

## "Empowering Justice: The Transformative Role of Trace DNA And Victim-Centric Reforms In Addressing Sexual Assault In India"

Avantika Johari<sup>1\*</sup>, Prof. (Dr.) Purvi Pokhariyal<sup>2</sup>, Shashi Kant Tiwari<sup>3</sup>, Dr. (prof.) Reena Jaiswal<sup>4</sup>

<sup>1\*</sup>Research Scholar, National Forensic Sciences University, Gandhinagar; [avantika.phdfl21@nfsu.ac.in](mailto:avantika.phdfl21@nfsu.ac.in)

<sup>2</sup>Dean, School of Law, Forensic Justice and Policy Studies, National Forensic Sciences University, Gandhinagar;  
[purvi.pokhariyal@nfsu.ac.in](mailto:purvi.pokhariyal@nfsu.ac.in)

<sup>3</sup>Research Scholar, Invertis University, Bareilly, [shashikantphd20@gmail.com](mailto:shashikantphd20@gmail.com)

<sup>4</sup>Dean, Invertis University, Bareilly, [reena.jaiswal@gmail.com](mailto:reena.jaiswal@gmail.com)

### Abstract

This paper delves into the crucial role that trace DNA evidence plays in reinforcing victims' rights and facilitating access to legal aid in sexual assault cases in India. The study underscores the pervasive issue of sexual violence in the country and examines the systemic barriers that survivors often encounter when seeking justice, despite significant legal advancements. Trace DNA, also known as touch DNA, is increasingly recognized as a pivotal tool in forensic investigations, especially in scenarios where traditional forms of biological evidence are absent or insufficient. This paper elucidates the process through which trace DNA aids in identifying suspects and emphasizes the importance of meticulous evidence collection, alongside a discussion on the legal nuances related to its admissibility in court.

Additionally, the paper explores the legal rights afforded to victims under Indian law, including the right to medical assistance, the right to file a police complaint, and the right to access legal aid. It highlights the necessity of comprehensive support systems to empower survivors and ensure their equitable access to justice. Through an analytical lens, the paper reveals that while legislative reforms have been introduced to safeguard victims' rights, challenges in implementation remain pervasive, demanding sustained efforts to ensure that justice is both accessible and effective for those impacted by sexual violence. Ultimately, the paper advocates for a victim-centric approach within the criminal justice system, one that prioritizes the needs and rights of survivors.

**Keywords:** Trace DNA Evidence, Victims' Rights, Sexual Assault, Legal Aid, Forensic Investigation

### Introduction

Sexual assault refers to sexual activity that takes place without the express consent of the victim. This could lead to long-lasting psychological, emotional, and physical impacts on the survivor. Among various types of violence that women are exposed to, sexual violence remains the most prevalent. Sexual violence can be of many kinds, viz., rape, indecent assault, obscene acts, and harassment. It can also be accompanied by other kinds of physical violence. (Costa et al., 2020)

WHO defines sexual violence as any unwanted sexual act, attempt to gain a sexual act, sexual comments, act to traffic, or any other activity which focused towards an individual's sexuality by force by any other person, irrespective of the relationship between the perpetrator and the victim and the setting. (Intimate Partner Violence, 2015)

Sexual assault remains a pervasive issue in India, with significant implications for victims and society at large. Despite legal advancements, many survivors face systemic barriers in seeking justice.

Technological advancements have significantly transformed the investigation of sexual assaults and other crimes in India, enhancing the efficiency and effectiveness of law enforcement agencies. This transformation is driven by the integration of various digital tools and legislative reforms aimed at modernizing the criminal justice system.

### Trace DNA Evidence

Trace DNA, commonly referred to as touch DNA, is increasingly significant in the adjudication of sexual assault trials. This forensic technique involves analyzing minute amounts of DNA left behind on surfaces through skin contact, which can be critical in cases where traditional biological evidence, such as semen, is absent.

This paper explores the intersection of trace DNA evidence, victims' rights, and legal aid, aiming to highlight how these elements can work together to improve outcomes for survivors of sexual violence.

