

Institutional Design and Access Barriers in India's Victim Compensation Framework for Rural Communities

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Abstract

The Bharatiya Nagarik Suraksha Sanhita 2023 provides a statutory right to payment for victims and their dependants of crime, under Section 396 of the Act. The scheme is managed by the District Legal Services Authorities under the State Victim Compensation Schemes along with the model scheme framed by the National Legal Services Authority. However, from an empirical perspective, compensation expenditure benefits are distributed unevenly across jurisdictions, in favour of victims in metropolitan and district-headquarter jurisdictions, and to the detriment of victims in rural and remote jurisdictions. This article examines the institutional and geographical aspects of the gap. It maintains that the reliance on the pathway activated by the court (under Section 396(2) of the scheme) and the residual jurisdiction of the District Legal Services Authority (DLSA) under Section 396(4) of the scheme, combined with the geography of rural policing, location of Sessions and Special Courts, and the extent to which the legal aid infrastructure can reach rural areas, creates a unique access deficit in rural areas. The article suggests four reforms at the rural interface based on the doctrine of the statute, the National Legal Services Authority's Compensation Scheme for Women Victims/Survivors of Sexual Assault and Other Crimes 2018 and the Supreme Court's observation in *Nipun Saxena v Union of India* namely: (i) an interim compensation pathway that does not require a court trigger, (ii) mobile compensation clinics at block and panchayat level, (iii) state-owned digital application infrastructure with assisted intake, and (iv) accreditation of para-legal volunteers as first responders. The changes aim to shift the tangible advantages of the scheme in favour of the beneficiaries it was supposed to benefit in practice — the rural and remote who were its primary target.

Keywords: Victim compensation; rural access to justice; Bharatiya Nagarik Suraksha Sanhita; District Legal Services Authorities; regional and remote India; NALSA scheme; institutional design

1. Introduction

In the Indian constitutional discourse, the right of a victim of crime to be compensated by the State has become largely settled today. The right has been gradually codified, starting from the Supreme Court's judgement in *Rudul Sah v State of Bihar*,¹ in which Chandrachud CJ recognised the writ court's power to award monetary compensation for a serious violation of the personal liberty guaranteed under Article 21 of the Constitution.²³ A long line of subsequent authority has interpreted the constitutional provision as an unenumerated source of compensatory jurisdiction, extending it through *Nilabati Behera v State of Orissa* to custodial deaths,⁴ through *D K Basu v State of West Bengal* to custodial violence,⁵ through *Bhim Singh v State of Jammu and Kashmir* to illegal detention,⁶ through *Sebastian M Hongray v Union of India* to enforced disappearance,⁷ through *M C Mehta v*

¹*Rudul Sah v State of Bihar* (1983) 4 SCC 141.

²*Ibid* 147–148 (Chandrachud CJ).

³*Constitution of India* art 21.

⁴*Nilabati Behera v State of Orissa* (1993) 2 SCC 746.

⁵*D K Basu v State of West Bengal* (1997) 1 SCC 416.

⁶*Bhim Singh v State of Jammu and Kashmir* (1985) 4 SCC 677.

⁷*Sebastian M Hongray v Union of India* (1984) 3 SCC 82.

Union of India to environmental harm⁸ and through *Chairman, Railway Board v Chandrima Das* to sexual violence perpetrated within the ambit of the state.⁹ The statutory turn came in the form of Section 357A of the Code of Criminal Procedure 1973, introduced by amendment in 2008.¹⁰ It has been continued as Section 396 of the Bharatiya Nagarik Suraksha Sanhita 2023 from 1 July 2024 onwards.¹¹ Concurrently, the National Legal Services Authority (‘NALSA’) has created a model scheme and the schemes at the state level have been significantly uniformed by the Compensation Scheme for Women Victim/Survivor of Sexual Assault and Other Crimes 2018,¹³ approved by the Supreme Court in *Nipun Saxena v Union of India*.¹⁴ The day-to-day administration of awards is given to State and District Legal Services Authorities institutionally, under the *Legal Services Authorities Act 1987*.¹⁵

But the shift from ‘formal’ to ‘substantive’ redress is not consistent, and is not consistent in a particularly geographical sense. The advantages of the scheme are disproportionately enjoyed by the victims of crime when the offence takes place in a metropolitan Sessions Court, district courts or Special Courts established under laws like the Protection of Children from Sexual Offences Act 2012.¹⁶ Those who are located in tehsils far from the district headquarters, on tribal blocks, in agrarian villages or coastal and hill hamlets, continue to be grossly under-represented in the caseload of the District Legal Services Authorities which administer the awards. This article contends that this ‘rural compensation gap’ is not a by-product. It is a foregone conclusion that this would happen as a result of institutional design decisions set out in Section 396 and its predecessor.

The argument has six substantive parts. Part 2 provides an empirical mapping of rural criminal victimisation in India and highlights the unique vulnerabilities of victims in the regional, rural and remote areas. Part 3 provides a legal framework of victim compensation, which was built upon judicial improvisation under Article 21 and now has been given a statutory form in Section 396 of the Bharatiya Nagarik Suraksha Sanhita. In Part 4, the author builds on the article’s central diagnostic point that four aspects of the scheme — the court-initiated pathway, the geographical centralisation of legal services infrastructure, the discretion of the state governments to interpret the scheme, and the residual powers of the District Legal Services Authority under Section 396(4) — work in tandem to systematically disadvantage the rural victims. Part 5 brings together the existing empirical research on under-representation in disbursement patterns. Part 6 places the Indian experience into comparative perspective with the experiences of other rural and remote access to justice contexts, including some Australian and Scandinavian contexts, but also being selective in scope. In Part 7, four institutional reforms are suggested which focus on the rural interface. Part 8 concludes.

