the courts to make sure that protection is in force in the case in question. Therefore, judicial control may still be relevant despite the statutory institutionalization process. Thus, it is possible to assert that the inclusion of Section 398 and BNSS can be treated as a part of the established tendency towards victim-oriented criminal justice. The law is not a total innovative law because the principles underpinning witness protection existed long before. It is more about the statutory institutional responsibility rather than any new practices.²²

Home Affairs, Government of India; The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 398, India Code (2023).

²² The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 398, India Code (2023); *Mahender Chawla v. Union of India*, (2019) 14 SCC 615; *In Re: Witness Protection Scheme, 2018*, W.P. (Crl.) No. 154 of 2019, Supreme Court of India; Witness Protection Scheme, 2018, Ministry of Home Affairs, Government of India.

8. Implementation Challenges and Recommendations

The success of victim compensation and witness protection schemes in India as set forth by the BNSS fundamentally lies in their effectiveness. While laws formally stipulating the principle of victim compensation and witness protection are indeed an essential milestone, they can still be incomplete because victims may not have access to these laws. Delays have been one of the most persistent problems in the compensation system implemented in India. Even though Section 396 of the BNSS introduces a specific timeline of two months for compensation inquiries, this period may have limited impact unless it is complied with and monitored by the authorities. Delays may be even more dangerous in instances, when victims need instant medical treatment, financial assistance, and some rehabilitation assistance.

Another issue is the differences between the victim compensation systems implemented throughout the country. This is due to the fact that victim compensation is implemented at the level of the state. It means that there can be certain discrepancies in such matters as eligibility criteria, amount and types of compensations and procedures. Such differences can result in unequal access to justice for similar victims living in different areas of the country. Although in some cases it is reasonable to introduce some local exceptions, it is of primary importance to have a standardized national regime.

In addition to the problems discussed above there is also the problem ofIn some situations, vulnerable victims may rely completely on police officials, prosecutors, or Legal Services Authorities to provide them with information on existing remedies. Thus, the concept of victim compensation should not just be one of an application-based mechanism, making it necessary for victims to deal with complicated bureaucratic procedures. Courts and relevant authorities should take the initiative of informing the victims in question about their rights throughout appropriate steps of the criminal process.

The next point of importance relates to the issue of appropriateness of compensation. The problem arises because compensation is often defined strictly according to legal monetary scales instead of taking into consideration specific situations of victims. Serious crimes can lead to extremely high long-term medical expenses, psychological trauma, disability, unemployment, or lost ability to earn. This means that the idea of victim-oriented approach implies evaluating immediate and long-term results of the compensation.

The third problem in the area of victim compensation is connected to the issue of institutional coordination. In other words, the efficiency of compensation depends on cooperation of police, prosecutors, courts, District Legal Services Authorities, State Legal Services Authorities, hospitals, etc. A delay at one level can affect the whole process. Therefore, improving digital coordination and application-tracking systems will contribute to better transparency and victims' ability to keep track of their applications. The problem of witness protection is associated with the same issues of implementation. Specifically, while it is true that Section 398 creates the appropriate legal framework for the provision of witness protection, in reality, specific resources are required to implement these measures. For instance, the measures of protection can include confidentiality of identity, relocation, police protection, safe accommodation, changes in contacts, etc. The implementation of those measures necessarily requires qualified personnel and funds. Therefore, it is important to view witness protection not merely as a procedure that needs to be followed, but as one of the key elements of justice system of the country.

Overall, some measures should be undertaken in the area of compensation to implement BNSS. The things include proper monitoring of compliance with deadlines of compensation procedures and creation of basic national standards for compensation. Legal Services Authorities should implement measures aimed at providing assistance to victims and making them aware of their rights and possibilities. Bureaucratic hurdles connected to obtaining compensation should be eliminated. It is also vital to understand that compensation has to be regarded as a part of rehabilitation process instead of being a simple financial payment.

9. Findings

The comparative assessment of the CrPC and BNSS shows that the transition across the two sets of juridical provisions indicates a fairly high level of doctrinal continuity. For instance, Section 395 BNSS upholds the main principle put forth in Section 357 CrPC stating that it is possible for any court to award compensation for loss or injury sustained due to the offense committed. Thus, the linkage between sentencing and victim compensation remains unchanged in essence. This brings into light a judicial philosophy established within the framework of Section 357, namely the recognition of the need to weigh the importance of victims' interests.

Moreover, Section 396 BNSS keeps the core structure of Section 357A CrPC. State liability for victim compensation, recovery of victims, paying compensation when the requiring party

could not be found, as well as paying compensation when acquitted or discharged and rehabilitation is required remain in the new legal framework. Thus, BNSS does not overlook the model of victim compensation created on the premises of the CrPC. Instead, it preserves its most significant aspects and integrates them into a new procedural law.

At the same time, Section 396 introduces some functional changes that can lead to the better access to justice. Thus, the necessity to finish the compensation inquiry within two months ensures a more structured procedural framework while the express inclusion of the concept of interim relief reflects the immediate needs of victims of crimes. The significance of these provisions lies in the fact that the efficiency of compensation depends not only on the existence of a legal right to receive compensation but also on the speed of its provision.