Following points highlight the role of Trace DNA in Sexual Assault Cases:

- 1. Identification of Suspects:** Trace DNA can provide crucial evidence linking a suspect to a victim or crime scene. For instance, a study found that in 31 groping sexual assault cases, 32% developed probative Short Tandem Repeat (STR) DNA profiles from touch DNA samples collected from victims, which were instrumental in identifying assailants when victims could not provide clear identifications.<sup>1</sup>
- 2. Evidence Collection Practices:** The collection of trace DNA is vital in sexual assault investigations. Best practices

<sup>1</sup> <https://nij.ojp.gov/events/touch-dna-evidence-collection-sexual-assault-cases-knowledge-inform-practice>

suggest that forensic teams should be trained to collect samples from various surfaces, including victims' clothing and skin, to maximize the likelihood of obtaining usable DNA profiles. The substrate from which DNA is collected can significantly affect the yield; for example, clothing typically provides a higher yield of touch DNA compared to skin.<sup>2</sup>

3. **Legal Considerations:** In court, trace DNA can be used to corroborate a victim's testimony or to exclude suspects. However, the interpretation of trace DNA evidence can be complex due to potential contamination issues and the possibility of false positives. This necessitates rigorous standards for evidence handling and analysis to ensure its admissibility in court.<sup>3</sup>

### Rights of Victims

According to Section 2(wa) of the CrPC, 1973, a victim is someone who has suffered loss or harm because of the accused person's alleged act or omission. This definition includes the victim's guardian or legal successor.<sup>4</sup>

"Victims" are individuals or groups harmed by actions or omissions that violate criminal laws, including those against abuse of power. Harm can include physical or mental injury, emotional suffering, economic loss, or impairment of fundamental rights. A person is considered a victim under this declaration regardless of the status of the offender or their relationship to the victim.

Sexual assault is a pervasive issue in India, with the government and legal system struggling to address the problem effectively. The Indian government has made efforts to reform laws and improve support services for victims, but significant challenges remain in ensuring justice and protecting the rights of those affected by sexual violence. (Inoue, 2020)

One of the key challenges is the treatment of sexual assault victims within the criminal justice system. Victims are often viewed with skepticism, and their credibility is frequently called into question by the courts. (Barn & Kumari, 2015) This can deter victims from reporting crimes, as they fear not being believed or facing further trauma during the legal process. Moreover, the lack of comprehensive support services, such as counseling and rehabilitation, leaves many victims without the resources they need to recover and seek justice. (Zafarzai & Amiri, 2021)

The Indian government has attempted to address these issues through legislative reforms, including the Criminal Law Act of 2013, which expanded the definition of sexual assault and introduced stricter penalties for offenders. (Inoue, 2020) However, the implementation of these laws has been uneven, and many victims still face significant barriers in accessing justice and support. (Amani & Dewani, 2019)

One potential solution is the adoption of a more restorative approach to justice, which focuses on repairing the harm caused to victims and addressing the underlying societal issues that contribute to sexual violence. (Amani & Dewani, 2019)

Following points provide an overview of the major rights provided to sexual assault victims under the Indian Criminal Laws:

#### 1. Right to Medical Assistance

Victims have the right to immediate medical attention. Under the Code of Criminal Procedure (CrPC) and various health guidelines, no government or private hospital can deny treatment to a sexual assault victim. They are entitled to free first aid and necessary medical care, and hospitals that refuse treatment can face legal penalties under Section 166B of the Indian Penal Code (IPC).

The Criminal Law Amendment Act (CLA) 2013 mandates that all public and private healthcare facilities must provide free treatment to survivors of sexual violence. Failure to treat is now an offense under the law.<sup>5</sup>

The new criminal laws mandate that medical practitioners provide immediate and free medical care to sexual assault survivors without needing police requisition, ensuring timely attention. Section 27(1) of the Bharatiya Nagarik Suraksha Sanhita enforces this, requiring practitioners to inform the police of the incident. Practitioners must conduct thorough examinations and collect forensic evidence, with Section 184(6) stipulating that medical reports be sent to investigating officers within seven days. The care provided must respect the survivor's dignity and privacy, involving female staff if requested and obtaining informed consent before procedures. Confidentiality of medical records is crucial. Legal provisions under Sections 176(1) and 183(6)(a) emphasize transparency, with recorded statements and female magistrates where possible. Medical facilities are encouraged to offer counseling and support services, and Section 173(1) allows for

<sup>2</sup> Ibid 1

<sup>3</sup> <https://www.tasanet.com/Knowledge-Center/Articles/ArtMID/477/ArticleID/169/Detecting-the-Presence-of-Male-DNA-in-Cases-of-Sexual-Assault-without-Ejaculation>