There are two things that should be pointed out as limitations of scope at the beginning. Firstly, the article is about the compensation payable by the State under Section 396 of the Bharatiya Nagarik Suraksha Sanhita and not compensation payable by the offender under Section 395 (earlier Section 357 of the Code of Criminal Procedure)¹⁷ or compensation through the civil suit. Secondly, the article does not try to rigorously examine the disbursement rates in rural areas. That is not possible based on the official statistics available. Rather, it makes a case for a doctrinal and institutional theory that sees, in the limited evidence available — audit reports, NALSA

⁸*M C Mehta v Union of India* (1987) 1 SCC 395 (‘*Oleum Gas Leak*’).

⁹*Chairman, Railway Board v Chandrima Das* (2000) 2 SCC 465.

¹⁰*Code of Criminal Procedure 1973* (India) s 357A, inserted by the *Code of Criminal Procedure (Amendment) Act 2008* (India) s 28, brought into force on 31 December 2009.

¹¹The Bharatiya Nagarik Suraksha Sanhita 2023, the Bharatiya Nyaya Sanhita 2023 and the Bharatiya Sakshya Adhinyam 2023 came into force on 1 July 2024, replacing the *Code of Criminal Procedure 1973*, the *Indian Penal Code 1860* and the *Indian Evidence Act 1872* respectively.

¹²*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396.

¹³National Legal Services Authority, *Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes 2018* (Scheme, 2 October 2018).

¹⁴*Nipun Saxena v Union of India* [2018] 13 SCC 715.

¹⁵*Legal Services Authorities Act 1987* (India) ss 6, 8A, 9.

¹⁶*Protection of Children from Sexual Offences Act 2012* (India) s 28 (constitution of Special Courts).

¹⁷*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 395; cf *Code of Criminal Procedure 1973* (India) s 357.

annual reports and independent field studies — prima facie evidence for a theory about the design of access to rural areas.

2. Rural victimisation and the compensation deficit

2.1 *The rural pattern of Indian crime*

The geography of criminal victimisation is rural and more than sixty per cent of the population in India still resides in the rural areas. The National Crime Records Bureau data for the last ten years shows that a significant number of cognisable offences have been reported under both general penal code and special and local laws in rural areas,¹⁸ such as offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989,²⁰ the Immoral Traffic (Prevention) Act 1956²¹ and the Protection of Children from Sexual Offences Act 2012.²² There are structural differences in these patterns that are relevant to compensation and that are different from the pattern of crime in urban areas. In many cases, interpersonal violence in rural India is deeply rooted in agrarian, caste and gender relations, making the victims even more dependent on the ongoing integration in the village; when victims of interpersonal violence belong to the Scheduled Caste or Scheduled Tribe communities, the perpetrators of the violence often hold a powerful social position in the village; in isolated areas, injuries suffered in interpersonal violence have delayed access to health care services, resulting in greater long-term rehabilitation expenses.²³²⁴

Criminal justice institutions are very sparsely distributed in rural areas, meanwhile, while they are densely distributed in urban areas. Police stations in remote blocks may reach hundreds of square kilometres, Sessions Courts are almost always found at district headquarters and the Special Courts set up under the Protection of Children from Sexual Offences Act 2012 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 are even less common.²⁵ A separate difficulty attaches to victims located within areas administered under the Fifth Schedule to the Constitution, where the interaction between customary systems of dispute resolution and formal criminal justice institutions is particularly attenuated.²⁶ These facts of geography will play into the design of the compensation scheme, which is architecturally court-centric, as is developed in Part 4.

2.2 *The distinctive vulnerabilities of remote victims*

In addition to the demographic size of rural victimisation, three characteristics of the rural context are important to highlight, and each relates to compensation delivery. First, there is a systematic informational disadvantage for the rural victim. In 2019–20, an independent research centre found that in six of the surveyed states in India, less than a quarter of the rural respondents knew of any statutory victim compensation scheme, while a little less than one-third of the urban respondents were aware of such a scheme in the same six states.²⁷ Little was known of the path under Section 396(4) — which permits direct application to the District Legal

¹⁸National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs, 2023) vol 1, ch 2 (statewise pattern of cognisable offences).

¹⁹*Ibid* ch 4 (offences under special and local laws).

²⁰*Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989* (India).

²¹*Immoral Traffic (Prevention) Act 1956* (India).

²²*Protection of Children from Sexual Offences Act 2012* (India).

²³See generally K I Vibhute, ‘Victims of Crime and Their Right to Reparation: A Human Rights Perspective’ (2004) 46(3) *Journal of the Indian Law Institute* 385, 390–392.

²⁴See generally S Muralidhar, *Law, Poverty and Legal Aid: Access to Criminal Justice* (LexisNexis Butterworths, 2004) 218–223.

²⁵*Protection of Children from Sexual Offences Act 2012* (India) s 28; *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989* (India) s 14 (Special Courts).

²⁶*Constitution of India* art 244 and Fifth Schedule (administration of Scheduled Areas).

²⁷Centre for Social Research, *Study of Awareness and Access to Victim Compensation Schemes: A Field Enquiry in Six States* (Research Report, 2020) 12–14.

Services Authority if the offender is untraced²⁸²⁹ — in the rural sample. Likewise, little was known about the interim relief now provided under Section 396(6).³⁰³¹

Secondly, there are compounded access costs to rural victims. Going from a remote village to the district headquarters to make an application, to meet the District Legal Services Authority or to attend medical examinations is not an easy task. The average distances of villages from essential government services are found to be much greater than the corresponding urban distances by the National Sample Survey Office,³² and independent baseline studies carried out for the Department of Justice's access to justice programme have recorded average distances of thirty to sixty kilometres from remote gram panchayats to the relevant District Court or Legal Services Authority office.³³³⁴ These distances correspond to transport costs, loss of wage days, and — for women and adolescent complainants — additional care burdens and safety costs.

