



## Legal Challenges in Implementing the Compensation Schemes for Women Victims in India: A Comparative Perspective

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### Abstract

The legal framework governing victim compensation for women survivors of violence in India has evolved significantly over the past decade, particularly with the insertion of Section 357A into the Code of Criminal Procedure (CrPC) and its reaffirmation under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Despite this progress, systemic challenges continue to obstruct the realization of compensation as a substantive right. This research examines the legal and institutional dimensions of India's victim compensation mechanisms, emphasizing statutory provisions, judicial interpretations, and implementation challenges within a rights-based framework. The study identifies legal inconsistencies, discretionary judicial behavior, and fragmented state practices as key barriers to uniform and timely disbursal of compensation. Adopting a doctrinal and comparative legal methodology, the research juxtaposes India's legislative approach with the rights-centric models of Canada, Sweden, and South Africa. The findings highlight the absence of enforceable guidelines, trauma-informed protocols, and centralized oversight in India's legal framework. This paper argues for statutory reforms that shift victim compensation from a discretionary benefit to an enforceable legal entitlement, supported by clear procedures, equitable access, and judicial accountability.

**Keywords:** BNSS, CrPC, Inconsistencies, Judiciary etc...

## Introduction

On the cold evening of December 16, 2012, a brutal incident unfolded in the streets of New Delhi that would come to redefine India's legal consciousness. A 23-year-old paramedical student, after boarding a private bus with her friend, was subjected to unspeakable acts of violence—beaten, raped, and left for dead. Her valiant struggle to survive, followed by her eventual death, ignited nationwide protests and a wave of collective moral reckoning. The incident, later dubbed the “Nirbhaya case,” was not merely a case of sexual assault—it was a moment that laid bare the inadequacies of India's criminal justice system, particularly its silence on the rights and rehabilitation of the victim.

Amidst public outrage, the State responded with legislative urgency. The Justice Verma Committee was constituted, leading to the Criminal Law (Amendment) Act, 2013, which expanded the definitions of sexual offences and introduced stricter punishments. However, what went relatively unnoticed in the popular discourse was the insertion of Section 357A into the Code of Criminal Procedure (CrPC) in 2009, and its operational reinforcement in the years that followed. Section 357A

represented a significant legal shift: it imposed a statutory duty on state governments, in coordination with the Central Government, to establish victim compensation schemes (VCS) for victims who have suffered loss or injury and require rehabilitation. The provision moved beyond offender-based compensation and marked the first major recognition of victims as stakeholders in the justice system—entitled to reparative support regardless of the trial outcome.

Nearly a decade later, however, the promise of victim compensation as a transformative tool remains largely unfulfilled. While laws exist on paper, their implementation has been erratic, fragmented, and often discretionary. For women victims of violence—particularly rape, acid attack, domestic violence, and trafficking survivors—the victim compensation framework in India suffers from structural, procedural, and normative deficiencies. These include inconsistent state-level schemes, judicial delays, lack of awareness among law enforcement, digital and procedural exclusion, and the absence of trauma-informed protocols. The result is a regime where the right to compensation is often treated as a matter of benevolence, rather than as a legally enforceable

entitlement grounded in constitutional guarantees and human dignity.

The statutory framework itself presents both opportunities and limitations. Section 357 CrPC allows courts to award compensation from the fine imposed on an offender, but this is contingent on a conviction and the financial capacity of the accused. In contrast, Section 357A obligates the state to provide compensation from its own resources, even in the absence of conviction or when the offender is untraceable or acquitted. Sections 357B and 357C further clarify that compensation under Section 357A is in addition to any other penalties and mandates hospitals to provide immediate medical aid to victims of rape and acid attack. These provisions, on their face, appear progressive. However, their utility is undermined by a lack of enforceability, clear timelines, or trauma-sensitive procedures. Moreover, with the advent of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023—set to replace the CrPC from July 2024—there was an opportunity to structurally reform these mechanisms. Instead, the BNSS retains the old provisions with only marginal improvements, such as a two-month window for state authorities to decide on applications under Section 396 BNSS. There remains no comprehensive articulation of the rights of women victims or the duties of state institutions beyond compensation disbursal.

This disconnect between statutory promise and practical delivery is evident in official reports and data. According to the National Crime Records Bureau (NCRB), over 31,000 cases of rape were registered in India in 2022. Yet, the National Legal Services Authority (NALSA), in its 2020 report, revealed that only around 35% of eligible victims received interim compensation within three months of registering an FIR. In states like Uttar Pradesh and Bihar, more than 50% of applications remained pending due to delays in police verification, lack of awareness, or procedural errors. Similarly, audit reports by the Comptroller and Auditor General (CAG) indicate that a substantial portion of the funds allocated under the Nirbhaya Fund and the Central Victim Compensation Fund (CVCF) remain unutilized—pointing to administrative bottlenecks and institutional apathy.

The victim compensation mechanism in India is further complicated by excessive judicial discretion. While landmark judgments such as *Bodhisattwa Gautam v. Subhra Chakraborty* (1996) and *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) have expanded the scope of judicial power to award compensation, courts continue to apply these principles unevenly. Some high courts, like the Delhi High Court, have granted compensation at the FIR stage as interim relief, whereas others insist on conviction as a prerequisite. This inconsistency undermines the very purpose of Section 357A—to ensure a uniform, accessible, and prompt support mechanism for victims, especially those

whose cases may never culminate in conviction due to evidentiary or procedural shortcomings.

Moreover, victim compensation remains inaccessible to a vast majority of women from marginalized backgrounds, including Dalit, Adivasi, and Muslim women. Empirical studies and field reports indicate that over 60% of rural women are unaware of compensation schemes, and law enforcement officials themselves are often unfamiliar with the procedural guidelines to initiate or refer claims. Digitalization, while intended to increase transparency, has created new layers of exclusion for victims lacking literacy, internet access, or legal support.

From a feminist legal perspective, these gaps raise serious concerns. Compensation should not merely be a financial transaction—it should be embedded within a larger framework of restorative and reparative justice that acknowledges the trauma experienced by victims and facilitates their reintegration into society. This includes access to psychological counselling, legal aid, housing support, education for dependents, and livelihood opportunities. However, current laws and schemes rarely incorporate these components, treating compensation as a one-time monetary payment rather than as a continuum of care and support. This reflects a deeply proceduralist and state-centric orientation, wherein the victim is viewed not as an active rights-holder, but as a passive recipient of state charity.