<sup>4</sup> <https://www.vidhyayanaejournal.org/journal/article/view/678/681>

<sup>5</sup> Government of India. (2014). *Guidelines and protocols for medico-legal care for survivors/victims of sexual violence*. Ministry of Health and Family Welfare. <https://ppl-ai-file-upload.s3.amazonaws.com/web/direct-files/13147105/99749312-8d10-4c5c-b8b2-2eefc4b20d1b/953522324.pdf>

Zero FIRs, facilitating prompt legal action. Overall, these measures ensure comprehensive, respectful, and confidential support for survivors, aiding their recovery and access to justice.<sup>6</sup>

**State of Karnataka v. Manjanna<sup>7</sup>:** In this case, the Supreme Court acknowledged the victim's right to obtain medical care before lodging a police complaint. The ruling underscored the critical need for prompt medical attention for sexual assault victims and set forth the responsibility of medical institutions to conduct necessary examinations and offer support, thereby strengthening the legal framework protecting victim rights.

## 2. Right to File a Police Complaint

Under Section 154 of the Code of Criminal Procedure (CrPC), a victim has the right to file a First Information Report (FIR) at the police station. The police are obligated to register the FIR without delay and without requiring the survivor to undergo any preliminary inquiry.

This power has now been mentioned under S. 173 of the Bhartiya Nagrik Suraksha Sanhita. Zero FIR has been given a statutory status under S. 173, BNSS, with the primary goal of introducing this measure was to allow victims to file complaints irrespective of jurisdiction, thus resolving a longstanding problem in crime reporting. It was implemented to stop the common practice among police officers of refusing to register complaints due to jurisdictional issues. Under this system, the police station must register the FIR when approached by the complainant and subsequently transfer it to the appropriate jurisdiction for investigation. The receiving police station is then required to commence the investigation based on the transferred FIR.<sup>8</sup>

## 3. Right to Legal Aid

Legal aid is a crucial component of the Indian legal system designed to guarantee that all individuals, regardless of their financial means, can access legal representation and support. This right to legal aid is established through various legal provisions and is essential for achieving justice.

Victims of sexual assault in India are entitled to legal assistance, a vital aspect of their path to justice and recovery. This right is backed by legal frameworks and guidelines ensuring survivors have access to essential legal resources and support. Key aspects include access to free legal aid under the Legal Services Authorities Act, 1987, providing representation and advice regardless of financial status, facilitated by legal services authorities at various levels. NGOs and legal aid clinics offer specialized services such as legal counseling, court representation, and assistance with legal processes. Survivors can file a First Information Report (FIR) without delay, with police required to register complaints sensitively. Legal assistance guides survivors through judicial procedures, informing them of their rights, including confidentiality, dignity, and protection from harassment. Survivors have the right to legal representation in court, ensuring their voices are heard and their rights advocated for. Additionally, many legal aid services incorporate emotional and psychological support, addressing the trauma of sexual violence and aiding recovery. This comprehensive legal support system aims to empower survivors and facilitate their access to justice and healing.<sup>9</sup>

### Key Provisions for Legal Aid

- **National Legal Services Authority Act, 1987:** This Act creates a framework for providing free legal services to qualifying individuals.
- **Section 12 of the Act:** Defines the groups eligible for free legal services, including women, children, and those living below the poverty line.
- **Article 39A of the Constitution:** Requires the state to provide free legal aid to ensure that no citizen is denied justice due to financial or other constraints.

### Accessing Legal Aid

#### Steps for Victims to Obtain Legal Aid:

- **Application Submission:** Victims should apply to the District Legal Services Authority for legal aid.
- **Eligibility Assessment:** Authorities evaluate the applicant's financial status and eligibility according to set guidelines.
- **Appointment of Counsel:** If deemed eligible, a legal representative is appointed to advocate for the victim in court.

### Rights of Victims

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<sup>6</sup> <https://bprd.nic.in/uploads/pdf/202401290405007247605VictimCentricApproachUpdated.pdf>

<sup>7</sup> 2000 (3) SCR 1007

<sup>8</sup> <https://www.livelaw.in/lawschool/articles/introduction-bnss-step-forward-backward-263140#:~:text=Now%20Zero%20FIR%20has%20been,longstanding%20issue%20in%20crime%20reporting.>

<sup>9</sup> Government of India. (2014). *Guidelines and protocols for medico-legal care for survivors/victims of sexual violence*. Ministry of Health and Family Welfare. <https://ppl-ai-file-upload.s3.amazonaws.com/web/direct-files/13147105/99749312-8d10-4c5c-b8b2-2eefc4b20d1b/953522324.pdf>

- **Right to Legal Representation:** Under Section 301(2) of the Criminal Procedure Code, victims have the right to appoint a lawyer to conduct prosecutions on their behalf.
- **Compensation Rights:** Victims can pursue compensation through the courts, with the amount determined based on the severity of the crime and the injury suffered.