Thirdly, the victims in rural areas are especially vulnerable to withdrawal pressure. The right to compensation under Section 396 is not, as a matter of law, dependent on prosecution and conviction — sub-sections (3) and (4) contemplate awards on acquittal, discharge or where there is no trial.³⁵ However, the rural victim's practical dependence upon a court recommendation, and the presence of locally dominant accused who may be able to pressure her into settling, may result in many rural criminal cases collapsing before the court is in a position to make any recommendation at all.³⁶ The one group that is most in need of the State's compensation is, then, structurally the group that is least likely to get it that way.

3. Legal architecture of victim compensation

3.1 Constitutional and judicial foundations

The constitutional history of the current statutory framework contained in Section 396 of the Bharatiya Nagarik Suraksha Sanhita is more extended and shapes its interpretation. In *Rudul Sah*, the Supreme Court found that Article 21 of the Constitution granted power to the writ court to order monetary compensation to a person for the unlawful deprivation of his liberty by the State.³⁷ The reasons were elaborated further in *Nilabati Behera v State of Orissa*³⁸ and *D K Basu v State of West Bengal*³⁹ to cover damages for custodial violence and death. Although the early cases were about compensation to be paid by the State for the misconduct of its employees, the constitutional principle they had enunciated — that the State has a duty of substantive redress to the victim of a serious violation of rights — paved the way for the subsequent structure of victim compensation. The principle was extended, in *Chairman, Railway Board v Chandrima Das*, to a foreign national gang-raped in State premises, on the reasoning that the constitutional guarantee of dignity is not confined to citizens.⁴⁰

²⁸Ibid 14 (rural awareness of section 396(4) pathway).

²⁹*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396(4).

³⁰Ibid 15 (rural awareness of interim relief).

³¹Ibid s 396(6).

³²National Sample Survey Office, *Household Social Consumption on Education in India, NSS 75th Round* (Ministry of Statistics and Programme Implementation, 2019) 34 (rural–urban disparities in institutional distance).

³³Department of Justice (Government of India), *Access to Justice Programme: Baseline Study* (Report, 2016) 45–47.

³⁴Ibid 46 (average distances in surveyed rural blocks).

³⁵*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396(3), (4).

³⁶On withdrawal, hostility and settlement pressure in rural criminal cases, see Muralidhar, above n 24, 220–223.

³⁷*Rudul Sah v State of Bihar*, above n 1, 147–148 (Chandrachud CJ).

³⁸*Nilabati Behera v State of Orissa*, above n 4, 767–768 (J S Verma J).

³⁹*D K Basu v State of West Bengal*, above n 5, 440–442 [50]–[54].

⁴⁰See also *Chairman, Railway Board v Chandrima Das*, above n 9, 483–484 [10]–[11] (constitutional compensation awarded to a Bangladeshi national gang-raped on railway premises).

In *Delhi Domestic Working Women's Forum v Union of India*, the Supreme Court went a step further and ordered the National Commission for Women to draw up a scheme for compensation and rehabilitation of women who are victims of rape, stating that:⁴¹

It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up a Criminal Injuries Compensation Board ... having regard to the fact that though the trial of the accused takes place in a court of law, the victim gets no compensation at all and it will be worthwhile if we could evolve a scheme by which the victims of crime, particularly the victims of rape, get some relief from the State.

*Delhi Domestic Working Women's Forum*⁴² did not come up with a comprehensive scheme right away, nor did the subsequent judgments, including *Bodhisattwa Gautam v Subhra Chakraborty*, in which the Court held that rape is not merely an offence against the person but a violation of the fundamental right to life under Article 21.⁴³ That step was taken by Parliament after the Law Commission of India recommended it in its 154th Report⁴⁴ and the Justice Malimath Committee in its 2003 Report.⁴⁵ In 2008 it was inserted in the Code of Criminal Procedure 1973 as Section 357A.⁴⁶ Section 357A mandated all state governments to draw up a scheme with the central government to provide funds for compensation to a victim of a crime or their dependants who had suffered a loss or injury as a result of the crime and who needed rehabilitation.⁴⁷ The same has been incorporated into Section 396(1) of the Bharatiya Nagarik Suraksha Sanhita in much the same form.⁴⁸

3.2 The Section 396 pathways

Section 396 of the Bharatiya Nagarik Suraksha Sanhita is a brief but structurally significant provision. It can be simplified in its architecture to four functional pathways. First, in terms of Section 396(2), where the Court makes a recommendation for compensation, the District Legal Services Authority or the State Legal Services Authority 'shall decide the quantum of compensation to be awarded under the scheme'.⁴⁹ Secondly, under Section 396(3), the trial court may suggest compensation at the end of the trial if the fine or compensation under Section 395 is insufficient for the rehabilitation of the victim, or in a case where the victim is acquitted or discharged but requires rehabilitation.⁵⁰ Thirdly, Section 396(4) states that if the offender cannot be traced or identified, or if no trial is held, then the victim or dependants can make an application to the State or the District Legal Services Authority for the award of compensation.⁵¹ Fourth, Section 396(5) stipulates that the Legal Services Authority shall complete its enquiry within two months of receiving either the recommendation or the application,⁵² and Section 396(6) allows for an order for first-aid or medical benefits to be made immediately, or for other interim relief to be made.⁵³ The compensation payable under Section 396 is expressly stated to be in addition to any fine payable to the victim under the Bharatiya Nyaya Sanhita 2023.⁵⁴

⁴¹*Delhi Domestic Working Women's Forum v Union of India* (1995) 1 SCC 14, 20 [15].

⁴²*Ibid.*

⁴³*Bodhisattwa Gautam v Subhra Chakraborty* (1996) 1 SCC 490, 502 [10] (rape as violation of Article 21).

⁴⁴Law Commission of India, *The Code of Criminal Procedure, 1973 (Act No 2 of 1974)* (Report No 154, August 1996) ch 15 [9]–[11].

⁴⁵Justice V S Malimath, *Committee on Reforms of Criminal Justice System: Report* (Government of India, Ministry of Home Affairs, Volume 1, March 2003) [6.7.1]–[6.7.4].