In this context, it becomes imperative to revisit and critically evaluate the legal architecture surrounding victim compensation in India. This research paper examines the statutory, procedural, and judicial contours of the victim compensation regime, focusing specifically on women survivors of violence. It investigates the role of key legal instruments—the CrPC, the BNSS, NALSA guidelines, and state-specific schemes—while highlighting the institutional failures of State Legal Services Authorities (SLSAs), law enforcement agencies, and health systems. The paper also reviews key judicial pronouncements to assess the trajectory and limitations of victim-centric jurisprudence.

To broaden the legal critique, the research incorporates a comparative analysis of compensation regimes in Canada, Sweden, and South Africa—jurisdictions that have adopted trauma-informed, victim-participatory, and rights-based approaches to reparative justice. These models serve as benchmarks to identify reforms necessary for making India's compensation system more equitable, accountable, and consistent with its constitutional obligations under Articles 14, 15, and 21.

Ultimately, this paper aims to argue that for compensation to be a meaningful instrument of justice, it must be removed from the realm of judicial discretion and administrative grace and placed squarely within the framework of enforceable legal rights. It must be

designed and implemented in a manner that respects the dignity of women survivors and actively contributes to their healing and empowerment.

## 2. Research Problem:

India's legal and institutional mechanisms for compensating women victims of violence are theoretically robust but practically dysfunctional. Despite the insertion of Section 357A into the CrPC and the establishment of schemes like the Nirbhaya Fund and Central Victim Compensation Fund (CVCF), there exists a glaring gap between law and implementation. Judicial discretion, administrative inefficiencies, and lack of awareness continue to thwart the realization of victim-centric justice.

The disparity in state-wise implementation is alarming. While Delhi and Kerala have made strides in providing interim compensation, states like Bihar, Jharkhand, and Uttar Pradesh lag behind significantly. The 2021 NALSA report reveals that over 60% of victims in these states received no compensation within six months of the crime being reported. Moreover, the Comptroller and Auditor General (CAG) reported that a significant portion of Nirbhaya Fund allocations remain unspent year after year. For example, as of 2022, only ₹292 crore of the allocated ₹1,000 crore under the Nirbhaya Fund had been utilized.

This problem is further compounded by the absence of mandatory judicial direction for compensation, non-uniform state schemes, digital barriers, and a lack of trauma-informed procedures. Victims are often required to provide FIRs, medical certificates, income proof, and court verification—documents that are difficult to procure, especially in rural areas. For marginalized women, these barriers become nearly insurmountable.

Thus, the core problem lies not in the absence of legal provisions but in their ineffective execution and the structural indifference of the justice system to the lived realities of women survivors of violence.

## 3. Research Objectives:

1. To analyze the structural and legal challenges in the implementation of compensation schemes for women victims in India, with a focus on judicial discretion, funding, and procedural delays.
2. To assess the adaptability of international practices to the Indian context through a feminist jurisprudential lens.

## 4. Hypothesis:

The Indian framework fails to deliver justice effectively to women victims due to systemic procedural inefficiencies, underfunding, and the absence of a victim-centric, feminist-informed legal structure.

## 5. Research Methodology:

- **Doctrinal Legal Analysis:** This involves examining statutory provisions such as Section 357A CrPC, state-specific victim compensation schemes, and legal interpretations through landmark judgments like *Bodhisattwa Gautam v. Subhra Chakraborty* (1996), *Nipun Saxena v. Union of India* (2018), and *Delhi Domestic Working Women's Forum v. Union of India* (1995). The research also draws on reports by NALSA, NCRB, CAG, and international organizations such as UN Women and the World Health Organization (WHO) to support its findings.
- **Comparative Legal Review:** A comparative study of compensation frameworks in Canada, Sweden, and South Africa is undertaken, focusing on their legislative structures, administrative procedures, and feminist underpinnings. These jurisdictions are selected for their proven track record in implementing trauma-informed, victim-centric compensation systems.

## 6. Literature Review

The discourse on victim compensation, particularly in the Indian context, has seen growing academic and judicial engagement, yet significant gaps persist in both theoretical exploration and empirical analysis.

Dhanda (2008) presents a critical examination of the patriarchal underpinnings of the Indian criminal justice system, arguing that victim needs are frequently subordinated to procedural formalism. Her work foregrounds the importance of feminist legal theory in restructuring criminal law to prioritize victims' voices and experiences.

Kapoor (2016) explores the concept of restorative justice, emphasizing victim compensation as a potentially transformative tool. However, he highlights how poor implementation and lack of victim participation dilute its restorative intent. Kapoor suggests the incorporation of community-based models of justice and victim counseling as pathways to meaningful engagement.

Sarkar (2017) critiques the inconsistent implementation of Section 357A CrPC and points out how judicial discretion leads to arbitrariness. His analysis of case law

demonstrates that courts frequently fail to consider the socio-economic conditions of victims or the structural violence they face, leading to a justice gap.

The Justice Verma Committee Report (2013) underscores the significance of victim compensation as a form of restorative justice, particularly in cases of sexual violence. The committee recommended that compensation should be independent of conviction and should not be contingent on the accused's status, a position aligned with victim-centric jurisprudence.

Baxi (2000), in his seminal work on human rights, situates the right to compensation within the broader frame of state accountability. He critiques the Indian state's tendency to use compensation as a substitute for structural reforms, warning against its use as a 'pay-off' rather than a genuine act of justice.

Further, Kumar (2019) examines how State Legal Services Authorities (SLSAs) operate in practice. His research reveals that many victims, especially from rural or marginalized backgrounds, are unaware of their right to compensation or the procedures to claim it. This lack of awareness is compounded by poor institutional outreach and minimal engagement with civil society organizations.

Choudhury and Shekhawat (2020) analyze the operational bottlenecks in the Victim Compensation Scheme across various Indian states. Their study reveals significant disparities in how compensation is awarded, the amount granted, and timelines for disbursal. They recommend harmonization of procedures and capacity-building of legal aid institutions.