**Rajoo @ Ramakant v. State of Madhya Pradesh<sup>10</sup>:** In this gang rape case, the Supreme Court emphasized that the right to legal representation covers all phases of legal proceedings, including appeals. The court stressed that lacking legal aid at any point, especially for sexual assault victims, compromises the principles of justice and a fair trial. It ruled that the state is obligated to offer legal assistance to those who cannot afford it, ensuring that victims can participate effectively in the judicial process.<sup>11</sup>

#### 4. Right to Protection

Victims of sexual assault in India have several rights aimed at safeguarding their privacy, dignity, and well-being. They have the right to confidentiality, ensuring their identity and personal details are protected from public disclosure, and media outlets are prohibited from publishing identifying information. Victims can request in-camera trials to keep proceedings private and avoid public scrutiny. They are also entitled to protection from social stigma and further harm, with the government obligated to shield them and their families from intimidation or harassment. Under Section 357(A) of the Code of Criminal Procedure, victims have the right to compensation, potentially up to Rs. 10 lakhs, to aid in their recovery. Access to free legal aid through the National Legal Services Authority ensures justice is accessible regardless of financial status. The right to control the disclosure of their identity further helps prevent additional trauma and stigmatization. While these rights provide a robust framework for victim protection, challenges in effective implementation persist.<sup>12</sup>

#### 5. Right to a Fair Trial

Victims are guaranteed the right to a fair trial, which includes the right to be heard in court. The judicial process must ensure that victims receive due process and that their rights are respected throughout the legal proceedings.

#### 6. Right to Compensation

Victims are entitled to compensation for the trauma and losses they have suffered. This compensation can cover medical expenses, rehabilitation, legal fees, and other related costs. The compensation is available regardless of the outcome of the case against the accused.

In India, the legal framework for compensating victims of sexual assault is still evolving. While there are no explicit constitutional provisions guaranteeing compensation, the Supreme Court has recognized the need for compensation in various rulings. The compensation is primarily governed by the following:

1. **Victim Compensation Scheme:** This scheme aims to provide financial aid to victims of crime, including sexual assault, and is implemented at both the national and state levels.
2. **Central Victim Compensation Fund (CVCF):** This fund supports the disbursement of compensation to victims, with guidelines established by the government.
3. **Code of Criminal Procedure (CrPC):** Amendments in the CrPC (2008 and 2013) have included provisions for victim compensation, although their implementation remains inconsistent across states.

#### Compensation Amounts for Specific Offenses

The compensation awarded varies based on the nature of the crime. Here are some specific provisions:

1. **Rape Victims:** Compensation ranges from a minimum of ₹4 lakh to a maximum of ₹7 lakh.
2. **Acid Attack Victims:** For disfigurement, compensation starts at ₹7 lakh and can go up to ₹8 lakh. If the injury is over 50%, the minimum compensation is ₹5 lakh.
3. **Gang Rape Survivors:** Proposed compensation is set at a minimum of ₹5 lakh and a maximum of ₹10 lakh.
4. **Child Victims of Sexual Assault:** An inclusive scheme is necessary to address the unique needs of child victims.<sup>13</sup>

In landmark cases such as *Railway Board v. Chandrima Das*<sup>14</sup>, the Court awarded compensation to a rape victim, showcasing its commitment to compensatory justice.

<sup>10</sup> (2012) 8 SCC 553

<sup>11</sup> <https://www.project39a.com/legal-aid-landmark-judgments>

<sup>12</sup> <https://nluassam.ac.in/docs/Journals/NLUALR/Volume-7/Article%204.pdf>

<sup>13</sup> <https://nluassam.ac.in/docs/Journals/NLUALR/Volume-7/Article%204.pdf>

<sup>14</sup> 2000 AIR SCW 649

India has implemented several victim compensation schemes aimed at providing financial support and rehabilitation to victims of crime. These schemes are essential for ensuring that victims receive the necessary aid to recover from their traumatic experiences.