⁴⁶*Ibid* [6.8.1] (recommendation for a statutory victim compensation scheme).

⁴⁷*Code of Criminal Procedure (Amendment) Act 2008* (India) s 28.

⁴⁸*Code of Criminal Procedure 1973* (India) s 357A(1) (as omitted with effect from 1 July 2024).

⁴⁹*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396(1).

⁵⁰*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396(2).

⁵¹*Ibid* s 395 (order to pay compensation from fine).

⁵²*Ibid* s 396(3).

⁵³*Ibid* s 396(4).

⁵⁴*Ibid* s 396(5).

⁵⁵*Ibid* s 396(6).

⁵⁶*Ibid* s 396(7) (compensation payable in addition to fines under the *Bharatiya Nyaya Sanhita 2023*).

The court-initiated mode is an important aspect to note, as a heavy reliance on the court-initiated mode will affect the provision. In both sub-sections (2) and (3) the key event that opens the door to compensation is a court recommendation. The Supreme Court has held that the recording of reasons on compensation is a mandatory duty of the trial court on disposition of a criminal case,⁵⁷ and that direction has been reiterated in *Suresh v State of Haryana*⁵⁸ and *Manohar Singh v State of Rajasthan*.⁵⁹ Only in a limited category of cases, where the offender is untraced and where there is no trial, is it possible to make a direct application to the District Legal Services Authority, under sub-section (4). In cases where the offender is identified, a trial commences, and the victim is compelled by circumstance to withdraw or turn hostile — a very common trajectory in rural criminal justice⁶⁰ — the direct pathway under sub-section (4) may not be technically available at all, leaving the victim dependent on a discretionary and often forbearing court recommendation under sub-section (3).⁶¹

3.3 State schemes and the NALSA framework

Sub-section (1) has allowed different state governments wide discretion which has resulted in significant differences between states in scheme design. The disparity in compensation ceilings was another aspect that was addressed by the Supreme Court in *Nipun Saxena v Union of India*, upon which the National Legal Services Authority had come up with a Compensation Scheme for Women Victims/Survivors of Sexual Assault and Other Crimes, which was approved by the Court in October 2018.⁶² The scheme lays down minimum and maximum values for each class of offences,⁶³ and the minimum value for loss of life and gang rape offences is five lakh rupees.⁶⁴ The scheme also lays down the procedure of enquiry to be followed by the disbursing authority.⁶⁵ A parallel line of authority runs through *Laxmi v Union of India*, in which the Court laid down a minimum of three lakh rupees for acid attack victims,⁶⁶ later held to be a floor rather than a ceiling in *Parivartan Kendra v Union of India*.⁶⁷ However, there are significant differences between states on how non-schedule offences are treated, the burden of proof that needs to be met by applicants seeking medical rehabilitation and — importantly for present concerns — the administrative structure in place to receive and process applications from distant areas of the state.

This is best seen as a nested delegation of powers between Section 396 and the NALSA framework. The primary statute outlines the pathways and grants rule-making authority to the state government; the state scheme provides detail of the substantive requirements (eligibility, quantum and procedure); and the NALSA framework exists as an interpretive anchor to which the substantive requirements of the state schemes are, in principle, expected to fit. However, in practice, the ability of the scheme to have an effective impact depends upon the geographic and institutional set-up of the District Legal Services Authority through which the scheme is administered under the Legal Services Authorities Act 1987.⁶⁸⁶⁹⁷⁰

⁵⁷*Ankush Shivaji Gaikwad v State of Maharashtra* (2013) 6 SCC 770, 795–796 [66]–[68] (mandatory recording of reasons on compensation).

⁵⁸*Suresh v State of Haryana* (2015) 2 SCC 227, 240 [17].

⁵⁹*Manohar Singh v State of Rajasthan* (2015) 3 SCC 449, 460–461 [13].

⁶⁰Malimath Report, above n 45, [6.5.3]–[6.5.7] (on turning hostile and withdrawal in rural prosecutions).

⁶¹*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396(3) (residual court recommendation).

⁶²*Nipun Saxena v Union of India*, above n 14, 720–721.

⁶³National Legal Services Authority, above n 13, cl 7 (schedule of minimum and maximum amounts).

⁶⁴*Ibid* sch (loss of life and gang rape: minimum ₹5 lakh; rape: minimum ₹4 lakh).

⁶⁵*Ibid* cl 6 (procedure of enquiry).

⁶⁶*Laxmi v Union of India* (2014) 4 SCC 427 (regime for acid attack victims).

⁶⁷*Parivartan Kendra v Union of India* (2016) 3 SCC 571, 578–579 (Laxmi minimum a floor only; states may award more).

⁶⁸*Legal Services Authorities Act 1987* (India) s 9 (District Legal Services Authorities).

⁶⁹*Ibid* s 8A (State Legal Services Authorities).

⁷⁰*Ibid* s 4 (functions of the National Legal Services Authority).

4. Institutional design and rural implications

This Part is intended to further the article's main diagnostic claim. Four architectural elements of the statutory scheme⁷¹ — overlaid on the rural geography sketched in Part 2 — systematically lower the chances of rural victims being able to convert their statutory entitlement into a payment. The features are: (a) the court-triggered pathway; (b) concentration of legal services infrastructure in a geographic location; (c) the disburser's residual discretion under Section 396(4); and (d) interim relief. They are each briefly discussed in turn.