Internationally, Doak (2009) presents a comparative perspective, arguing that compensation schemes work best when integrated with holistic victim support services, including mental health counseling and legal aid. He suggests that procedural justice—fairness in the process—is as important to victims as the outcome itself.

Studies from Sweden (Crime Victim Compensation Authority, 2022) and Canada (Victim Services and Compensation Programs, 2022) emphasize a state-led, victim-oriented approach with minimal procedural burdens on the victim. These models prioritize timeliness, psychological support, and a rights-based approach, rather than treating compensation as an act of state benevolence.

South Africa's Victim Empowerment Programme (Department of Social Development, 2021) offers another noteworthy example of integrating legal and psychosocial support. Mokoena (2021) illustrates how community-based victim-friendly courts in South Africa create safer spaces for victims, thereby improving their access to justice and restoration.

Despite this growing body of literature, a major gap remains in the application of **feminist legal theory** to analyze the implementation of compensation schemes in India. While many studies touch upon operational or policy deficiencies, few have interrogated the ideological framework underpinning victim compensation or questioned the neutrality of legal processes from a feminist standpoint. This research seeks to fill that gap by grounding its analysis in feminist jurisprudence, focusing not only on implementation barriers but also on structural and epistemic injustices.

The Justice Verma Committee Report (2013) emphasized the need for victim compensation as a critical pillar in addressing sexual violence, yet subsequent implementation has been fragmented. Sarkar (2017) explores the discretionary nature of judicial awards, pointing to inconsistent precedents and lack of standardized guidelines. Goel (2005) and Nigam (2018) analyze the role of the state in reinforcing or challenging patriarchal norms through its approach to victim compensation.

International scholarship further supports the need for trauma-informed, victim-centered models. Wemmers (2012) advocates for a rights-based approach, situating compensation within broader restorative justice initiatives. Daly and Stubbs (2006) examine how feminist perspectives can reshape compensation schemes to prioritize empowerment over paternalism.

Notably, Bose (2020) critiques the lack of integration between India's legal mandates and its healthcare and social support systems, creating a fragmented response to women's needs post-violence. Choudhury (2021) and Roy (2019) highlight regional disparities in compensation schemes, especially within federal structures like India's. Their findings confirm that states with greater administrative capacity and political will are more successful in implementing VCS effectively.

### Indian Legal Architecture: Statutes, Schemes, and Institutional Roles

#### I. Statutory Basis: Sections in CrPC and Related Provisions

India's statutory framework for victim compensation has historically drawn from the Code of Criminal Procedure, 1973. With the enactment of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**—which replaces the CrPC from July 1, 2024—the legal foundation of compensation has been reaffirmed and structurally retained, though not significantly transformed. The relevant provisions across both statutes reflect a legislative acknowledgment of the need for compensatory justice but still suffer from vagueness, discretionary language, and lack of enforceable timelines.

### **Section 357 CrPC & Section 394 BNSS – Compensation from Fine by Court**

Section 357 of CrPC and its successor Section 394 of BNSS authorize courts to apply fines imposed on offenders toward victim compensation.

However, this provision is contingent upon successful conviction and payment by the accused, making it unreliable as a primary compensatory mechanism.

For women victims—especially in cases of sexual violence or domestic abuse—this provision remains inadequate because it is dependent on the offender's means and willingness to pay.

### **Section 357A CrPC & Section 396 BNSS – Victim Compensation Scheme (VCS)**

Section 357A CrPC, a landmark provision inserted in 2008, is replicated almost verbatim in Section 396 of BNSS.

This section obligates each state government, in coordination with the central government, to establish a Victim Compensation Scheme (VCS) or victims requiring rehabilitation, including those affected by crimes against women such as rape, acid attacks, trafficking, and domestic violence.

The provision also allows courts to recommend interim or final compensation, even in cases where the offender is not traced or tried—a major shift from perpetrator-based compensation toward state accountability.

### **Section 357B CrPC & Section 397 BNSS – Additional Compensation**

Section 357B CrPC (now Section 397 of BNSS) clarifies that compensation under Section 396 (357A CrPC) is independent and additional to any penalty or fine imposed under the substantive penal law (e.g., Bharatiya Nyaya Sanhita provisions like Section 66 for rape or Section 74 for acid attacks).

This is a critical safeguard for women victims, as it protects the compensatory right from being subsumed under punitive justice.

### **Section 357C CrPC & Section 398 BNSS – Obligation on Medical Institutions**

This provision, now Section 398 of BNSS, mandates that all hospitals (public or private) must provide immediate first-aid or treatment to victims of rape and acid attacks, failing which criminal liability can be imposed on responsible persons.

Though not a compensation provision per se, it reflects the state's rehabilitative duty, which is often integrated with compensation disbursal procedures.

### **Section 396(6) BNSS – A Missed Opportunity for Reform**

While BNSS retained the overall structure of CrPC's Section 357A, it failed to introduce binding timelines, enforceable quantum guidelines, or mandatory interim compensation, all of which had been strongly recommended by the Law Commission of India, women's rights groups, and victim advocacy bodies.

For instance, no statutory limit is placed on the time taken to verify or disburse claims, nor are victims accorded a presumptive right to legal assistance or trauma care services as part of the compensatory process.

## **II. Central Guidelines and Subsidizing Structures**

Section 357A outlines that the State Legal Services Authorities (SLSAs) are responsible for disbursing compensation under the VCS. In 2015, the National Legal Services Authority (NALSA) issued a Model Victim Compensation Scheme, intended to harmonize the provisions across states and recommend minimum amounts of compensation for various categories of crimes, including sexual violence, acid attacks, and human trafficking.

Additionally, specialized financial mechanisms such as the Nirbhaya Fund, established in 2013 following the brutal Delhi gang rape case, and the Central Victim Compensation Fund (CVCF) in 2015, were created to provide central support to state-level compensation schemes, especially for women victims of sexual and gender-based violence.

However, the mere existence of statutory and financial frameworks has not ensured equitable access or efficient functioning. Implementation gaps persist across almost all levels—legal, institutional, procedural, and informational.

In 2015, NALSA issued a Model Victim Compensation Scheme, defining minimum monetary thresholds, application modes, timelines, and eligibility criteria—especially for crimes against women and minors.

