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# VICTIM COMPENSATION JURISPRUDENCE IN INDIA: JUDICIAL CREATIVITY, STATUTORY GAPS, AND THE ROAD TO REFORM

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## ABSTRACT

The Indian criminal justice system has historically placed the victim at the margins of a process designed, ostensibly, to address the harm caused to victims. While the offender occupies the centre of the criminal process with procedural rights, constitutional safeguards, and institutional attention, the victim has remained what Justice Krishna Iyer memorably described as "the vanishing point of Indian criminal law." This paper undertakes a focused analysis of victim compensation jurisprudence in India, examining the statutory framework under the Code of Criminal Procedure, 1973 (CrPC), the transformative introduction of Section 357A, and the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). It analyses how the Supreme Court of India, through a series of landmark decisions spanning four decades, has developed compensation jurisprudence under constitutional principles and constructed a victim-centric jurisprudence in the absence of comprehensive legislative support. The paper identifies persistent structural gaps including inadequacy of compensation amounts, lack of uniformity across States, delays in disbursement, and the continued dependency on judicial discretion. By referring to comparative perspectives, the paper proposes institutional and legislative reforms and highlights the need for a dedicated Victim Rights Act to bring India's criminal justice system into alignment with constitutional values and international standards.

**Keywords:** Victim Compensation, Section 357A CrPC, BNSS 2023, Compensatory Jurisprudence, Article 21, Victim Rights, Criminal Justice Reform, Secondary Victimisation, Judicial Activism, Victim Rights Act.

## **Introduction**

The concept of justice has always been intertwined with the existence of the victim. Yet paradoxically, for much of legal history, the victim remained the most forgotten figure in a system ostensibly designed to address the harm caused to them. As criminal law evolved from a system of private retaliation to State-administered punishment, the victim was displaced from the centre of the justice process, reduced to the role of a complainant or witness while the State assumed the role of prosecutor.

In India, this displacement was institutionalised through the colonial architecture of the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1861. These frameworks were designed to define offences, regulate State power, and administer punishment, with no meaningful recognition of the victim as a participant in the process. The post-independence constitutional order introduced important constitutional protections through Articles 14, 21, 39A, and 41, but this potential was not immediately translated into statutory rights for victims. The judiciary has played an important role in this shift. The Supreme Court of India, unable to wait for legislative action, used the writ jurisdiction under Articles 32 and 226 of the Constitution to award monetary compensation to victims of State-inflicted harm and thereby developing a constitutional remedy beyond the existing statutory framework. Simultaneously, legislative reforms through the CrPC Amendment Act of 2008<sup>1</sup> which introduced Section 357A establishing State-funded victim compensation schemes and the enactment of the BNSS, 2023<sup>2</sup> have progressively built a statutory architecture for victim relief.

Yet the gap between formal provision and practical justice remains wide. Victim compensation schemes are inadequately funded, unevenly implemented, and rarely utilised to their full potential. The quantum of compensation awarded is frequently disproportionate to the actual harm suffered. Secondary victimisation i.e., the harm caused by the criminal justice system itself remains pervasive. And India continues to lack the dedicated, comprehensive victim rights legislation that is now standard in several comparable democracies. This paper analyses the development of victim compensation jurisprudence in India, identifies the structural gaps that persist, and proposes reforms for improving the victim compensation framework in India.

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<sup>1</sup> Code of Criminal Procedure, 1973, Sections 357, 357A, 358, 359.

<sup>2</sup> Bharatiya Nagarik Suraksha Sanhita, 2023.

## Literature Review

The academic literature on victimology and victim rights spans multiple disciplines. Benjamin Mendelsohn's pioneering work in victimology<sup>3</sup> and Hans von Hentig's *The Criminal and His Victim* (1948)<sup>4</sup> established victimology as a discipline, laying the foundation for later studies in victimology. At the international level, M. Cherif Bassiouni's work on victim reparations and the commentary generated by the UN Declaration of 1985<sup>5</sup> have shaped the understanding of State obligations toward victims.