4.1 The court-triggered pathway

The first way to receive compensation under Section 396, as we have already seen, depends on a court's recommendation.⁷² In the real world, the design embeds a two-part system: first, that the criminal case reaches a stage of judicial disposition (conviction, acquittal or discharge) at trial and, second, that the presiding judge turns his or her mind to the issue of a formal recommendation for victim compensation. In *Ankush Shivaji Gaikwad v State of Maharashtra*, the Supreme Court stated that it had become a mandatory obligation for the trial court to give reasons in regard to compensation while disposing of the criminal case.⁷³ That obligation now has a longer statutory pedigree that runs through *Palaniappa Gounder v State of Tamil Nadu*,⁷⁴ *Hari Singh v Sukhbir Singh*⁷⁵ and *Sarwan Singh v State of Punjab*.⁷⁶ Despite this line of authority, the empirical evidence indicates that recommendations are made in only a small proportion of eligible cases,⁷⁷ and there is no reason to believe that rural trial courts, in which each judge has more cases to deal with and less institutional support, do this at higher rates than their metropolitan counterparts. It is more probable to be the other way around.

The pathway also has time delays, which have distributional consequences and are triggered by the court. If the victim of an assault or sexual violence is rural and requires immediate medical, psychological and economic assistance, the victim will probably only receive a recommendation at the end of the criminal trial — in some cases, several years after the assault or sexual violence has occurred — if at all, under Section 396(2) or (3).⁷⁹ The distance between the point of victimisation and the point of court disposition is exactly the time when the majority of victims in the countryside are most vulnerable to the risk of withdrawal, community ostracism and financial ruin. The scheme, then, provides compensation (if any) at the time when its rehabilitative value is greatly reduced.

4.2 Geographic concentration of infrastructure

The second aspect is the geographic structure of the legal services infrastructure. The Legal Services Authorities Act 1987 stipulates that each district must have a District Legal Services Authority, based at the district headquarters.⁸⁰ There are taluk (or tehsil) legal services committees, in principle, below the district level,⁸¹ and the NALSA (Legal Services Clinics) Regulations 2011 envision the existence of legal services clinics at the village level.⁸² In reality, however, there is wide variation in the number and quality of taluk-level clinics in different states, and the number of rural residents in the states is clearly negatively correlated with the density of the taluk-

⁷¹*Bharatiya Nagarik Suraksha Sanhita* 2023 (India) s 396(1)–(6).

⁷²*Bharatiya Nagarik Suraksha Sanhita* 2023 (India) s 396(2), (3).

⁷³*Ankush Shivaji Gaikwad v State of Maharashtra*, above n 57, 795–796 [66]–[68].

⁷⁴See *Palaniappa Gounder v State of Tamil Nadu* (1977) 2 SCC 634, 638–639 (early recognition of compensation power under section 357 of the *Code of Criminal Procedure* 1973).

⁷⁵See *Hari Singh v Sukhbir Singh* (1988) 4 SCC 551, 555–556 [11] (statutory compensation to be liberally construed).

⁷⁶See *Sarwan Singh v State of Punjab* (1978) 4 SCC 111 (factors relevant to compensation orders).

⁷⁷Comptroller and Auditor General of India, *Report of the Comptroller and Auditor General of India on Implementation of the Nirbhaya Framework* (Report No 21 of 2020) 29–32.

⁷⁸*Ibid* 30 (variation in disbursement rates across states).

⁷⁹*Bharatiya Nagarik Suraksha Sanhita* 2023 (India) s 396(2), (3).

⁸⁰*Legal Services Authorities Act* 1987 (India) s 9(1).

⁸¹*Ibid* s 11B (Taluk Legal Services Committees).

⁸²*National Legal Services Authority (Legal Services Clinics) Regulations* 2011 (India) regs 5–8.

level clinics. NALSA's annual reports also admit to the non-uniformity of access to village-level clinics and deployment of para-legal volunteers.⁸³

As a consequence, the point of contact between the compensation scheme and the rural victim — the District Legal Services Authority — is usually at the district headquarters, which is often far away from many rural victims. Independent baseline studies have been completed for the access to justice programme of the Department of Justice, and have recorded that the average distances for remote gram panchayats from the Legal Services Authority office in the area are thirty kilometres or more, and that the distances are significantly greater in tribal and hill areas.⁸⁵ A scheme with its main hub at that distance, and an administrative culture geared towards the walk-in applicant and court-driven recommendations, cannot fail to under-serve remote victims.⁸⁶

4.3 Section 396(4) and residual discretion

In principle, Section 396(4) is the pathway most likely to be helpful to rural victims, as it allows for direct application to the District Legal Services Authority where the offender cannot be traced and there is no trial.⁸⁷ In principle, this by-passes both the court-initiated pathway and the temporal problem of waiting for the trial to be completed. But in reality, three characteristics of the sub-section limit its application in rural areas. First, it can only be applied where the offender is not caught or known. A very high proportion of rural crime victimisation is committed by someone known to the victim (spousal violence, caste-based atrocities, harassment at work and sexual offences within extended family networks)⁸⁸ and in those instances the sub-section is therefore unavailable as a matter of text. Second, the sub-section, even where available, requires the applicant to submit an application to the District Legal Services Authority. The article has already discussed the geographic and informational obstacles to such filing.⁹⁰ Third, the sub-section leaves the mode of enquiry and the standard of proof to the discretion of the Legal Services Authority. The Comptroller and Auditor General's report on the Nirbhaya framework noted significant variation across state Legal Services Authorities in the standard of proof and documentary demands imposed on applicants, with more demanding standards observed in states with lower disbursement rates.⁹¹

The scheme's several pathways may be usefully summarised as follows:

Table 1: Trigger pathways under Section 396 and their rural implications

Trigger pathway	Statutory basis	Practical rural implication
Court recommendation on conviction	BNSS Sec. 396(2), s 395	Requires trial to reach conviction stage in a court often distant from victim
Court recommendation on acquittal or discharge	BNSS Sec. 396(3)	Only accessible after prolonged trial; rural applicants disproportionately drop out

⁸³National Legal Services Authority, *Annual Report 2022–23* (Report, 2023) 22–25.

⁸⁴Ibid 26.

⁸⁵Department of Justice, above n 33, 46–47.

⁸⁶Manjeet Kaur, 'Access to Justice and Rural Litigants in India: The Long Walk to the Court' (2019) 61(4) *Journal of the Indian Law Institute* 445, 452–456.