The Central Victim Compensation Fund (CVCF), launched in 2015 with a one-time grant of ₹200 crore, aimed to supplement fragmented state schemes and ensure minimum support even when state funds are delayed or insufficient.

Additionally, acid attack victims receive an additional ₹1 lakh under the Prime Minister's National Relief Fund, over and above state and central compensation.

These support mechanisms are meant to bolster state schemes, particularly in sexual violence and acid attack cases, yet often remain underutilized or poorly integrated.

## **Law Commission & Academic Findings**

**The 154th Law Commission Report (1996)** underpinned Section 357A as an essential structural shift toward victim-centric justice. Its suggestions on witness protection, victim counseling, legal aid, and interim relief informed later judicial decisions and administrative policies.

Research published in *Legal Service India* and academic journals note that despite BNSS's procedural enhancements, **state-by-state disparities, procedural delays, and low victim awareness** undermine the statutory gains. It recommends uniform timelines, online/offline application mechanisms, awareness campaigns, and decoupling compensation from conviction.

### Statistical Corroboration

According to the **NCRB (2022)**, **446,000 cases** of crimes against women were registered, with **88 rapes per day**, yet **most of these survivors received no compensation**. Media and academic commentary highlight the **underutilization of the Nirbhaya Fund**, even ten years post-establishment.

Auditor reports by the **Comptroller & Auditor General (CAG)** reveal that states commonly utilized less than **40%–50%** of allocated Nirbhaya Funds due to delayed disbursal, bureaucratic inertia, or lack of applications.

Surveys, such as that by **Kumar (2019)**, found **60% of rural women** and **75% of local police officials** were unaware of compensation procedures, indicating a severe awareness gap at ground level.

### III. Critical Appraisal: Legislative Gaps, Procedural Weaknesses, and Feminist Disconnects

#### 1. Fragmented and Unequal Compensation Regimes

Despite BNSS and NALSA mandating VCS, there remains considerable **variation in compensation quantum and eligibility** across states:

Example: **Rajasthan (2011 scheme)** grants ₹3 lakh to minor rape victims and ₹2 lakh to adults; **Chhattisgarh** caps at ₹25,000; **Goa** offers up to ₹10 lakh.

These disparities stem from non-binding model guidelines and lack of central enforcement—resulting in justice that is inconsistent, unpredictable, and location-dependent.

#### 2. Timelines vs Reality

While BNSS imposes a **two-month timeframe** for decision-making, real-world data shows compensation delays extending from **six months to two years**, owing to procedural verification, fund hurdles, or document shortages.

#### 3. Awareness Deficit and Access Barriers

The **low literacy or digital capacity** of many survivors (especially Dalit, Adivasi, or Muslim women) further compounds exclusion. Few states offer **offline assistance desks**, despite BNSS allowing direct application under Section 396(4). The awareness gap limits uptake of statutory provisions meant for universal coverage.

#### 4. Absence of Victim-Centric Mechanisms

Statutes touch upon compensation and medical relief, but they do not mandate **psychosocial support, counseling**, or trauma-sensitive application processes—even though jurisprudence and feminist legal theory emphasize these needs for holistic justice.

### IV. Institutional Mechanisms and the Implementation Reality

#### 1. Role of SLSA and DLSA

**State Legal Services Authorities (SLSAs)** and **District Legal Services Authorities (DLSAs)** are the statutory bodies responsible for receiving, evaluating, and disbursing compensation under state VCS. In practice, their capacity varies widely across states.

States such as **Delhi, Kerala, and Goa** maintain well-organized interim and final compensation procedures. Others, including **Uttar Pradesh, Bihar, and Jharkhand**, lag significantly, owing to inadequate staffing, poor outreach, and delayed fund release.

#### 2. Discrepancies Across State-Level Schemes

As of recent audits and research, there is **non-uniformity in compensation amounts and eligibility**:

**Chhattisgarh** caps rape victim compensation at ₹25,000

**Goa** goes up to ₹10 lakh

**Delhi and Kerala** have more generous ceilings and structured interim relief policies

The lack of central enforcement of NALSA's Model Scheme leads to a **postcode lottery** of justice.

#### 3. Underutilization and Administrative Delays

**CAG audit reports** show that many states underutilize allocated funds year after year. A 2022 audit revealed that upwards of **60% of Nirbhaya Fund allocations remained unspent**.

**NALSA's R/O Victim Compensation Schemes Report (2024-2025)** reveals that many compensation applications are **pending beyond statutory timelines**,

often awaiting additional documentation or legal verification.

#### 4. Awareness Gaps and Procedural Barriers

A 2019 study by Kumar found that **60% of rural women and 75% of police officers** in states like Uttar Pradesh and Madhya Pradesh lacked clarity about compensation rights and procedures.

Digital portals, meant to improve transparency, are often inaccessible to illiterate or digitally excluded victims—creating further barriers.

#### 5. Lack of Trauma-Informed Practices

The compensation process—involving repeated retelling of traumatic events, interactions with unsympathetic officials, and absence of counseling—reinforces victim alienation.

Neither SLSA nor police personnel undergo mandatory training in **gender sensitivity, trauma care, or victim rights**, despite such training being recommended in NALSA guidelines.

### III. Judicial Interventions: Landmarks and Limitations

#### 1. Landmark Judgments: Expanding the Scope

In *Hari Kishan & State of Haryana v. Sukhbir Singh*, the Supreme Court ruled that courts have a **mandatory duty to consider Section 357 compensation**, not merely discretionary power.

In *Ankush Shivaji Gaikwad v. State of Maharashtra (2013)*, courts must **apply their mind in every criminal case**, even without a specific request from the victim.

These rulings significantly expanded **judicial accountability**, making compensation a routine consideration rather than an afterthought.

#### 2. Recent Supreme Court Directions

In early 2025, the Supreme Court directed all Sessions Courts dealing with bodily injury to women and children to **mandatorily order victim compensation** within their sentencing or acquittal orders. Interim compensation may also be ordered based on case circumstances. The implementation must be prompt and in consultation with State/District Legal Services Authorities.

This judgment attempts to reduce judicial discretion and enforce prompt compensation. However, follow-up on state compliance remains crucial.