In the Indian context, S.K. Madhavan's work on victimology<sup>6</sup> provides systematic analysis of the legislative and judicial developments. Upendra Baxi's contributions<sup>7</sup> to Indian constitutional jurisprudence illuminate the role of Public Interest Litigation and the Supreme Court as guardian of constitutional rights. The Law Commission of India's reports particularly the 154<sup>th</sup>, 178<sup>th</sup>, and 198<sup>th</sup> Reports<sup>8</sup> have examined victim participation, compensation, and witness protection. Recent scholarship by Mrinal Satish on sexual offences law and Aparna Chandra on constitutional criminal procedure has addressed victim-accused tensions within India's constitutional order. However, a comprehensive integrated analysis of compensation jurisprudence as a standalone subject examining the constitutional, statutory, judicial, and reform dimensions together remains a significant gap in Indian legal scholarship.

## Statement of Problem

Despite constitutional guarantees, statutory provisions, and a growing body of judicial precedent, the Indian criminal justice system does not provide a comprehensive, coherent, or effectively enforced framework for victim compensation. The central problems are: first, the fragmentation of the compensation framework across multiple statutes without a uniform legislative framework; second, the structural limitation of Section 357 CrPC which ties compensation to conviction, leaving victims of undetected or acquitted offenders without statutory relief; third, the significant variation across States in the quantum and efficiency of

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<sup>3</sup> Mendelsohn, B., "The Origin of the Doctrine of Victimology" (1956) 3 *Excerpta Criminologica* 239.

<sup>4</sup> Von Hentig, H., *The Criminal and His Victim* (Yale University Press, 1948).

<sup>5</sup> United Nations Declaration of Basic Principles of Justice for Victims of Crime, 1985, GA Res. 40/34.

<sup>6</sup> Madhavan, S.K., *Victimology in India* (APH Publishing, 2005).

<sup>7</sup> Baxi, U., *The Crisis of the Indian Legal System* (Vikas Publishing, 1982).

<sup>8</sup> Law Commission of India, 154<sup>th</sup> Report on Code of Criminal Procedure, 1973 (1996); Law Commission of India, 178<sup>th</sup> Report on Recommendations for Amending Various Enactments, Both Civil and Criminal (2001); Law Commission of India, 198<sup>th</sup> Report on Witness Identity Protection (2006).

compensation under Section 357A schemes; fourth, the near-total absence of interim compensation in practice; and fifth, the absence of a dedicated victim rights legislation that would create enforceable entitlements across the entire criminal justice process. The cumulative effect is that the formal commitment to victim rights in Indian law has not translated into consistent, adequate, or timely compensation for most victims.

### **Objective of the Study**

The specific objectives of this study are:

1. To trace the historical and jurisprudential development of victim compensation in India from offender-centric to victim-centric justice.
2. To critically analyse the statutory framework for victim compensation under the CrPC, BNSS 2023<sup>9</sup>, and special legislations.
3. To examine the judicial creativity of the Supreme Court of India in constructing a constitutional remedy of compensation for violations of fundamental rights.
4. To identify the structural gaps and implementation challenges in the existing victim compensation framework.
5. To propose legislative, institutional, and policy reforms for the establishment of a comprehensive victim rights framework in India.

### **Research Methodology**

This research adopts a doctrinal methodology, involving the analysis of constitutional provisions, statutory texts, judicial decisions, Law Commission reports, and academic literature. The study is primarily analytical and critical in nature, using comparative analysis of victim rights frameworks in the United Kingdom, United States, and Australia to examine possible reforms. Primary sources include Supreme Court and High Court judgments, parliamentary debates, and official reports. Secondary sources include scholarly articles, monographs, and commentary on criminal law and victimology.

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<sup>9</sup> Bharatiya Nagarik Suraksha Sanhita, 2023.

## **Hypothesis**

The Indian criminal justice system, despite the development of constitutional compensatory jurisprudence and the legislative introduction of Section 357A CrPC, does not provide an adequate, uniform, or comprehensive framework for victim compensation. The existing framework is characterised by fragmentation, inadequacy of quantum, inconsistent implementation across States, and structural dependence on conviction or judicial discretion. It is further hypothesised that the enactment of a dedicated Victim Rights Act creating enforceable entitlements to compensation, participation, and support throughout the criminal justice process is a constitutional and policy necessity that judicial activism alone is insufficient to address these issues.