Section 397 is another manifestation of essential continuity of both laws. The idea of free and immediate medical treatment introduced by Section 357C CrPC is taken into consideration as well. The only adjustment is that the new provision is integrated into a new substantive criminal law framework. This means that this provision can be regarded as a legislative reform rather than a radical change in victims' rights.

Section 398, however, can be regarded as a more significant institutional innovation. Witness protection has already been given a decent recognition by the judiciary due to the Witness Protection Scheme, 2018. Its introduction into BNSS makes this principle statutory and obliges State Governments to create the relevant scheme. Thus, it can be stated that this change can be seen as an institutional transformation and not a doctrinal one.

Thus, the findings of the above research point out that BNSS is an example of doctrinal continuity along with some functional changes. The overall philosophy of compensating victims of crimes has not been abandoned or radically changed. Instead, new legislation tries to make current victim-oriented principles work better and function in the existing procedural order. The success of this transformation will, however, depend on implementation of this law and availability of proper resources.

10. Conclusion

The shift from Sections 357–357C of the CrPC, 1973 to Sections 395–398 of the BNSS, 2023 represents a major milestone in the evolution of victim-oriented criminal justice in India. The

close doctrinal and practical assessment shows that it is not actually right to view the move as a total break from the pre-existing legislation or as a mere renumbering of legal provisions. The BNSS largely repeats the main ideas set out in the CrPC, although it brings some procedural changes that may change the actual operation of victim protection. Section 395 is preserving the principle of court-imposed compensation set forth in Section 357. Section 396 is maintaining the state-sponsored compensation mechanism for victims created under Section 357A, and also recognises the necessity to rehabilitate victims. The sections pertaining to situations where the offenders are untraceable, and situations where the victims need rehabilitation after being acquitted show considerable continuity as well. Section 397 continues the idea of prompt, free medical assistance provided in Section 357C.

However, it is at the functional level that greater innovations can be observed. The two-month term for conducting the compensation inquiry imposed by Section 395 and the idea of interim relief expressed in Section 396 indicate the striving to ensure timely provision of compensation to victims. These Articles make a significant differentiation between having legal recourse and being able to enjoy the recourse when necessary. A victim who has to meet medical expenses, lose a job or face any other immediate effects of the crime will be able to establish the efficiency of the compensation only if it is received in timely manner. Section 398 is also another important event due to being legally acknowledged in the form of witness protection. The witness protection was not created by the BNSS since it was emerging through the work of the courts and the Witness Protection Scheme, but being included in the law gives it a stronger legal basis. Thus, this move should be regarded as a process of institutionalisation rather than complete doctrinal advancement.

The value of this event lies, in the general significance of the shift from offender-oriented to victim-centred and restorative approach. Compensation, rehabilitation, medical support and witness protection serve to illustrate that justice should not only be linked to punishment but also takes into consideration the consequences for victims and the risks for witnesses. Despite this fact, the effectiveness of the BNSS should not only be judged by its wording. Implementation of the law is a crucial issue. Delays in compensating, differences between State systems, lack of knowledge and lack of fundings may cause weak practical enjoyment of legal rights. Recent judges' attention to implementation of Section 398 proves that it is important to implement legislative initiatives.

Thus, the chief conclusion of the paper is that the BNSS shows that there is an element of “doctrinal continuity with functional progress.” Being victim-oriented it implies that the old ideas behind the mechanism still exist, but efforts have been made to ensure implementation through clarity of procedures, interim assistance and legal acknowledgment of witness protection. The effectiveness of this evolution is going to depend on the way in which this legal instrument becomes effective in terms of compensation, rehabilitation and health assistance.

Bibliography

A. Books

1. Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 6th ed. 2015).
2. Andrew Karmen, *Crime Victims: An Introduction to Victimology* (Cengage Learning, 9th ed. 2013).
3. Ratanlal & Dhirajlal, *The Code of Criminal Procedure* (LexisNexis, 22d ed. 2021).

B. Research Papers and Journal Articles

4. Ashi Bansal & Manisha Matolia, “Understanding Victim Compensation in India: A Review of Statutory Framework and Judicial Trends,” *Advances in Consumer Research* (2025).
5. Don Caeiro & Jeremiah Justus, “A Critical Review on the Development of Victim Compensation in India,” *CPJ Law Journal*, Vol. XII (2022).
6. Hershika A.S. & T. Vaishali, “Implementation of Victim Compensation Scheme in India: Judicial Trends,” 5(12) *Indian Journal of Legal Review* 873–886 (2025).
7. Monika Madaan & Arryan Mohanty, “Victim Compensation Laws: A Comprehension of Various Indian Statutes and Comparative Analysis Among Jurisdictions in India, the UK, and the US,” 5(2) *International Journal of Criminal Common and Statutory Law* 118–130 (2025).

C. Statutes and Legal Instruments

8. Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023.
9. Constitution of India.
10. Code of Criminal Procedure, No. 2 of 1974.
11. Code of Criminal Procedure (Amendment) Act, 2008, No. 5 of 2009.
12. Witness Protection Scheme, 2018, Ministry of Home Affairs, Government of India.

13. United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

D. Cases

14. *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.
15. *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14.
16. *Hari Singh v. Sukhbir Singh*, (1988) 4 SCC 551.
17. *Laxmi v. Union of India*, (2014) 4 SCC 427.
18. *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.
19. *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.
20. *Parivartan Kendra v. Union of India*, (2016) 3 SCC 571.