#### 3. Persisting Judicial Inconsistencies

While some High Courts (e.g., Delhi, Rajasthan, Telangana) adopt **pro-victim interpretations**, awarding compensation at the FIR stage, others insist

on **conviction-based approach**, undermining compensation's rehabilitative rationale.

There is no consistent **quantum-setting methodology**: award amounts vary dramatically based on judge discretion and state scheme provisions.

### V. Disconnects: Gaps Between Law and Practice

#### 1 Right vs Benevolence

Despite Section 357A framing compensation as a statutory framework, in practice it is treated as **charity**, not a legal entitlement. The absence of **mandatory timelines, statutory quantum guidelines, or automatic referral** reduces it to discretionary relief.

#### 2 State Variation Violates Constitutional Equality

The divergent compensation levels across states (₹25,000 in Chhattisgarh vs ₹10 lakh in Goa) violate **Article 14's mandate of equality**, especially since criminal law is uniformly valid nationwide.

#### 3 Victim Marginalization Through Process

Women from marginalized communities—Dalit, Adivasi, Muslim—face **multiple structural barriers**. Lack of documentation, legal aid, digital exclusion, and awareness gaps all compound to prevent access to the compensation framework.

#### 4 Non-Coordinated Institutional Response

There is **no centralized oversight body** with binding authority to standardize or enforce compliance. Although the 2025 Supreme Court ruling strengthens judicial accountability, there is no equivalent mechanism to enforce state compliance in institutional practice.

### VI. Empirical Evidence & Recent Data

According to NALSA's 2024-25 annual report, though **29 states and 7 Union Territories** have notified VCS, **less than 50%** of disbursals are made within **90 days**, and **case pendency is high**, especially in high-crime states like Uttar Pradesh and Bihar.

CAG's statewide audit shows underutilization: many states remain unable to spend even **50% of allocated Nirbhaya Fund** disbursements due to procedural delay, lack of applications, or slow verification processes.

#### Summary of Implementation Gaps Table

Aspect	Legal Provision	Ground Reality / Gap
Section 357A CrPC	Mandatory state VCS	States delay or ignore updating schemes

Aspect	Legal Provision	Ground Reality / Gap
Judicial Discretion	Section 357A(4) allows compensation post-trial	Courts often require conviction, bypass interim orders
Institutional Oversight	NALSA Model Scheme non-binding	No centralized enforcement body – leading to state disparity
Administrative Processing	DLSA/SLSA roles defined	Lack capacity, backlog, poor outreach
Award Quantum	NALSA guidelines recommend amount	Varies widely: ₹25k to ₹10 L based on state
Timelines & Awareness	N/A	Low awareness among victims; digital exclusion
Trauma-Informed Mechanisms	NALSA suggests implementation; counseling	No repetitive retraumatization
Supreme Court Rulings (2025)	Sessions Courts must order compensation	Uptake in practice pending; no state compliance measures

### Administrative Data on CrPC Implementation

The **NALSA Annual Statistical Report (2018–2019)** reveals wide disparities in state-level uptake:

A total of **16,354 compensation orders** were issued, with major contributors being **Delhi (2,284 orders, ₹5.2 crore disbursed)**, **Rajasthan (2,170 orders, ₹2.76 crore)**, **Odisha (1,419 orders, ₹10 crore)**, and **Maharashtra (947 orders, ₹5.77 crore)**. In contrast, high-crime states like **Bihar (821 applications, ₹0.94 crore)** and **Jharkhand (791 applications, ₹0.59 crore)** showed lower award numbers in proportions disproportionate to reported crimes ([turn0search11]).

The data highlights a **mismatch between high sexual violence incidence and compensation claims**, particularly in populous states like Uttar Pradesh, which reported only 26 applications—the total disbursement being embarrassingly low given high crime statistics ([turn0search11]).

### Administrative Audits: Under-Utilization and Systemic Delay

**CAG reports (2022)** indicate that most states utilized less than **50% of the Nirbhaya Fund allocations**, largely due to procedural bottlenecks, limited awareness, and sluggish verification processes. These audit findings underscore deep structural inefficiencies in fund flow and implementation ([turn0search11], [turn0search7]).

**Academic critique** further emphasizes limited adoption of model compensation guidelines and uneven financial thresholds. For example, Chhattisgarh caps rape survivor compensation at just ₹25,000, while Odisha offers ₹1.5 lakh—highlighting **state-level inconsistency** ([turn0search10]).

### Awareness Deficits and Access Barriers

A rural survey (Kumar, 2019) documented that **60% of rural women** and **75% of local police officers** in states like Uttar Pradesh and Madhya Pradesh were unaware of compensation entitlements and procedural processes—vocally producing massive under-reporting of applications relative to incidents ([turn0search7], [turn0search9]).

**Legal scholarship** notes that digital-only application channels and complexity of documentation further exclude illiterate or marginalized survivors ([turn0search9]).

### Fragmentation and Postcode Justice

Despite statutory uniformity, empirically there remain vast **compensation disparities**: Goa offers up to ₹10 lakh, ~Kerala and Delhi offer higher ceilings, whereas Chhattisgarh and Bihar offer ₹25k–₹50k despite similar crime profiles ([turn0search10]).

BNSS's procedural reforms (e.g. two-month timeline) remain **unenforced in many states**, where delays extend to six months or even years, due to low administrative capacity and lack of penalties for non-compliance.

### Feminist Disconnect: Lack of Victim-Centric Provisions

Neither CrPC nor BNSS mandates **psychological counselling**, legal aid, shelter, or vocational rehabilitation. Despite feminist jurisprudence emphasizing holistic trauma-informed justice, statutory silence on these matters persists ([turn0search3]).

Statutes remain focused on monetary compensation; they fail to integrate survivor **agency**, dignity, or participation in scheme design.

## International Perspectives on Victim Compensation: A Comparative Study of Canada, Sweden, and South Africa

A comparative examination of victim compensation laws in jurisdictions like Canada, Sweden, and South Africa offers valuable insights into how feminist jurisprudence and victim-centric principles can be meaningfully integrated into the legal and administrative systems. These countries have developed structured compensation regimes that go beyond mere financial assistance and aim to restore dignity, agency, and stability to victims, particularly women who suffer violence and sexual abuse. When assessed alongside India's system, these models illustrate the importance of legal clarity, administrative efficiency, trauma-informed policies, and judicial consistency.

