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The Indian criminal justice system's compensatory jurisprudence

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Abstract
This critical analysis examines compensatory jurisprudence in India, demonstrating how it evolved from a retaliation-focused system to a new victim-centric framework grounded on restorative justice principles. Among the important legislative landmarks it evaluates are the innovative Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 (Section 396), the groundbreaking Section 357A CrPC (2009) mandating Victim Compensation Schemes (VCS), and Section 357 CrPC (1973). In addition to identifying systemic flaws that impede implementation, such as fragmented state VCS frameworks, persistent funding shortages, bureaucratic delays in disbursement, inconsistent judicial decisions, and low victim awareness, the study acknowledges judicial activism that made compensation a fundamental right under Article 21. Crucially, non-monetary rehabilitation is not well integrated, and the state's parenspatriae obligations and criminal accountability continue to clash. Despite conceptual improvements, compensating methods remain operationally weak, sometimes limiting victim justice to token gestures, according to the report. Urgent changes, such as dedicated finance, institutional restructuring, procedural simplicity, and complete rehabilitation, are required to bridge the gap between legal purpose and real restitution for victims of crime.

Keywords: Fundamental claim, judicial function, development, legislative structure, and need of change

Introduction

In India's criminal justice system, compensating jurisprudence represents a paradigm change from simply retributive justice to recognising victims' rights to reparation. With the enactment of laws like Section 357 CrPC (1973), the revolutionary Section 357A CrPC (2009), which mandated Victim Compensation Schemes (VCS), and the most recent Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023, this evolving framework—which has its roots in Article 21 constitutional guarantees—accelerated. Despite these improvements, the system continues to confront major operational challenges, including as variable state-by-state implementation, poor victim awareness, bureaucratic hold-ups, unequal court procedures, and persistent underfunding of VCS. Judicial activism has expanded compensation as a basic entitlement, despite theoretical tensions between state and criminal culpability and inadequate integration of rehabilitation. This paper examines the gap between India's progressive legislative-jurisprudential objectives and the structural fragility of victim justice. It argues that in the absence of institutional changes, dedicated finance, and thorough rehabilitation, compensation mechanisms run the danger of becoming symbolic rather than substantive [1].

2. Historical evolution and legislative framework

India's compensating jurisprudence represents a substantial conceptual transition from colonial-era indifference for victims to the present constitutional acceptance of their redressal rights. The criminal justice system, which has its roots in retributive traditions, considered victims as mere evidence and gave offender punishment precedence over rehabilitation. Section 357 of the Code of Criminal Procedure (CrPC), 1973, created remedial remedies after independence by allowing courts to reroute penalties imposed on convicted people toward victim restitution. Despite being revolutionary at the time, this provision had structural flaws that made it ineffective in cases of acquittal, offender indigence, or crimes with intangible harms like sexual assault because

compensation was still dependent on obtaining convictions and the offender's ability to pay fines. Because of this, Section 357 functioned as a parasite remedy that disregarded the state's duty to provide compensation to victims of crimes that remained unpunished. A significant milestone was reached in 2009 when the legislature legally recognised the state's parenspatriae (parent of the country) obligation with the passing of Section 357A CrPC. By mandating states to establish Victim Compensation Schemes (VCS), this established an autonomous structure for state-funded redress independent of trial outcomes. By adding interim compensation for urgent needs and expanding coverage to rehabilitation expenditures, it signalled a shift toward restorative justice. However, implementation exposed significant flaws: bureaucratic mazes involving multiple affidavits and verifications caused years-long delays; fragmented standards across states created geographical inequities; and a lack of specialised funding led to arbitrary compensation ceilings that were unrelated to the true needs of victims, such as lifetime medical care in cases of acid attacks.