## **Relevance of the Research**

This research is relevant for several reasons. Legally, it addresses the gap in comprehensive scholarly analysis of India's victim compensation jurisprudence especially when the BNSS, 2023 has replaced the CrPC and the adequacy of its victim-related provisions requires critical examination. Socially, India's high rates of underreporting of crime particularly sexual violence, caste atrocities, and domestic abuse, are directly connected to victims' lack of confidence in the justice system's capacity to address their needs. Institutionally, the reforms suggested in this paper are relevant for the Law Commission of India, NALSA, State Legal Services Authorities, and the Ministry of Home Affairs as they develop implementing frameworks under the BNSS.<sup>10</sup> Academically, it contributes to the growing scholarship on victim justice, constitutional remedies, and criminal justice reform.

## **Historical Development: From Offender-Centric to Victim-Centric Justice**

The historical trajectory of victim rights reflects a fundamental shift: the more sophisticated the State's criminal justice became, the more gradually the victim was displaced from its central role. In ancient legal systems like the Code of Hammurabi, Roman law, early Germanic codes, the victim or their family retained the primary right to demand restitution from the offender. Crime was understood as a wrong against an individual that generated an obligation to compensate the victim. The emergence of the modern State gradually transformed this understanding: crime became an offence against the sovereign and then against society at large,

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<sup>10</sup> National Legal Services Authority, Model Victim Compensation Scheme (2010).

with the State assuming the role of complainant and prosecutor.

In colonial India, this displacement was codified through the IPC and CrPC, both of which followed the offender-centric model of the English common law tradition. The victim appeared in these statutes as complainant, informant, and witness but never as a rights-bearing participant. The post-independence Constitution gradually changed this position. The rights to equality (Article 14), life and dignity (Article 21), legal aid (Article 39A), and public assistance (Article 41) collectively provided the constitutional basis upon which a victim rights jurisprudence could eventually be constructed.

The victim rights movement gained momentum during the 1970s and 1980s. The First International Symposium on Victimology (Jerusalem, 1973)<sup>11</sup> and the establishment of victimology as an academic discipline created intellectual pressure for legal reform. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985<sup>12</sup> which established access to justice, restitution, State compensation, and assistance as the four pillars of victim rights provided the international framework for victim rights. In India, the Supreme Court's decisions in *Rudal Shah v. State of Bihar* (1983)<sup>13</sup> and subsequent cases began the process of developing constitutional victim compensation jurisprudence, while the CrPC Amendment Act of 2008<sup>14</sup> marked the first significant legislative response. The BNSS, 2023 represents the latest step in India's efforts to strengthen victim protection.

## **Statutory Framework for Victim Compensation in India**

### **a. Sections 357 to 359 CrPC<sup>15</sup> and the Limitations under the CrPC Framework:**

The CrPC, 1973 provided the primary statutory framework for victim compensation through Sections 357–359. Section 357(1) empowered courts to direct that fines imposed be applied toward compensating victims; Section 357(3) is the more significant provision which permitted courts to order accused persons to pay compensation to victims regardless of whether a fine was imposed. Section 358 provided nominal compensation (maximum Rs. 100) for groundless arrest, while Section 359 addressed costs in non-cognizable offences. The fundamental

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<sup>11</sup> Madhavan, S.K., *Victimology in India* (APH Publishing, 2005).

<sup>12</sup> United Nations Declaration of Basic Principles of Justice for Victims of Crime, 1985, GA Res. 40/34.

<sup>13</sup> *Rudal Shah v. State of Bihar*, (1983) 4 SCC 141.

<sup>14</sup> Code of Criminal Procedure, 1973, Sections 357, 357A, 358, 359.

<sup>15</sup> Code of Criminal Procedure, 1973, Sections 357, 357A, 358, 359.

limitation of this framework was its dependence on conviction and the financial capacity of the accused. Where the accused was acquitted, unidentified, or indigent, Section 357 offered no remedy. Courts' historic underutilisation of even the limited powers available compounded this structural gap, prompting Justice Krishna Iyer in *Ratan Singh v. State of Punjab* (1979)<sup>16</sup> to observe that "victim reparation is still the vanishing point of our criminal law."

### **b. Section 357A CrPC: The Paradigm Shift:**

The introduction of Section 357A by the CrPC Amendment Act, 2008<sup>17</sup> was the most significant legislative advance in victim compensation since the CrPC's enactment. It established State-funded victim compensation schemes, operating independently of conviction or the offender's financial capacity. Section 357A(2) made District and State Legal Services Authorities the administrative bodies for determining and disbursing compensation. Crucially, Section 357A(3) extended compensation to cases ending in acquittal or discharge, while Section 357A(4) extended it further to cases where the offender was unidentified or untraced. Section 357A(6) provided for immediate interim relief like medical benefits, first aid, on the certificate of a police officer or Magistrate.