### International Best Practices: Canada, Sweden, and South Africa

To understand how a **feminist, trauma-informed, and victim-centric compensation model** can function, a comparative study of legal frameworks in **Canada, Sweden, and South Africa** provides instructive examples. These jurisdictions reflect diverse legal traditions—common law, civil law, and constitutional rights-based—but all emphasize **restorative justice and victim empowerment**.

#### Canada: A Rights-Based and Province-Led Approach

Canada adopts a **decentralized but rights-based model** of victim compensation, with each province responsible for designing and administering its own compensation scheme. While there is no overarching federal legislation mandating uniformity, the guiding principles across provinces reflect a **trauma-sensitive and victim-centered orientation**, particularly in cases involving domestic violence, sexual assault, and child abuse.

The key legislation in this domain includes provincial laws like the **Victims of Crime Act (1997, amended 2015)** in Ontario and the **Victims Compensation Program** in British Columbia. These laws allow for timely compensation regardless of the conviction status of the accused. For instance, in Ontario, victims are eligible for **interim compensation** at the investigation stage itself, and compensation covers not just medical

and funeral expenses but also **counselling costs, loss of income, relocation assistance, and support for dependents**.

A notable feature of the Canadian approach is the **presumption in favor of the victim**, where the burden of disproving victimization rests with the state. Moreover, the adjudicatory process is not tied strictly to the criminal justice timeline; this allows victims to access compensation even if the trial is delayed or the accused is acquitted due to lack of evidence. This **decoupling of victim support from criminal adjudication** has proven crucial in cases of intimate partner violence, where conviction rates remain low.

Canada also has well-defined **Victim Services Units** that work closely with victims from the point of police reporting through medical and legal proceedings, ensuring they are informed, protected, and rehabilitated. This integrated service model represents a significant departure from the fragmented and procedure-heavy system in India.

Canada operates a **decentralized, province-led system** for victim compensation, yet maintains high standards of access, consistency, and care across regions. Provinces like **Ontario** and **British Columbia** administer their compensation through laws like the **Victims of Crime Act (1997)** and **Victims Compensation Program**.

**No requirement of conviction:** Victims are eligible at the **investigation stage** based on reasonable evidence.

**Presumption in favor of the victim**, shifting the burden of disproving victimization to the state.

**Comprehensive compensation**, covering:

Medical costs

Counseling

Loss of income

Relocation assistance

Childcare and dependent support

**Victim Services Units** operate at the police station and court levels, ensuring timely coordination between law enforcement, hospitals, and legal authorities.

Victim impact statements are legally required during sentencing, and victims are granted procedural rights under the **Canadian Victims Bill of Rights (2015)**. Importantly, Canada's model reflects feminist values by prioritizing victim **agency, autonomy, and emotional recovery**, not just economic relief.

#### Sweden: A Welfare-Oriented, Feminist Model

Sweden, known for its robust welfare policies and commitment to gender equality, has one of the most progressive victim compensation systems globally. The governing legislation is the **Swedish Criminal Injuries Compensation Act**, which provides compensation through the **Swedish Crime Victim Authority (Brottsoffermyndigheten)**. Unlike many countries, Sweden does not require a conviction for compensation; instead, a **strong suspicion or reasonable probability** of crime is sufficient.

Sweden's model integrates **financial compensation with psychosocial rehabilitation**, legal aid, housing support, and long-term welfare assistance. The system is designed to be **trauma-informed**, with officials trained in victim psychology and gender sensitivity. Victims of sexual violence, in particular, receive expedited access to funds, and the application process is largely digital and victim-friendly.

A remarkable aspect of the Swedish model is its **victim empowerment framework**. Victims are encouraged to participate in policy discussions, and their feedback is incorporated into reforms. Moreover, Sweden's compensation scheme reflects **feminist principles**, ensuring the system does not retraumatize victims or portray them as passive recipients of charity. Compensation is seen as a **restorative entitlement**, not an act of state generosity.

Importantly, Sweden has also institutionalized cooperation between **courts, police, medical personnel, and social workers**. This multi-sectoral coordination ensures that victims do not have to repeatedly narrate their trauma at each stage of the process, a challenge commonly faced by Indian victims.

Sweden's model is governed by the **Criminal Injuries Compensation Act**, implemented by the **Swedish Crime Victim Authority (Brottsoffermyndigheten)**. The process is characterized by **simplicity, speed, and sensitivity**, making it a global benchmark.

**Conviction is not required: A reasonable suspicion of crime** is sufficient.

Applications can be filed **online**, and victims are assisted by legal professionals free of charge.

Compensation includes **psychological trauma, loss of social functioning, and risk of recurrence**.

Victims receive access to **housing support, therapy, job assistance, and social security measures**.

Officials undergo **mandatory gender-sensitivity training**, and **multi-agency task forces** coordinate response and recovery.

A unique feature is **victim consultation in policymaking**. Survivors are invited to provide

feedback on the scheme's design and functioning. This participatory governance model reflects feminist jurisprudence principles of **dignity, empowerment, and intersectionality**.

#### **South Africa: A Post-Apartheid Restorative Justice Approach**

In the aftermath of apartheid, South Africa adopted a justice system that seeks to combine **reparative justice with redistributive principles**, particularly for victims of racial, sexual, and systemic violence. The South African legal framework is grounded in the **Victims' Charter (2004)** and supported by the **Constitution of South Africa**, which enshrines the right to dignity, equality, and access to justice.

While South Africa does not yet have a fully codified national compensation law like Sweden or Canada, its **Department of Justice and Constitutional Development** has rolled out victim compensation schemes that prioritize **gender-based violence (GBV)**. Compensation can be accessed through the **Criminal Injuries Compensation Fund**, and victims of rape, domestic violence, and trafficking are eligible for both financial and social rehabilitation.

One of the standout features of South Africa's approach is its **community-based support model**. Non-governmental organizations (NGOs), faith-based institutions, and victim support centers are funded by the state to assist victims in filing applications, obtaining legal counsel, and accessing trauma counselling. These actors play a **quasi-institutional role**, serving as intermediaries between victims and the state, thereby enhancing accessibility and trust.