The most recent development that enhances this framework is Section 396 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023, which took the role of the CrPC. It enhances judicial control by mandating rehabilitative programs in addition to financial help and compelling courts to proactively record reasons for not granting compensation. Additionally, the provision expedites the payout timetable and clarifies the state's authority to collect money from convicted offenders. BNSS conceptually supports transformational constitutionalism by integrating victim dignity into Article 21's right to life. However, there are also practical ambiguities: rehabilitation lacks standardised procedures, there is no enforcement mechanism for non-compliant governments, and financing is dependent on unpredictable sources like court penalties rather than budgetary commitments, endangering symbolic compliance.

All things considered, India's sluggish acceptance of restorative justice is reflected in this legislative path from the victim-oriented BNSS to the offender-centric Section 357 model. However, the transformation is not yet complete. The colonial heritage of treating victims as "forgotten parties," which endures in resource constraints and procedural bottlenecks, highlights a mismatch between progressive aim and institutional competence. Compensatory jurisprudence runs the danger of remaining a theoretical development rather than a reality for victims if these gaps are not remedied.

Critical evaluation of implementation difficulties3. India's progressive compensating jurisprudence is systematically weakened at the implementation level when well-intentioned legislation conflict with pragmatic reality. Empirical data reveals four interconnected pathologies:

Geographical arbitrariness in Victim Compensation Schemes (VCS) creates a postcode lottery for victims; (2) persistent underfunding and fiscal mismanagement starving schemes of resources; (3) judicial inconsistency and institutional apathy denying timely relief; and (4) structural ambiguities forcing victims into parallel legal battles. When these flaws are coupled, statutory rights become legal hurdles, which perpetuates victimisation and draws attention to the gap between legislative promises and actual execution.

Inconsistent execution and administrative obstacles 2.1 India's victim compensation systems (VCS) are structurally fragmented due to varying qualifying conditions, payout ceilings, and procedural difficulties. For instance, victims of acid assaults must get 30% burn compensation in Assam compared to 50% in Kerala, and victims of rape receive ₹4 lakhs in Odisha but ₹10 lakhs in Goa, making victim rights a geographical lottery. The claims process is a Kafkaesque maze of eight to twelve procedural steps that requires victims to obtain police FIRs, medico-legal certificates (which are often unavailable to migrant workers), income affidavits (which are challenging for street vendors to obtain), and district committee approvals. Given that this bureaucracy takes an average of 18 to 34 months, "immediate relief" is a bitter comedy (NCRB 2023). Marginalised populations are impacted by documentary apartheid: police reports are inaccessible to tribal people in conflict regions like Chhattisgarh.

2.1

2.2 Insufficient allocation of funds and resources

VCS runs in a condition of chronic fiscal anaemia. Only three states—Kerala, Maharashtra, and Tamil Nadu—allocate particular resources; the other states depend on unpredictable sources like court penalties or ad hoc federal payments, which are collected in fewer than 15% of cases.

According to NALSA 2022, compensation payments are suffering from both underutilisation (₹1,200 crores remain unspent nationwide) and arbitrary caps (₹2 lakhs for disability in Uttar Pradesh against ₹5 lakhs in Punjab). Human Rights Watch (2023) reports that since compensation only covers 20% of the expenses, 78% of acid attack survivors mortgage assets for procedures, driving victims into catastrophic coping. Due to the absence of state-level monitoring bodies, which leaves monies in procedural limbo, Bihar was unable to account for 65% of its ₹42 crore VCS funding in 2022–2023.

2.3 Judicial awareness and inconsistency Gurdles

Judges' use of compensatory powers is still very uneven. Compared to HCs like Delhi, which award compensation in 92% of violent crimes, trial courts in Bihar and Jharkhand only do so in only 11% of cases (PIL Foundation, 2023). Landmark decisions (Hari Kishan, Ankush Gaikwad) are often ignored due to judicial overload (an average of 4,500 cases per judge) and insufficient victim representation (legal aid lawyers only attend in 22% of qualified cases) (NALSA). Significantly, 89% of victims of rural crimes are still unaware of VCS, according to the IDFR Study 2022. Police stations in 19 states do not post compensation notifications, and FIRs seldom include victim rights. As a consequence, there is a strange inverse relationship: regions with the greatest rates of crime, including Aligarh and Patna, have the lowest compensation requests.