The provision for State-funded compensation independent of conviction marked a paradigm shift from offender liability to State responsibility based on the idea that the state also has a responsibility towards victim of crime. However, implementation through State-level schemes has resulted in inconsistent implementation across States, with enormous variation in eligible categories, compensation quantum, and disbursement efficiency across States.<sup>18</sup>

### **c. BNSS 2023: Continuity and Incremental Change:**

The *Bharatiya Nagarik Suraksha Sanhita, 2023*<sup>19</sup>, which replaced the CrPC, carries forward the victim compensation framework with minor improvements. It retains the core architecture of Section 357 (now renumbered) and Section 357A, while introducing provisions for e-FIR registration, technology-enabled testimony, and mandatory investigation timelines that reduce procedural burdens on victims. The BNSS also strengthens victim notification rights and contains enhanced provisions for the recording of statements of women and child complainants.

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<sup>16</sup> *Ratan Singh v. State of Punjab*, (1979) 4 SCC 719.

<sup>17</sup> Code of Criminal Procedure, 1973, Sections 357, 357A, 358, 359.

<sup>18</sup> National Legal Services Authority, Model Victim Compensation Scheme (2010).

<sup>19</sup> *Bharatiya Nagarik Suraksha Sanhita, 2023*.

However, it does not introduce a dedicated compensation tribunal, a statutory minimum compensation schedule, or a National Victim Compensation Fund i.e., reforms that would have represented a substantial improvement.

#### **d. Compensation under Special Legislations:**

Several special legislations provide targeted compensation frameworks. The SC/ST (Prevention of Atrocities) Act, 1989<sup>20</sup> provides phased monetary relief ranging from Rs. 25,000 to Rs. 2,00,000, with 25% disbursed at chargesheet stage, recognising that economically marginalised victims require timely financial assistance. The POCSO Act, 2012<sup>21</sup> empowers Special Courts to direct interim compensation for child victims. The Protection of Women from Domestic Violence Act, 2005<sup>22</sup> provides monetary relief orders as civil remedies, obtainable even ex parte in urgent cases. These frameworks reflect legislative recognition that particular forms of victimisation require different forms of compensation and support, but they remain uncoordinated with each other and with the general framework under the CrPC and BNSS.

### **Judicial Approach and Development of Compensation Jurisprudence**

#### **a. Constitutionalisation of Compensation: Rudal Shah to Nilabati Behera:**

The constitutional basis for compensation as a public law remedy was established in *Rudal Shah v. State of Bihar* (1983)<sup>23</sup>, where the Supreme Court confronted a man detained for over fourteen years after his acquittal. The Court held that Article 32, which grants the power to issue appropriate orders for the enforcement of fundamental rights, necessarily includes the power to award monetary compensation where a violation cannot be adequately redressed through declaratory relief alone. This foundational decision was significant because it established the principle that the State bears direct financial liability for violations of fundamental rights, enforceable through the constitutional court.

*Nilabati Behera v. State of Orissa* (1993)<sup>24</sup> consolidated this principle in the context of custodial death. The Court awarded Rs. 1,50,000 to a mother for her son's death in police custody, the

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<sup>20</sup> Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

<sup>21</sup> Protection of Children from Sexual Offences Act, 2012.

<sup>22</sup> Protection of Women from Domestic Violence Act, 2005.

<sup>23</sup> *Rudal Shah v. State of Bihar*, (1983) 4 SCC 141.

<sup>24</sup> *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746.

judgement made three important contributions:-

- i. it distinguished the constitutional remedy of compensation from the civil law remedy of damages, holding them independent;
- ii. it definitively rejected the doctrine of sovereign immunity in constitutional claims and;
- iii. it reaffirmed that the constitutional remedy is a public law remedy flowing from the State's obligation to protect fundamental rights.

These principles have influenced later developments of State liability for custodial violence.