Another innovative development is the **Gender-Based Violence and Femicide Response Fund**, created in 2021 in response to rising incidents of GBV. The fund facilitates rapid disbursal of resources, including emergency housing, protective services, and medical support, especially for women in rural and under-resourced regions. This emergency response system is far more agile and comprehensive than India's underutilized Nirbhaya Fund.

South Africa, shaped by a history of apartheid and systemic violence, has developed a **constitutional model of restorative justice**. Though it does not have a centralized compensation statute, frameworks such as the **Victims' Charter (2004)** and **Gender-Based Violence and Femicide Response Fund (2021)** provide extensive support.

**Community-based victim support centres**, often run by women-led NGOs.

**Financial and psychosocial compensation** for rape, domestic abuse, and trafficking victims.

**Emergency relief funds** for housing, food, and healthcare in rural areas.

Judicial recognition of **symbolic restitution**, public apologies, and moral damages, especially in cases involving state failure (*Carmichele v. Minister of Safety and Security*, 2001).

South African courts also consider **intersectionality**, acknowledging how race, gender, and poverty compound victimization. The model, though decentralized, is rooted in **constitutional values of equality and human dignity**, consistent with **Section 9 and Section 10** of the South African Constitution.

### Key Comparison

From a comparative standpoint, several key takeaways emerge for India. First, countries like Sweden and Canada treat **compensation as a right**, decoupled from the criminal trial process. This is vital in ensuring access to justice for women victims, especially when criminal convictions are delayed or unlikely due to patriarchal biases in investigation and prosecution.

Second, the **integration of trauma-informed care**—from application procedures to adjudication—is a crucial strength in these countries. Victims are not forced to relive their trauma at every stage of the process, and institutional actors are sensitized to the psychological dimensions of victimhood. India's legal and procedural design can greatly benefit from such an approach.

Third, these countries place strong emphasis on **institutional coordination**. In Canada and Sweden, police, medical professionals, and legal service providers operate in sync, enabling a seamless flow of information and support. In India, the fragmentation of these services causes delays, redundant paperwork, and repeated trauma to victims.

Fourth, both Canada and Sweden have robust **monitoring and evaluation frameworks**. Compensation schemes are audited regularly, and public reports are published to ensure transparency. Victim feedback is institutionalized, which helps in reforming laws and practices in a responsive manner. In contrast, India lacks a centralized monitoring system, and victim voices are rarely heard in policymaking.

Lastly, these international models recognize that **financial assistance alone is insufficient**. True compensation must include social rehabilitation, legal support, housing, employment training, and counselling. By framing compensation within a broader restorative justice framework, these countries promote healing and re-empowerment of victims—a goal that India is still striving to achieve.

### 9.. Judicial Decisions and Landmark Judgments: India, Canada, Sweden, and South Africa

Judicial interpretation plays a pivotal role in shaping how laws related to victim compensation are implemented, expanded, or restricted. Courts are not only arbiters of legal disputes but also key agents in evolving victim-centric jurisprudence. A comparative study of landmark judicial decisions in India, Canada, Sweden, and South Africa reveals significant insights into how different legal systems address the needs and rights of victims, particularly women. This section explores notable judgments and their impact on victim compensation schemes within each country.

#### India: Expanding the Constitutional and Statutory Framework

In India, the judiciary has made considerable interventions to fill the legislative and executive void in victim compensation. A landmark moment came in **Bodhisattwa Gautam v. Subhra Chakraborty (1996)**, where the Supreme Court recognized that rape is not only a crime against the individual but also an affront to human dignity and a violation of Article 21 of the Constitution. The Court ordered the accused to pay interim compensation to the victim, setting a precedent for monetary relief even before the trial concluded. This judgment was critical in laying the foundation for a **constitutional right to compensation**, going beyond statutory schemes.

Following this, the Supreme Court in **Delhi Domestic Working Women's Forum v. Union of India (1995)** directed the establishment of Criminal Injuries Compensation Boards in each state and emphasized the need for compensation irrespective of conviction. This case stands out for advocating a **victim-friendly procedural mechanism**, including legal assistance, confidentiality of the victim's identity, and access to trauma counselling.

A more recent and significant judgment is **Nipun Saxena v. Union of India (2018)**. Here, the Court reiterated the importance of the **Nirbhaya Fund** and directed the Ministry of Women and Child Development to ensure uniform disbursal of compensation to rape survivors under the **Compensation Scheme for Women Victims/Survivors of Sexual Assault and Other Crimes (2018)**. The ruling also emphasized the creation of **one-stop centers** to support victims of sexual violence, setting the stage for a more institutionalized victim support system.

In **Laxmi v. Union of India (2014)**, a PIL filed by an acid attack survivor led to the Supreme Court ordering the regulation of acid sales and mandating state governments to pay **minimum compensation of ₹3**

**lakh** to acid attack victims. The Court observed that compensation is not a matter of charity but a **legal entitlement rooted in Article 21** and international human rights norms.

Despite these progressive judgments, a recurring issue is the **discretionary nature** of judicial awards. There is no uniform standard or methodology for calculating compensation. This often leads to **inconsistent amounts**, varying across states and judges. Moreover, implementation remains erratic, with delays in disbursement, lack of awareness among victims, and absence of institutional follow-up.

In **Bodhisattwa Gautam v. Subhra Chakraborty (1996)**, the Supreme Court declared that **rape violates Article 21** and directed interim **compensation** irrespective of trial outcome.

**Delhi Domestic Working Women's Forum v. Union of India (1995)** emphasized the need for **Criminal Injuries Compensation Boards, legal aid, and identity protection**.

**Laxmi v. Union of India (2014)** expanded rights for acid attack victims, making compensation mandatory and regulating acid sales.

**Nipun Saxena v. Union of India (2018)** led to the **Compensation Scheme for Women Victims of Sexual Assault**, reinforcing **one-stop centres** for holistic support.

Despite these landmark rulings, **implementation remains weak**. There is no **national enforcement mechanism**, and many states have failed to comply with the Supreme Court's guidelines. Compensation often remains **delayed, inadequate, and non-uniform**, undermining the transformative potential of these judgments.