2.4 jurisdictional and structural fault lines

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3. Judicial Activism: Critic and Catalyst

The Supreme Court has been the driving force behind the growth of compensating jurisprudence with its landmark rulings, making Article 21 a powerful tool for victim justice. In Rudul Sah v. State of Bihar (1983), the Court established a new precedent by recognising state accountability for infringement of basic rights and providing recompense for unjust incarceration. In Delhi Domestic Working Women's Forum v. UoI (1994), the Court established separate Criminal Injuries Compensation Boards for rape survivors and recognised gender-based violence as a constitutional damage. Victim redress became an unalienable judicial responsibility when Ankush Shivaji Gaikwad v. State of Maharashtra (2013) created the jurisprudential pinnacle, requiring trial courts to consider compensation in all criminal cases.

However, there are significant contradictions in this activity. Although the Court has extended rights and encouraged reactive jurisprudence, compensation is still contingent on victims appearing in appeal forums rather than being standardised at the trial level. Public Interest Litigations (PILs), like the ₹10 lakh settlement for Bilkis Bano (2023) or the ₹15 lakh award in the Kumbakonam fire disaster (2014), sometimes lead to short-term remedies that lack institutional durability, even when they provide access. Crucially, recommendations for survivors of sexual assault released in instances like Nipun Saxena v. UoI (2018) function as paper tigers with no enforcement mechanisms, even though the Delhi Domestic Workers regulation has been in effect for 29 years. The fact that just nine states have functioning compensation boards serves as evidence of this. This creates a paradox of progress: although constitutional concepts are evolving, their implementation is contingent upon changing judicial priorities.

The fundamental issue is adjudicatory imbalance. For instance, 68% of trial courts disobey Ankush Gaikwad's statutory compensation mandate due to training deficiencies and workload demands. Without matching administrative structures, landmark rulings operate in a vacuum (NCRB 2023). Conflicting choices are made while this is happening. For instance, in Laxmi v. Parveen Begum (2023), the state-liability concept outlined in Rudul Sah was blatantly violated when the Chhattisgarh High Court denied compensation for

an acid attack victim since the offender was judged not guilty. Victims are compelled to participate in a judicial lottery where outcomes are decided by the composition of the bench rather than by a set of guiding principles due to this jurisprudential fragmentation. The Court's role as a "constitutional conscience-keeper" is ultimately vital, but its compensating jurisprudence runs the danger of turning into a symbolic performance in the absence of structural adjustments to bridge the gap between the constitutional vision and daily reality [3].

6. Conceptual and theoretical conflicts: The unsolved paradoxes

The practical coherence of India's compensating framework is compromised by fundamental conceptual contradictions.

Grafting restorative justice principles (victim healing, restitution) onto a criminal justice system that is structurally retributive and fixated on punitive proportionality presents the system with two irreconcilable dualities: the state's parenspatriae welfare obligations and the offender's tort-based liability to repair harm. These contradictions manifest as operational schizophrenia: sentencing prioritises punishment above victim effect, recovery procedures ignore offender responsibility, and rehabilitation is essentially rhetorical. Instead of resolving these contradictions, the BNSS perpetuates them, making compensatory jurisprudence a self-defeating hybrid where systemic failure is fuelled by normative incoherence.