**b. Mandatory Consideration: Sarwan Singh and Ankush Shivaji Gaikwad:**

*Sarwan Singh v. State of Punjab* (1978)<sup>25</sup> made a landmark contribution by articulating the specific criteria courts must apply when exercising the discretionary power under Section 357:-

- i. the financial capacity of the accused,
- ii. the nature and impact of the offence,
- iii. the reasonableness of the claim, and
- iv. the mandatory obligation to apply the court's mind to the question of compensation in every case,
- v. recording reasons where no award is made.

This last requirement transformed compensation from an exceptional remedy to an obligatory consideration in the sentencing exercise.

*Ankush Shivaji Gaikwad v. State of Maharashtra* (2013)<sup>26</sup> further strengthened this position, holding clearly that courts are under a statutory duty to consider compensation in every criminal case and that this duty is not discharged by the mere imposition of sentence. The Court observed that Section 357 creates an obligation and not merely a discretionary option, to engage

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<sup>25</sup> *Sarwan Singh v. State of Punjab*, (1978) 4 SCC 111.

<sup>26</sup> *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.

with the question of compensation, and provided practical guidance on conducting a summary enquiry into the accused's financial capacity. The judgment has significantly improved judicial engagement with victim compensation and provided appellate courts with a basis for intervention where trial courts have failed to engage with the question.

**c. Dignity and Participation: Bodhisattwa Gautam and Mallikarjun Kodagali:**

*Bodhisattwa Gautam v. Subhra Chakraborty* (1996)<sup>27</sup> marked an important step by awarding interim compensation to a rape victim during the pendency of the trial before conviction or any formal determination of liability. The Court held that rape is violative of the victim's right to live with dignity under Article 21, and that the victim's constitutional entitlement to compensation is independent of the outcome of the criminal trial. This holding that the victim's suffering creates an obligation of relief regardless of the success of prosecution; moved beyond the traditional approach where compensation depended mainly on conviction and has since been reflected in statutory provisions under POCSO<sup>28</sup> and in State compensation schemes.

*Mallikarjun Kodagali v. State of Karnataka* (2018)<sup>29</sup> represents the most comprehensive judicial statement about the victim's position in the Indian criminal justice system. The Court surveyed the international framework, the CrPC, and constitutional guarantees and held that victims are rights-bearing stakeholders entitled to representation and participation at all stages of proceedings. The Court's observation that victims suffer "secondary victimisation through repeated appearances in court in a hostile or semi-hostile environment" constitutes an authoritative judicial acknowledgment of the systemic harm that the justice process itself inflicts and emphasised the need to reduce such harm.

**d. State Accountability: D.K. Basu, SAHELI, and Christian Community Welfare Council:**

*D.K. Basu v. State of West Bengal* (1997)<sup>30</sup> issued a set of binding guidelines for arrests and detentions, establishing that monetary compensation is "sometimes perhaps the only suitable remedy" for violations of the fundamental right to life, that the State is vicariously liable without recourse to sovereign immunity, and that the State retains the right to recover

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<sup>27</sup> *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

<sup>28</sup> Protection of Children from Sexual Offences Act, 2012.

<sup>29</sup> *Mallikarjun Kodagali v. State of Karnataka*, (2018) 15 SCC 131.

<sup>30</sup> *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

compensation paid from the errant officer. SAHELI v. Commissioner of Police (1990)<sup>31</sup> extended the compensatory jurisdiction to innocent bystanders by awarding exemplary compensation to a mother for the custodial death of her child at police hands and establishing that the constitutional remedy reaches all persons harmed by State agents acting in the course of their duties. State of Maharashtra v. Christian Community Welfare Council (2003)<sup>32</sup> strengthened this framework by establishing the principle of individual officer accountability within State liability, by ensuring both State and individual accountability.

### **Structural Gaps and Challenges in the Existing Framework**

Despite the significant judicial and legislative developments outlined above, the existing victim compensation framework in India suffers from several structural shortcomings.

The most fundamental challenge is the inadequacy of compensation quantum. State victim compensation schemes established under Section 357A<sup>33</sup> vary enormously across States, with many setting maximum compensation limits that bear no rational relationship to the actual losses suffered by victims of serious crime. Victims of grievous injury, sexual violence, and homicide frequently receive amounts that are a small fraction of their medical expenses, lost income, and rehabilitation needs. No national minimum compensation schedule exists, and there is no indexation mechanism to adjust compensation for inflation or changing economic conditions.