⁸⁷*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396(4).

⁸⁸National Crime Records Bureau, above n 18, ch 3 (relationship between accused and victim).

⁸⁹*Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989* (India) s 3.

⁹⁰Centre for Social Research, above n 27, 17–19 (barriers to filing at District Legal Services Authorities).

⁹¹Comptroller and Auditor General of India, above n 77, 31–32.

Trigger pathway	Statutory basis	Practical rural implication
Application where offender untraced	BNSS Sec. 396(4)	Direct DLSA pathway; requires FIR and independent access to legal aid infrastructure
Interim relief for immediate needs	BNSS Sec. 396(6)	Dependent on DLSA proactivity; uneven across districts and negligible in remote tehsils

4.4 Interim relief and its non-delivery

The Legal Services Authority can provide immediate first-aid, medical benefits or any other interim relief in accordance with Section 396(6) to relieve the suffering of the victim.⁹² In principle, this is the most rural of the sub-sections, as it is not dependent on a court recommendation, does not depend on a trial and is targeted at the time when the victim's need is most acute. However, the sub-section is typically underused. There do not seem to be any schemes that specifically list the disbursement of interim orders under Section 396(6) as a category, nor do NALSA's annual reports list them separately as an amount of disbursement,⁹³ and independent field studies indicate that interim payments are rare and, where made, are of small quantum.⁹⁴ The under-use of the interim pathway is a key component of the rural access narrative. Its neglect means that rural victims have no way of accessing the scheme in the critical weeks and months after they are victimised, when state support could have the greatest impact on the course of rehabilitation.⁹⁵

5. Empirical dimensions of the rural gap

5.1 Aggregate disbursement patterns

No published data source reports victim compensation disbursements by rural versus urban location of the victim. Aggregate figures are reported in NALSA's annual reports,⁹⁶ in the audit report on Nirbhaya by the Comptroller and Auditor General,⁹⁷ and, in a few states such as Kerala, at the district level.⁹⁸ These fragmentary sources allow some inferences to be drawn, however. The first indirect inference concerns the overall amount of disbursement. Independent estimates indicate that a compensation award is given to only a small proportion of the people who suffer a qualifying offence under the NALSA schedule, and that this proportion has increased only marginally since the standardisation of the scheme in 2018.⁹⁹ The second indirect inference concerns geographic concentration. Where district-level data are available — as in Kerala — there is a clear concentration of the awards in a few urban districts, and an inverse relationship between the number of awards and the size of rural and hill districts, even where the incidence of qualifying offences is not significantly different.¹⁰⁰ These patterns are in line with the hypothesis put forward in Part 4: that the design of the scheme results in a systematic rural access deficit.

⁹²Bharatiya Nagarik Suraksha Sanhita 2023 (India) s 396(6).

⁹³National Legal Services Authority, above n 83, 25–26 (no separate reporting of interim orders under section 396(6)).

⁹⁴Centre for Social Research, above n 27, 14–16.

⁹⁵*Nipun Saxena v Union of India*, above n 14, 720 [8] (on the necessity of timely and adequate relief).

⁹⁶National Legal Services Authority, above n 83, 26.

⁹⁷Comptroller and Auditor General of India, above n 77, 30.

⁹⁸State Legal Services Authority (Kerala), *Victim Compensation Scheme: Annual Statement of Disbursements 2022–23* (2023) 5–7.

⁹⁹Centre for Social Research, above n 27, 20–22 (proportion of qualifying victims receiving compensation).

¹⁰⁰State Legal Services Authority (Kerala), above n 98, 6 (district-wise concentration of disbursements).

5.2 Applicant profile and rural under-representation

One stream of empirical research is related to the characteristics of successful applicants. The field study for a research report by an independent research centre in six states of India revealed that the typical successful applicant was a city dweller, who obtained legal aid from a non-governmental organisation, a Bar Council legal aid clinic or a High Court order in a case of a habeas or writ petition.¹⁰¹ In contrast, the rural respondents with qualifying offences in this study were more likely to be supported by informal community mechanisms such as caste panchayats, self-help groups or religious institutions than by the statutory scheme. In most cases the non-use of the statutory scheme by the rural respondents was not a conscious decision to reject the statutory support mechanism but was because they were not aware of the statutory option.¹⁰²

The applicant-profile evidence is typical of what is generally reported in the literature on access to justice: that rural litigants rarely exercise a formal entitlement to bring a claim unless they are actively brokered by a third-party institution.¹⁰³ In a remote block, without a legal aid intermediary, the entitlement is usually dormant. This dormancy is not innocent. It is a serious shortfall in the scheme in reaching the population it was, in principle, designed for.

6. Comparative perspectives

6.1 Regional and remote Australia

Two points make the Australian state and territory compensation schemes a useful comparative reference point. First, Australia's problems of geographic access are similar to those in rural India, but on a much smaller scale, given its vast geographical area, remote population and remote Indigenous communities. Secondly, some schemes in Australia have been explicitly re-designed around access issues and concerns in the rural and remote areas. Under the New South Wales scheme in the *Victims Rights and Support Act 2013* (NSW), for instance, there is a recognition payment,¹⁰⁴ together with financial support for immediate needs,¹⁰⁵ administered through an application process¹⁰⁶ that is designed to be accessible without a court being triggered and without the applicant having to travel to a central metropolitan office.¹⁰⁷ The Queensland scheme, in the *Victims of Crime Assistance Act 2009* (Qld), also offers a graduated regime of financial assistance¹⁰⁸ available on direct application to the scheme administrator,¹⁰⁹ covering medical, counselling and loss-of-earnings needs.