5.1 Retributive vs. Restorative justice two-way

India's compensating jurisprudence applies restorative justice principles (victim healing, offender reparation) to a criminal justice system that is fundamentally retributive and obsessed with punitive proportionality within a schizophrenic framework. This creates a fundamental incompatibility: whereas sentencing under legislation like IPC Section 302 (murder) focuses primarily on the seriousness of the crime (e.g., life imprisonment), compensation forces courts to take victim impact into account, which is not a criterion in conventional sentencing. Despite the BNSS's rhetorical focus on rehabilitation, trial courts maintain the "add-on fallacy" by seeing compensation as an optional addition to punishment rather than as an essential part of justice. For instance, in State v. Mohan (2023), a Delhi sessions court sentenced a defendant to life in prison for rape-murder but declined to pay compensation, stating that "the sentence itself serves societal interests," ignoring the victim's family's poverty. Operationally, this contradiction manifests as prosecutors seldom lead victim impact evidence, judges lack training in trauma-informed evaluation, and sentence guidelines (such the Mukesh v. NCT framework) prioritise deterrent over reparation. Therefore, rather than being structural changes, restorative components remain performative behaviours.

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5.2 Offender accountability vs. state responsibility

The system's primary philosophical difficulty is the dual responsibility conundrum. In addition to imposing perpetrator accountability via restitution orders, Section 396 BNSS recognises the state's parenspatriae obligation to compensate victims in cases when its protective mechanisms fall short (e.g., gang rape on state property or torture in jail).However, by providing no enforced recovery mechanisms, the legislation generates perverse

incentives. States only collect less than 0.2% of compensation from offenders due to (a) the lack of recovery cells in district administrations, (b) the absence of provisions for offender asset attachment prior to trial, and (c) conflicting precedents (State of Karnataka v. Sharanappa permitted recovery waiver for "indigent" offenders) (NALSA 2023). Because of a systemic moral hazard, criminals such as the Bilkis Bano prisoners, who were sentenced to pay a total of ₹50 lakhs, retained their homes while taxpayers covered their compensation. Even worse, corporate culpability is still excluded: the victims of the 2023 Silkyara tunnel disaster got state compensation, but the contracting firm was exempt from reparation orders despite safety concerns. This disparity contradicts the "polluter pays" concept, which is upheld in environmental law but denied to victims of crime, by reducing state compensation to a taxpayer-funded subsidy for criminal impunity [4].

6. Comparative inadequacies and the need for reform: closing the worldwide divide in India's victim compensation system

India's compensating jurisprudence has serious shortcomings as compared to global best practices. Unlike mature systems like the UK's Criminal Injuries Compensation Authority (CICA), a statutory agency that administers standardised pricing for 400+ injuries with a £500,000 compensation maximum 10, India lacks particular law incorporating compensation elements. This fundamental gap sustains systemic fragmentation since victim remedy relies on court discretion rather than legal rights. The study that follows examines three major shortcomings and makes innovative recommendations that are backed by comparative analysis.

1. Core deficiencies in the global context legislative vacuum

While the UK operates under the Criminal Injuries Compensation Scheme 2012, which has statutory effect, India relies on scattered, non-standardized CrPC/BNSS provisions. India's manual methods need 12+ document verifications, which causes delays of 18–34 months and traps victims in procedural mazes, in contrast to the UK's online claims processing platform. Because there isn't a stand-alone statute, there isn't any legislative body that can centralise fund administration or decide claims in a manner similar to CICA.

Blindspot for Psychological Rehabilitation: Through NHS partnerships, the UK program funds treatment for "medically recognised mental injury" (412). However, money is still given precedence over psychological requirements in India's state VCS frameworks. Less than 20% of the expenses of reconstructive surgery and no psychotherapy are covered by compensation for acid attack survivors, which is a critical gap considering that 89% of them have persistent PTSD (NALSA 2023). This violates the Delhi Domestic Working Women's Forum's need for all-encompassing support.

Corporate Liability Exclusion: The UK's concept of "crime of violence" covers institutional negligence (such industrial accidents), but India's framework exempts businesses from culpability.

10. The Silkyara tunnel collapse in 2023 mimicked the Bhopal Gas Tragedy model, in which victims battled for more nearly 39 years for recompense but the contractor was not compensated. This contradicts the "polluter pays" notion, which is embedded in environmental law but does not apply to crime victims.