### Key Compensation Schemes

1. **Central Victim Compensation Fund (CVCF):** This scheme provides financial assistance to victims of various crimes, with the amount depending on the nature and severity of the crime.
2. **Criminal Procedure Code Provisions:** Sections 357, 357A, 358, and 359 of the Criminal Procedure Code (CrPC) outline the framework for victim compensation. The 2008 amendment specifically defines a victim as someone who has suffered loss or injury due to a crime 7.
3. **Acid Attack Victims:** Victims of acid attacks are entitled to a minimum compensation of ₹5 lakh and can receive up to ₹8 lakh, depending on the severity of the injuries 26.
4. **Rape Survivors:** There is a proposal for uniform compensation for rape survivors, suggesting a minimum of ₹5 lakh and a maximum of ₹10 lakh, aimed at providing financial solace during trial proceedings 2625.
5. **Probation of Offenders Act, 1958:** Under Section 5, courts can order offenders to pay compensation to their victims as part of their release conditions 16.
6. **State-Specific Schemes:** Various states in India have their own compensation schemes that may offer different levels of financial aid depending on local laws and resources.
7. **National Legal Services Authority (NALSA) Scheme:** NALSA has introduced guidelines targeting specific types of crimes, such as gang rape, to ensure victims receive appropriate compensation.<sup>15</sup>

### 7. Right to Privacy and Dignity

Victims have the right to have their identity protected and to be treated with dignity throughout the legal process. The law prohibits any reference to the victim's past sexual history or character during the trial, which aims to prevent further victimization.

### Victim- Centric Approach under the New Criminal Laws:

The new law seeks to improve the efficiency, fairness, and accountability of the justice system by recognizing victims as stakeholders in the criminal trial process. It provides them with participatory rights and expanded access to information, placing victims at the center of the criminal justice system with unprecedented rights and opportunities. According to Section-2(1)(Y) of BNSS 2023, a "victim" is defined as a person who has suffered any loss or injury caused by the act or omission of the accused person, including the guardian or legal heir of such a victim.

### Victim-Centric Laws

Reforms in the criminal justice system have generally taken the form of:

1. **Participatory Rights:** Victims are given a say in the criminal process, such as the opportunity for a hearing before a court, as outlined in Section 360 of BNSS.
2. **Right to Information:** Sections 173, 193, and 230 of BNSS ensure victims are kept informed throughout the investigation and trial process.
3. **Right to Compensation:** Victims have the right to receive compensation for the harm suffered.  
The 154th Law Commission Report (1996) and the Justice Malimath Committee Report (2003) highlighted the importance of justice for victims and victimology as crucial areas for reform. These reports recommended increasing victims' participatory roles and improving compensatory justice. Additionally, the practice of recording Zero FIRs has been institutionalized under Section 173 of BNSS, allowing complainants to file an FIR regardless of where the offense occurred.

A significant gap in the Criminal Procedure Code (CrPC) Section 321 allowed prosecutors to withdraw prosecution before judgment without the victim's input. BNSS addresses this gap by mandating that victims be heard before such withdrawal, thus recognizing them as stakeholders in the criminal trial.

### Expanded Right to Information

The BNSS expands victims' right to information in three key ways:

1. **Access to FIR:** Victims are entitled to receive a copy of the FIR free of charge, a crucial piece of evidence for the trial.
2. **Progress Updates:** Section 193(3) requires police to inform victims of investigation progress within ninety days, allowing them to monitor potential delays or lapses.

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<sup>15</sup> <https://nluassam.ac.in/docs/Journals/NLUALR/Volume-7/Article%204.pdf>

- 3. Case Details:** Section 230 provides victims with information about their case, including police reports, FIRs, and witness statements, enabling effective participation in the criminal process. Rights under Section 193(3) are exclusive to victims, while Section 230 rights are available to both victims and accused.

### **Zero FIRs and Accessibility**

The BNSS institutionalizes the right to register Zero FIRs under Section 173, prohibiting police from using a lack of territorial jurisdiction as a reason to avoid recording first information. This provision eliminates a common hurdle victims face when registering an FIR. The introduction of E-FIRs further enhances accessibility by allowing victims to file reports online, regardless of the crime location. This system eliminates the need to visit a police station and enables tracking the status of complaints online.

### **Victim-Centric Features: A Holistic Approach**

- 1. Right to Participation:** Victims can express their views, reinforcing their role as stakeholders in criminal cases. The institutionalization of Zero FIRs and the introduction of E-FIRs enhance accessibility, allowing victims to file reports anywhere.
- 2. Victims' Voices in Case Withdrawal:** Section 360 of BNSS fills the historical gap in Section 321 of CrPC by ensuring victims' voices are heard before permitting case withdrawal. It grants victims the authority to obtain a complimentary copy of the FIR and mandates measures to keep them informed about investigation progress within ninety days.