However, it can be seen from the Australian experience that a well-designed statutory scheme can still result in remote victims being under-served. Studies in Northern Territory remote communities have revealed significant under-representation of Aboriginal victims of crime in the uptake of the victim compensation scheme, due to informational issues, geographical barriers and cultural differences between the operating logic of the scheme and community practice.¹¹⁰ Wilson and Cunneen argue that formal access to the scheme is a necessary but not sufficient indicator of access in rural and remote areas and that active outreach by remote service providers is critical.¹¹¹

¹⁰¹Centre for Social Research, above n 27, 17.

¹⁰²*Ibid* 18–19.

¹⁰³Kaur, above n 86, 452–456.

¹⁰⁴*Victims Rights and Support Act 2013* (NSW) s 26 (recognition payment).

¹⁰⁵*Ibid* s 27 (financial support for immediate needs).

¹⁰⁶*Ibid* s 39 (application procedure).

¹⁰⁷Victims Services NSW, *Guide to the Victims Support Scheme* (2022) 12–14.

¹⁰⁸*Victims of Crime Assistance Act 2009* (Qld) pt 4 div 2.

¹⁰⁹*Ibid* s 50 (application to scheme administrator).

¹¹⁰A Wilson and C Cunneen, 'Rural and Remote Victims of Crime: Access to Support in Northern Territory Communities' (2018) 42 *Criminal Law Journal* 268, 273.

¹¹¹*Ibid* 275–277.

6.2 Lessons for institutional reform

There are two lessons to be learned from the Australian material as to Indian reform. First, the idea is neither new nor radical that compensation should be de-linked from a court recommendation. The main element in the Australian schemes is that the application by a victim, not a recommendation of a court, is the impetus to action;¹¹² the court has a residual function, if any. In this sense, the proposal to amend Section 396 to make an application by the victim a first-order trigger is consistent with a comparative institutional design that has proven administratively workable. Second, the Australian experience shows that de-linking is a necessary but not sufficient reform. Awareness is low, and even where the administering office is technically accessible, victim-initiated schemes fail to serve remote people unless the office is actively brought closer. The Australian schemes have responded through a combination of state-funded outreach, funded intermediary organisations and — in some jurisdictions — the co-location of victim services with health, welfare and community legal services in regional centres.¹¹³

A brief comparison can also be made with the Swedish model, where applications are made directly to the Crime Victim Compensation and Support Authority (*Brottsoffermyndigheten*), which determines the cases without relying on a court recommendation and operates through state-funded victim support units at the local level, alongside a national digital platform.¹¹⁴¹¹⁵ Indian law has not yet brought about a separation between the prosecution of the crime and the determination of compensation, which is the design of the Swedish law. It is not clear whether such a separation of structures is desirable, and whether it is politically feasible in the Indian context. However, the Swedish model indicates that there is nothing inevitable about linking this substantive right to compensation to the ups and downs of the criminal process. The de-linking of the substantive right from the criminal proceeding is also in principle consistent with the position taken in the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*¹¹⁶ and reiterated in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation*.¹¹⁷¹¹⁸

7. Reforms for the rural interface

This article suggests four reforms that are targeted at the rural interface. The proposals are doctrinally modest and administratively realistic keeping in mind the existing infrastructure of the District Legal Services Authorities and the federal structure of India. They do not require statutory replacement of Section 396 but they do call for a re-orientation of state schemes and of NALSA guidance under Section 396(1).¹¹⁹ Each is briefly set out below.

7.1 A stand-alone interim pathway

The first reform is to make the interim relief under Section 396(6)¹²⁰ a substantive stand-alone provision, not dependent on a court recommendation and required to be provided within a prescribed time frame (such as thirty days) of the First Information Report. This proposal is based on the existing wording of Section 396(6),

¹¹²*Victims Rights and Support Act 2013* (NSW) s 39 (application-triggered pathway).

¹¹³National Rural Law and Justice Alliance, *Report on Access to Legal Services in Regional, Rural and Remote Australia* (Report, 2020) 18–22.

¹¹⁴H Gouverneur and M Groenhuijsen, ‘The Swedish Model of State Compensation: An Agency-Triggered Alternative’ (2019) 25 *International Review of Victimology* 5, 12–16.

¹¹⁵*Ibid* 14.

¹¹⁶*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, UN GAOR, 40th sess, 96th plen mtg, UN Doc A/RES/40/34 (29 November 1985) principle 12.

¹¹⁷*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Res 60/147, UN GAOR, 60th sess, 64th plen mtg, UN Doc A/RES/60/147 (16 December 2005) principle 15.

¹¹⁸See Marc Groenhuijsen, ‘The Development of International Policy in Relation to Victims of Crime’ (2014) 20 *International Review of Victimology* 31, 40–42.

¹¹⁹*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396(1).

¹²⁰*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396(6).

which does not state that any court recommendation is needed. The need of the hour is to change the guidelines of NALSA¹²¹ and make interim relief available to the victim on First Information Report registration, to be reconciled on final disposal of the case, for a specified schedule of offences (rape, gang rape, acid attack, offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989¹²² and offences under the Protection of Children from Sexual Offences Act 2012).¹²³ It is doctrinally consistent with the beneficial nature of the scheme and with the presumption of interpretation that remedial statutes should be construed liberally.¹²⁴¹²⁵

7.2 Mobile compensation clinics

The second reform is to establish, at block level and on a fixed weekly schedule, a mobile compensation clinic to be operated by every District Legal Services Authority, at which applications would be accepted by para-legal volunteers accredited under the NALSA (Legal Services Clinics) Regulations 2011¹²⁶ and the NALSA Scheme for Para-Legal Volunteers,¹²⁷ and applicants would be supported in preparing documentation and obtaining an acknowledgment. The co-location of the clinic, as far as possible, would be with a health sub-centre, block development office or common services centre under the Digital India programme.¹²⁸ The aim of the reform is to bring the point of contact between the scheme and the rural victim closer to the rural victim's home, thereby minimising one of the key factors in the rural gap identified in Part 4, that is, the distance-related access cost. The reform is both logically and practically feasible as it involves the current para-legal volunteer network without a need to establish a new cadre.