### **Canada: Provincial Courts and a Strong Precedent System**

In Canada, landmark decisions on victim compensation are often rendered by **provincial courts and administrative tribunals**, reflecting the federal structure. Although Canada does not follow a centralized model for victim compensation, courts have actively interpreted the **Victims' Bill of Rights (2015)** to enhance procedural fairness, information rights, and restitution.

In the case of **R. v. Pham (2013)**, the Supreme Court of Canada emphasized the importance of restitution and victim participation. While the primary case involved sentencing, the Court observed that **victims must be consulted and informed**, particularly in cases of serious personal injury or sexual violence. This laid the groundwork for recognizing that **compensation and**

**restitution are integral to justice**, not merely optional remedies.

Provincial appellate courts have also played a vital role. In **R. v. Ipeelee (2012)**, although centered around sentencing of Indigenous offenders, the court indirectly reinforced the idea that victims, especially from marginalized communities, need holistic support and **compensation mechanisms that address intergenerational trauma**.

In **R. v. Pham (2013)**, the **Supreme Court of Canada** emphasized that **restitution and victim consultation are essential to justice**, setting a precedent for early-stage compensation. Administrative tribunals like the **Ontario Criminal Injuries Compensation Board** have awarded victims up to **CAD 25,000**, even without a conviction.

Administrative tribunals like Ontario's **Criminal Injuries Compensation Board** have historically delivered significant awards to victims, including **lifetime counseling, relocation support, and education assistance** for children of victims. While these decisions lack the dramatic effect of Supreme Court rulings, they form a consistent and predictable body of precedent that strengthens victim rights in practice.

### **Sweden: Integrating Feminist Principles into Judicial Philosophy**

Sweden's judicial interventions may not always be in the form of sensational verdicts, but the legal culture itself is rooted in **gender sensitivity, victim autonomy, and restorative justice**. The Swedish courts consistently uphold the principle that victims must not be retraumatized by the justice system, and this is reflected in the **broad interpretation of the Criminal Injuries Compensation Act**.

A notable case involved a **rape survivor who was unable to secure a conviction due to procedural flaws** in the police investigation. Despite the acquittal, the **Swedish Crime Victim Authority** awarded full compensation, and the administrative court upheld this decision, stating that the **standard of proof for compensation should be lower** than that of criminal conviction. This landmark affirmation set the precedent that **state responsibility to compensate is independent of prosecutorial outcomes**.

Another progressive judgment was delivered by the Court of Appeal in **2016**, where the court recognized the **psychological trauma** faced by a stalking victim as equivalent to physical injury. It awarded not only compensation but also ordered a restraining order, mandated public housing support, and prioritized the victim for government psychological services.

In Sweden, courts have consistently upheld that **state compensation is independent of prosecutorial success**. A 2016 appellate ruling awarded full compensation to a **stalking victim**, recognizing **psychological trauma** as valid harm. Courts often liaise with the **Crime Victim Authority** to design victim-specific support packages. The **judiciary and administrative bodies collaborate**, ensuring the judgment is not just punitive for the offender but also **restorative for the victim**. Courts frequently call upon the Crime Victim Authority to evaluate the victim's needs and suggest tailored compensation packages, reflecting a multi-disciplinary approach.

### South Africa: Transformative Constitutionalism and Reparative Justice

South Africa's jurisprudence on victim rights is grounded in **transformative constitutionalism**, where the courts actively shape law and policy to redress systemic injustice. A landmark judgment in this regard is **Carmichele v. Minister of Safety and Security (2001)**, where the Constitutional Court held the police and prosecution liable for failing to prevent a known threat from harming the victim. The Court established that **state actors owe a duty of care to potential victims**, and failure to act can lead to constitutional damages.

In **Nkala v. Harmony Gold Mining Co. Ltd (2016)**, the South Gauteng High Court certified a class action on behalf of thousands of mineworkers (including female workers) who had suffered occupational diseases due to employer negligence. Though not a direct GBV case, it significantly expanded the scope of **collective victimhood and compensation**, setting a precedent for mass tort claims and reparative frameworks.

The **Carmichele judgment** held police liable for failing to prevent foreseeable harm, reinforcing the **state's duty of care**. In **Nkala v. Harmony Gold Mining Co. Ltd (2016)**, courts recognized **collective victimhood** and expanded compensation eligibility to entire communities affected by systemic injustice. Such rulings underscore a **transformative, reparative vision** of justice, where compensation is not just relief, but a tool to **redress structural inequalities** and rebuild lives.

One of the more recent decisions is from the **Equality Court in 2020**, where the court ruled in favour of a woman who was sexually assaulted by a public official. The court awarded **exemplary damages** and ordered the state to **issue a public apology**, reflecting the recognition that victim redress includes **symbolic, moral, and material restitution**.

South African courts often adopt **international human rights instruments**, including the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** and the **UN Declaration of Basic Principles of Justice for Victims**, while interpreting domestic law. This harmonization of constitutional principles with international standards reinforces victim-centricity as a judicial norm.

### Conclusion

Despite a fairly progressive statutory framework under the CrPC and BNSS, India's victim compensation regime continues to suffer from significant implementation roadblocks, especially in the context of women survivors of violence. Legislative provisions like Sections 357A and 396 BNSS offer a rights-based foundation, but lack uniformity, enforceability, and trauma-informed implementation.

Institutional bodies such as SLSAs and NALSA function without adequate oversight or inter-agency coordination. Judicial discretion, while occasionally expansive, remains highly inconsistent—resulting in arbitrary and unpredictable compensation outcomes. Central schemes like the Nirbhaya Fund remain critically underutilized, and procedural delays compound the emotional and economic burden on victims.

What emerges clearly is a **disjuncture between law and justice**, where formal entitlements rarely translate into meaningful support. To remedy this, the state must go beyond legislative formality and ensure:

Mandatory and automatic referral to VCS by courts and police,

Enforceable timelines and standard compensation slabs, Integration of legal aid, psychological counselling, and housing support into the compensation process,

Centralized oversight mechanisms under NALSA or an independent victim compensation authority.

A victim compensation framework that is **trauma-informed, adequately funded, and uniformly applied**, is not only a legal necessity but a moral imperative in a constitutional democracy. Women survivors of violence deserve not just punitive justice for the accused, but rehabilitative justice for themselves.

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