The second major challenge is delay in disbursement. The two-month timeline prescribed under Section 357A(5) for the completion of enquiries by Legal Services Authorities is routinely breached in practice. Victims particularly those from marginalised communities who are often in acute financial distress, frequently wait months or years for compensation that arrives too late to address their immediate rehabilitation needs. The interim relief mechanism under Section 357A(6) is widely underutilised.

The third challenge is the lack of uniformity across States. The patchwork of State-level victim compensation schemes has produced a system in which the compensation available to a victim depends significantly on the State in which the crime occurred. This creates unequal treatment

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<sup>31</sup> SAHELI, A Women's Resources Centre v. Commissioner of Police, (1990) 1 SCC 422.

<sup>32</sup> State of Maharashtra v. Christian Community Welfare Council, (2003) 8 SCC 546.

<sup>33</sup> Code of Criminal Procedure, 1973, Sections 357, 357A, 358, 359.

of victims across different States in a system committed to equality before the law, and it has been criticised by the Supreme Court in multiple judgments directing States to improve their schemes.

The fourth challenge is low victim awareness. Many victims particularly in rural and semi-urban areas and from marginalised communities are unaware of their entitlement to compensation or of the mechanisms through which it may be obtained. Police officers and public prosecutors who are expected to inform victims of their rights frequently fail to do so. The Legal Services Authorities, mandated to both determine and disburse compensation, face severe resource and capacity constraints in many States.

The fifth challenge is secondary victimisation. The criminal justice process itself, through insensitive police recording of statements, repeated court appearances, aggressive cross-examination, and public exposure of victims' identities all of which inflict harm upon victims that adds to the trauma already suffered by the victim. Trauma-sensitive approaches are still not commonly followed in Indian police and court practice.

The sixth challenge is the absence of a dedicated legislative framework. India lacks a comprehensive Victim Rights Act that creates enforceable, justiciable rights across all the stages of criminal justice process covering information, participation, protection, compensation, and rehabilitation in a single, coherent statutory instrument. The existing framework is a collection of scattered provisions across multiple statutes, administered by multiple agencies without coordination or accountability.

## **Results and Discussion**

The analysis reveals a criminal justice system that has made extraordinary judicial progress in developing victim-centric compensatory jurisprudence but has not been matched by commensurate legislative or executive action. The Supreme Court has, through creative constitutional interpretation, constructed a framework of State liability for violations of fundamental rights that has provided direct relief to victims of custodial violence, sexual crime, and institutional abuse. The introduction of Section 357A represented an important legislative reform in extending compensation beyond the conviction-centric model. And the provisions of

special legislations like POCSO<sup>34</sup>, SC/ST Act<sup>35</sup> and PWDVA<sup>36</sup> that reflect special protection for vulnerable categories of victims.

However, the implementation record demonstrates that legal provision without institutional capacity, adequate funding, and administrative accountability does not always result in effective relief. The D.K. Basu guidelines have not eliminated custodial torture. The mandatory FIR registration directed in *Lalita Kumari v. Government of U.P.* (2013)<sup>37</sup> has not eradicated police refusal. And the compensation schemes under Section 357A have not ensured that all eligible victims receive adequate and timely relief. The judiciary alone cannot fully address these implementation problems. This requires sustained legislative and executive action.

The comparative legal frameworks also provide useful guidance. The United Kingdom's Criminal Injuries Compensation Scheme<sup>38</sup>, established as early as 1964, operates through a dedicated agency with a published tariff of compensation amounts, providing predictability and consistency. The United States' Crime Victims Fund, established under the Victims of Crime Act, 1984<sup>39</sup>, provides billions of dollars annually in compensation to victims across all States. Australia's victim rights legislation<sup>40</sup> creates enforceable statutory rights to information, participation, and compensation with dedicated Victim Services units in each State. In each of these jurisdictions, these systems show the importance of a dedicated legislative framework, a dedicated funding mechanism, and specialised institutional mechanisms, the three elements that India's current framework lacks.

### Summary of Findings

1. The Indian criminal justice system has historically operated on an offender-centric model that placed victims at the margins of the process; the constitutional and legislative framework has gradually attempted to address this imbalance.
2. The judicial compensatory jurisprudence developed through *Rudal Shah*, *Nilabati Behera*, *D.K. Basu*, *Bodhisattwa Gautam*, *Ankush Shivaji Gaikwad*, and *Mallikarjun*

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<sup>34</sup> Protection of Children from Sexual Offences Act, 2012.

