

PENOLOGY & VICTIMOLOGY

UNIT – V

Victimology – Indian Experience
Legal Framework · Courts · NHRC

20 explanatory slides · Statutes, schemes and landmark cases

ROADMAP

What this unit covers

1. Indian starting point

2. Constitutional base

3. CrPC / BNSS tools

4. s.357 compensation

5. s.357A schemes

6. POCSO & special laws

7. Witness Protection 2018

8. Nirbhaya architecture

9. Role of trial courts

10. High Courts & SC

11. Public law compensation

12. NHRC mandate

13. NHRC & custodial victims

14. NHRC guidelines

15. Legal Services Authorities

16. Gaps in delivery

17. Key cases I

18. Key cases II

19. Takeaways

20. Close

Indian experience – the long delay then a rush

For decades the victim was a witness for the prosecution and little else. From the 1980s the Supreme Court began to invent compensation. After 2008–2013 the statute book caught up, especially for women and children.

Phase 1

Accused-centric CrPC. Victim could at most fine-tune a private complaint.

Phase 2

Judicial compensation under Art. 21 (Rudul Sah, Nilabati).

Phase 3

s.357A (2009), NALSA schemes, special laws after Nirbhaya.

Phase 4

BNSS language is more victim-visible, but implementation is the test.

Constitutional foundations

Art. 21

Life with dignity – the root of public-law compensation and fair process for victims too.

Art. 14

Equal protection – indifferent treatment of victims can be arbitrary.

Art. 39A

Equal justice and free legal aid – extends to victims in many schemes.

Art. 32 / 226

Writ courts can order compensation and systemic directions.

DPSP / Art. 51A

Humane spirit and compassion – used as interpretive support.

Federal note

Police and prisons are State subjects; schemes vary by State.

CrPC / BNSS tools for the victim

The criminal process is still run by the State, but the victim now has several specific footholds.

Information

FIR copy; right to know progress in a growing number of settings.

Participation

Victim can engage counsel to assist the prosecutor in many serious cases.

Appeal

Victim's limited right to appeal against acquittal / inadequate sentence (CrPC 372 proviso).

Compensation

ss.357, 357A, 357B, 357C and BNSS successors.

Section 357 CrPC – restitution from the offender

Who pays

The offender, out of fine or in addition to sentence.

When

On conviction. Court ought to apply its mind in every case (Ankush Gaikwad).

What

Loss or injury, medical expenses, and in some cases loss to the family of a deceased victim.

Problem

Poor offenders; fine too small; order not executed.

Duty

Reasons should appear if the court refuses compensation.

BNSS

The same idea continues with updated numbering – quote both in answers.

Victim Compensation Scheme – s.357A

Inserted in 2009. Every State / UT must have a scheme funded by the State for victims or their dependants who need rehabilitation. It works even if the offender is not caught or is acquitted.

When it applies

Where compensation under s.357 is inadequate or not available.

Who decides

Legal Services Authority on recommendation of the court, or on application.

Nirbhaya Fund / NALSA

Central push and model amounts for acid attack, rape, etc.

Suresh (2015)

Supreme Court pressed States to make the scheme real, not ornamental.

Victim-facing special statutes

POCSO 2012

Child-friendly process, compensation, support persons.

SC/ST (PoA) Act

Relief, rehabilitation, special courts, victim rights in atrocity cases.

DV Act 2005

Protection orders, residence, monetary relief for domestic-violence victims.

PCPNDT / trafficking laws

Rescue and rehabilitation duties.

CrPC 357C

Free medical treatment for acid-attack and specified sexual-offence victims.

IT Rules / new criminal codes

Updated procedure for electronic evidence and some victim safeguards.

Witness Protection Scheme, 2018

Approved by the Supreme Court in Mahender Chawla. It is a national scheme that States are to implement. It treats threatened victims and witnesses as persons who need graded protection.

Threat categories

Low / moderate / high – different measures.

Measures

Change of identity in extreme cases, relocation, in-camera trial, police escort.

Competent authority

Usually a standing committee headed by a District & Sessions Judge.

Gap

Funding, housing and long-term relocation remain weak in many districts.

Nirbhaya-era architecture

Criminal Law (Amendment) 2013

New offences, harsher sentences, some victim-process reforms.

One-stop centres

Medical, legal, police and counselling under one roof.

Nirbhaya Fund

Central corpus for women-safety projects.

Fast-track courts

Intended to cut delay in sexual-offence trials.

Victim impact

Courts more willing to hear the victim at sentencing.

Unfinished

Conviction rates, delay and victim fatigue remain serious.

Role of trial courts

Most victims never reach the Supreme Court. The Sessions Judge and Magistrate decide whether victimology is real or rhetorical.