The BNSS represents a significant shift towards victim empowerment, ensuring they are central to the criminal justice process with enhanced rights and protections.

### **Role of Trace DNA Evidence:**

Incorporating trace DNA evidence into the framework of sexual assault investigations and prosecutions can significantly address several issues raised in the document regarding victims' rights and access to justice. Following points highlight how Trace DNA can be utilized effectively:

#### **Identification of Suspects**

Trace DNA, or touch DNA, can play a crucial role in identifying suspects in sexual assault cases. This is particularly important in situations where traditional biological evidence (like semen) is not available. By analyzing minute amounts of DNA left on surfaces, law enforcement can link a suspect to a victim or crime scene, thereby bolstering the victim's credibility in court. For example, studies have shown that trace DNA profiles can be developed in a significant percentage of groping cases, which aids in identifying assailants when victims may struggle to provide clear identifications.

#### **Evidence Collection Practices**

The document highlights the importance of evidence collection practices in sexual assault investigations. Implementing best practices for collecting trace DNA can enhance the likelihood of obtaining usable DNA profiles. Forensic teams should be trained to collect samples from various surfaces, including victims' clothing and skin, which can yield higher amounts of touch DNA. This improved collection method can help overcome challenges related to the lack of traditional biological evidence, thereby strengthening the overall case against the perpetrator.

#### **Legal Considerations and Admissibility**

Trace DNA evidence can corroborate a victim's testimony or exclude suspects, thus contributing to a fair trial. However, the interpretation of such evidence can be complex due to contamination risks and potential false positives. Establishing rigorous standards for the handling and analysis of trace DNA is essential to ensure its admissibility in court. This can help mitigate skepticism towards victims' accounts, as the presence of trace DNA can provide objective evidence supporting their claims.

#### **Enhancing Victim Support and Rights**

Incorporating trace DNA evidence aligns with the rights of victims to receive fair treatment and access to justice. By providing solid forensic evidence, trace DNA can help counteract the common skepticism victims face in the legal system. This can empower victims to come forward, knowing that there is a scientific basis to support their claims, thus addressing one of the barriers to reporting sexual assaults.

#### **Addressing Systemic Barriers**

The use of trace DNA evidence can help bridge gaps in the current criminal justice system, where many victims face systemic barriers in seeking justice. By enhancing the investigative process and providing more robust evidence, trace DNA can improve the overall efficiency and effectiveness of sexual assault prosecutions. This aligns with the need for

comprehensive support services and a more victim-centric approach in the legal framework, as highlighted in the document

## Conclusion

Thus, this paper highlights the importance of adopting a comprehensive approach that merges the scientific accuracy of trace DNA evidence with strong legal protections and efficient legal aid. This integrated method is essential for fostering a supportive environment for sexual assault victims and promoting a just and fair society. The incorporation of trace DNA evidence into sexual assault investigations can significantly address the issues raised in the document regarding victims' rights and access to justice. By improving suspect identification, enhancing evidence collection practices, ensuring the admissibility of evidence, and empowering victims, trace DNA can play a pivotal role in transforming the legal landscape surrounding sexual assault cases.

The following points address current challenges and suggest possible solutions:

1. **Policy Reforms:** There is a need for reforms that improve victim rights and protections, ensuring that victims are at the center of the criminal justice process.
2. **Collaboration:** The paper advocates for increased cooperation among forensic experts, legal professionals, and advocacy groups. Such collaboration is crucial for safeguarding victims' rights and ensuring justice is accessible.
3. **Compensation System Issues:**
  - **Lack of Uniformity:** Compensation laws differ significantly across states, creating inconsistencies and difficulties in delivering effective compensation to victims.
  - **Awareness:** Many victims are unaware of their right to legal aid.
  - **Quality of Representation:** Concerns exist about the effectiveness and quality of legal representation provided to victims.
  - **Administrative Delays:** The process for obtaining legal aid can be slow, impacting the timely delivery of justice.
4. **Ongoing Efforts:** The paper emphasizes the need for ongoing efforts to raise awareness, streamline processes, and improve the quality of legal services available to those in need.<sup>16</sup>

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<sup>16</sup> <https://nluassam.ac.in/docs/Journals/NLUALR/Volume-7/Article%204.pdf>