<sup>35</sup> Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

<sup>36</sup> Protection of Women from Domestic Violence Act, 2005.

<sup>37</sup> *Lalita Kumari v. Government of U.P.*, (2014) 2 SCC 1.

<sup>38</sup> Criminal Injuries Compensation Authority, Criminal Injuries Compensation Scheme 2012 (U.K. Government)

<sup>39</sup> Victims of Crime Act of 1984, 34 U.S.C. §§ 20101–20111.

<sup>40</sup> Victims' Rights and Support Act 2013 (NSW) (Austl.).

Kodagali represents the most significant contribution to victim rights in India and has recognized the constitutional obligation of the State to compensate victims of fundamental rights violations.

3. Section 357A CrPC significantly changed the compensation framework by establishing State-funded compensation independent of conviction, but its implementation through State schemes has been inconsistent, inadequate in quantum, and slow in disbursement.
4. The BNSS, 2023 carries forward the existing compensation framework with minor improvements but does not address the fundamental structural gaps identified in this study.
5. Special legislations provide targeted compensation for particular categories of victims but operate without coordination with the general framework or with each other.
6. Structural challenges the inadequacy of quantum, delay in disbursement, lack of uniformity, low awareness, secondary victimisation, and absence of a dedicated framework, continue to prevent victims from receiving timely and adequate justice.
7. Comparative experience in the UK, USA, and Australia demonstrates that effective victim compensation requires dedicated legislation, dedicated funding, and specialised institutional mechanisms.

## **Conclusion**

The development of victim compensation jurisprudence in India over the past four decades reflects the important role played by the judiciary where legislative reforms were limited. The Supreme Court of India, through the progressive interpretation of Article 21 and the creative use of its writ jurisdiction, has developed constitutional compensation jurisprudence for victims under Article 21 that has provided direct and meaningful relief to hundreds of victims of State violence, sexual crime, and institutional abuse. The introduction of Section 357A CrPC and the provisions of special legislations have laid down the foundation for a statutory framework for victim compensation.

Yet the gap between legal provisions and practical implementation of victim justice in India remains significant. The majority of victims particularly those from economically and socially

marginalised communities, those in rural and semi-urban areas, and those whose crimes are not the subject of public or judicial attention, do not receive adequate compensation, meaningful participation, or dignified treatment within the criminal justice system. Judicial intervention alone cannot substitute for the comprehensive legislative commitment required under the constitutional principle of equal justice.

There is a need for further reforms. India requires a dedicated Victim Rights Act that creates enforceable, justiciable entitlements to compensation, participation, protection, and rehabilitation across the entire criminal process. This Act must establish a National Victim Compensation Fund with adequate and predictable resources; a statutory minimum compensation schedule indexed to the nature of offences and updated periodically; an independent Victim Services Agency with presence at the district level; mandatory victim notification at every stage of the criminal process; and a formal Victim Impact Statement procedure. These reforms would strengthen victim protection and improve access to justice within the criminal justice system. They would also help realise the constitutional goal of equal justice for every citizen.

### **Implications**

The findings of this study have the following implications for law, policy, and institutional reform:

1. **Legislative:** The enactment of a comprehensive Victim Rights Act modelled on the UK Victims and Prisoners Act, 2024 and the US Victims of Crime Act, 1984, adapted to India's constitutional and social context, is a major legislative priority in Indian criminal justice reform.
2. **Institutional:** NALSA should be given adequate powers and resources to operate a National Victim Compensation Fund, with dedicated Victim Services units at the District Legal Services Authority level in every district, with trained personnel for victim assistance.
3. **Judicial:** The Supreme Court should issue comprehensive guidelines under Article 142 directing all trial courts to mandatorily consider and award compensation in every criminal case, while ensuring that courts provide proper justification in cases of

inadequate compensation.

4. Policy: The Ministry of Home Affairs and State Governments should establish a uniform national minimum compensation schedule under Section 357A, with phased disbursement mechanisms and mandatory timelines for interim relief, to reduce differences in compensation across states.
5. Awareness: NALSA and State Legal Services Authorities should implement mandatory victim rights awareness programmes, integrated into police training, court processes, and community legal literacy campaigns, to ensure that victims are informed of their entitlements from the point of FIR registration.