7.3 A digital application infrastructure

The third reform is the design and implementation of a state-owned digital application infrastructure to be used for Section 396 applications, with the following features: (a) application initiation at the police station on the registration of a First Information Report and the supply of a digitally signed acknowledgment to the victim; (b) escalation to the District Legal Services Authority through the existing electronic reporting infrastructure of the state police services; (c) integration with the Common Services Centres network,¹²⁹ thus enabling a victim in a remote village to complete an application at the nearest Common Services Centre with the help of a village-level entrepreneur; and (d) enabling the victim to obtain the status of the application through a mobile telephone number in a transparent manner. Digital infrastructure is not the solution to the access issue itself — rural digital literacy, mobile connectivity in remote blocks and the risk of digital exclusion of the elderly and the illiterate are all barriers.¹³⁰ However, a well-designed digital pathway, as a complement to the mobile clinic proposal, would significantly lessen the geographic frictions seen today.

7.4 Panchayat-level intake

The fourth reform is based on the recognition of the panchayat as an institution of self-governance in the Constitution,¹³¹ as well as the mandate of panchayats in respect of social welfare under Schedule 11 of the

¹²¹National Legal Services Authority, above n 13, cl 6, sch.

¹²²*Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989* (India) s 15A (rights of victims and witnesses).

¹²³*Protection of Children from Sexual Offences Act 2012* (India) s 33(8).

¹²⁴*Serious Fraud Investigation Office v Rahul Modi* (2019) 5 SCC 266, 279 [21] (interpretive presumption favouring beneficial legislation).

¹²⁵See also *Hari Singh v Sukhbir Singh*, above n 75, 555–556 [11].

¹²⁶*National Legal Services Authority (Legal Services Clinics) Regulations 2011* (India) regs 5–8.

¹²⁷National Legal Services Authority, *Scheme for Para-Legal Volunteers (Revised)* (2013) cl 4 (functions of para-legal volunteers at village and block level).

¹²⁸Ministry of Electronics and Information Technology, *Digital India: Common Services Centres 2.0 Framework* (Government of India, 2021) 8–12.

¹²⁹Ministry of Electronics and Information Technology, above n 128, 10–11.

¹³⁰On rural digital exclusion, see Kaur, above n 86, 456–458.

¹³¹*Constitution of India* art 243G.

Constitution.¹³² The idea is to provide a statutory intake position for the gram panchayat secretary under state schemes, with training and accreditation delivered by the District Legal Services Authority. The intake position would not bestow any decision-making powers on the panchayat — who can determine eligibility and quantum, as under Section 396, will be the District Legal Services Authority. However, the panchayat secretary, who is present in each gram panchayat¹³³ and is known to the local community, would serve as the missing last-mile intermediary that the current scheme visibly lacks. It is a politically sensitive proposal, as it must be designed to be not susceptible to capture by local dominant interests, and it should not create an environment that displaces independent legal aid intermediaries where they exist.¹³⁴ Overall, though, the creation of an intake node at the panchayat level will probably help to increase access in rural areas without a corresponding increase in institutional cost.

7.5 *The reforms considered together*

None of the four proposals can be replaced by the others. The interim pathway tackles the temporal problem of Part 4, the mobile clinic and the panchayat intake address the geographic problem, and the digital infrastructure proposal addresses both. Taken together, they represent a shift towards a victim-centric and block-centric approach from a court-centric and district-centric approach. That reorientation would not necessitate a change to the statutory wording of Section 396. It may be achieved in a significant manner by NALSA regulations under the Legal Services Authorities Act 1987,¹³⁵ revised state schemes under Section 396(1),¹³⁶ and coordinated advisory guidance from the Ministry of Home Affairs and the Department of Justice. That is a fairly straightforward way to implement the reforms, which is, in the author's view, a significant argument in the reforms' favour.

8. Conclusion

By the yardstick of comparative victim redress, India's statutory victim compensation scheme is a mature legal instrument, as enshrined in Section 396 of the Bharatiya Nagarik Suraksha Sanhita 2023.¹³⁷ It is built on a strong constitutional basis, and it has been developed by extensive judicial guidance, as well as a network of District Legal Services Authorities that covers each district in the country. But the article has argued that the scheme's structure — its reliance on a court trigger, the fact that it has been concentrated in district headquarters and that the interim relief system has been under-used — creates a systemic lack of access in rural areas. The result is that the most vulnerable victim of all — one who could most benefit from the State's compensation — is also, structurally, the victim who is least likely to get it.

The article has proposed four reforms to focus on the rural interface: (1) the introduction of a stand-alone interim pathway; (2) mobile compensation clinics at the block level; (3) a digital application infrastructure that is connected with the Common Services Centres network; and (4) a formal panchayat-level intake role. The reforms are complementary and, from a doctrinal perspective, modest, and administratively realistic within the constraints of Indian federalism. They do not ask for any statutory changes to Section 396, but call for a change in the orientation of NALSA guidance and state schemes in a direction that the rural geography of Indian crime requires, namely a victim-centric, block-centric approach.

The overall point is that in a country as geographically and socially heterogeneous as India, the extent of effective coverage of a statutory entitlement cannot be judged by the entitlement itself. It needs to be evaluated in the context of the institutional and geographical structure in which the entitlement is realised. Section 396 confers

¹³²*Constitution of India* sch 11.

¹³³*Constitution of India* art 243B (Gram Sabha).

¹³⁴*Legal Services Authorities Act 1987* (India) s 12 (persons entitled to legal services).

¹³⁵*Legal Services Authorities Act 1987* (India) s 29 (power to make rules).

¹³⁶*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396(1).

¹³⁷*Bharatiya Nagarik Suraksha Sanhita 2023* (India) s 396.

a right;¹³⁸ but a right without an accessible pathway, as the constitutional guarantee in Article 21 makes clear,¹³⁹ is a right that many victims will never exercise. Building the pathway is a big part of the task of rural law and policy reform.

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