FIR and charge

See that the correct offences are added; victim is heard where the law requires.

Protection

Bail conditions, in-camera trial, screens, in-camera deposition.

s.357 mind

Must consider compensation; not treat it as optional charity.

Dignity

Control of hostile, degrading cross-examination of sexual-offence victims (s.146 Evidence / BSA analogue).

Role of High Courts and the Supreme Court

Law-making

Guidelines where statute was silent (D.K. Basu, Vishaka, acid-attack directions).

Compensation

Writ compensation as public-law remedy.

Monitoring

Continuing mandamus on prisons, undertrials, schemes.

Appellate sentence

Can enhance or reduce; can add compensation.

Victim appeal

Liberal reading of the 372 proviso in several High Courts.

Limits

Courts cannot run welfare departments; schemes need budgets.

Constitutional tort and the victim of the State

When the State itself is the wrongdoer – illegal detention, custodial death, fake encounter – the victim's family uses writs, not only the criminal trial.

Rudul Sah (1983)

Compensation for years of illegal incarceration after acquittal.

Nilabati Behera (1993)

Custodial death – compensation in public law, distinct from private tort.

D.K. Basu (1997)

Arrest safeguards to prevent the next custodial victim.

Later line

Encounter deaths and disappearances – independent inquiry plus compensation.

NHRC – mandate and structure

The Protection of Human Rights Act, 1993 creates the National Human Rights Commission. State Commissions exist in parallel. For this paper, NHRC matters as a victim-access institution outside the regular criminal court.

Inquiry

Can inquire into complaints of human-rights violation by public servants.

Visit

Jails and State institutions; recommend improvements.

Recommend

Compensation, prosecution, departmental action – recommendatory, not a decree.

Court use

NHRC reports often relied on in writ petitions and PILs.

NHRC and victims – typical work

Custodial death

Mandatory intimation; independent inquiry protocol.

Police torture

Compensation recommendations; training of force.

Bonded / trafficked persons

Rescue-related recommendations with other bodies.

Communal and riot victims

Relief recommendations; monitoring of prosecution.

Undertrials

Intervenes on prolonged detention and overcrowding.

Limit

No power to force a conviction; depends on government acceptance.

Legal Services Authorities as victim bodies

NALSA / SLSA / DLSA

They administer many s.357A schemes.

Legal aid

Counsel for victims in specified sexual and atrocity cases.

Victim compensation applications

Can be moved even if trial is pending or offender unknown.

Awareness

Camps and front offices – uneven across districts.

Coordination

Should connect one-stop centres, police and courts.

Student tip

In answers, name DLSA as the practical window for compensation.

What still fails on the ground

Delay

Compensation sanctioned late; trial later still.

Amounts

Schemes differ widely from State to State.

Information

Victims often not told of rights or of the accused's bail.

Witnesses turn hostile

Fear plus compromise culture.

NHRC follow-up

Recommendations parked.

Rural access

One-stop centres and trained prosecutors are city-heavy.

Indian victim-law cases – set one

Rudul Sah (1983)

Illegal detention – monetary compensation under Art. 32.

Nilabati Behera (1993)

Custodial death – public-law compensation.

**Delhi Domestic Working Women's
Forum (1995)**

Legal representation and support for rape victims.

Bodhisattwa Gautam (1996)

Interim compensation during trial of a sexual offence.

**Chairman, Rly Board v. Chandrima Das
(2000)**

Compensation to a foreign victim of rape on public premises.

Laxmi v. Union of India

Acid-attack compensation and regulation of acid sale.

Indian victim-law cases – set two

Ankush Shivaji Gaikwad (2013)

s.357 consideration is mandatory; reasons if refused.

Suresh v. State of Haryana (2015)

s.357A scheme must function; Legal Services Authority's role.

Mahender Chawla (2018)

Witness Protection Scheme approved as law of the land.

Nipun Saxena (2018–19)

Identity protection of sexual-offence victims; compensation directions.

Lalita Kumari (2014)

Mandatory FIR in cognizable cases – first gateway for the victim.

Shakti Vahini (2018)

Honour-crime prevention – protective duties of the State.

Key takeaways

- 01** Indian victimology is court-led first, then statutory (357 / 357A and special laws).
- 02** Art. 21 public-law compensation is the distinctive Indian contribution.
- 03** Trial courts must consider s.357 in every conviction; DLSA runs 357A.
- 04** Witness Protection Scheme 2018 and one-stop centres are the new infrastructure.
- 05** NHRC is recommendatory but central for custodial and systemic victims.
- 06** Core citations: Rudul Sah, Nilabati, Ankush Gaikwad, Suresh, Mahender Chawla, Laxmi.

End of UNIT – V

Penology & Victimology • All five units complete

20 slides • Light academic edition