2. The needs for structural reform

2.1 Redesign of the Funding Architecture

India's VCS suffers from chronic fiscal anaemia, with 72% of states depending on court penalties (collected in less than 15% of convictions). 5. Rajasthan's ₹42 crore 2023 compensation fund only covered 11% of qualified rape survivors, and bureaucratic freezing has left ₹1,200 crores unspent nationally.

In addition to a victim compensation tax on luxury items, company turnover, and traffic penalties, the Reform Blueprint proposes obligatory budgetary allocations of 0.1% of the state GDP. Follow the UK's Treasury-funded approach, where Parliament determines level 10 compensation. Establish a National Victim Recovery Fund with market-linked investments to provide permanent funding.

2.2 Restructuring the Administration

The UK's CICA settles 85% of claims within a year using a centralised digital platform 2, whereas India's DLSA-administered system needs victims to traverse eight or more authorities. Marginalised groups are impacted by documentary apartheid: indigenous populations in war zones cannot access police records, and families of manual scavengers lack death certificates.

Blueprint for Reform: Create District Compensation Commissioners (DCCs) with the power to decide on compensation within ninety days. For instant validation, link AI-powered claim portals to CCTNS/health databases. Adopt CICA's single-window paradigm, which uses a single ecosystem to handle police reports, financial data, and medical examinations.

2.3 Infrastructure for Awareness

Only 11% of Indian crime victims seek for compensation because of information obscurity, in contrast to the UK's proactive outreach via victim assistance NGOs and police stations.

A blueprint for reform All FIRs must include measures for restitution, and victims must be notified by SMS as soon as their cases are filed. Install multilingual VCS legal aid kiosks at every police station. Copy the CICA public handbook, which has been translated into fourteen languages and describes eligibility and processes.

2.4 Integration of Rehabilitation

The UK program finances vocational retraining at 410 and reimburses lost wages at the statutory sick pay rates. 78% of victims of paraplegic violence become indebted within five years, and India's ₹300,000 disability ceiling does not cover lifetime care.

- **Reform Blueprint:** Create networks for trauma recovery that include:
- **Medical hubs:** Facilities for reconstructive surgery for burn and acid victims
- **Psychological units:** NIMHANS partnerships for CBT and EMDR therapy
- **Bridges to livelihoods:** Job connections and skill development with MNREGA/MSME
- Pass legislation mandating that DCCs conduct rehabilitation audits and keep an eye on victims for at least five years after compensation.

3. Using local innovations to apply global lessons

India must modify best practices to fit its socio-legal environmThe UK program reimburses missed income at the statutory sick pay rates and pays vocational retraining at 410. Within five years, 78% of victims of paraplegic assault incur debt, and lifelong care is not covered by India's ₹300,000 disability cap.

ict VCS 5% of their CSR funds.

Gender Responsive Design: Combine the UK's trauma-informed response to sexual abuse with panchayat-level compensation committees chaired by women.

12. Release survivors from the burdensome "facial disfigurement certificates" that require documentation of the severity of their injuries.

Technology Leapfrogging: To prevent bureaucratic syphoning, replace CICA's conventional banking system with block chain-enabled direct benefit payments. To help candidates who are illiterate, develop multilingual chatbots with Bharati integration.

India's existing patchwork philanthropic model must give way to a rights-based ecosystem as the nation's compensation framework. Legislative change is the cornerstone; a National Victims' Rights Act should combine compensation ideas, establish independent supervision organisations, and establish rehabilitation as an unalienable state responsibility. As the UK's CICA demonstrates, sustainable victim justice requires institutional permanency rather than judicial charity. By federalising funds, including psychological treatment, and addressing corporate responsibility loopholes, India may transform compensatory jurisprudence from a paper promise to an actual remedy [5].

7. Conclusion

India's compensating jurisprudence is intellectually sophisticated but operationally brittle. Legislative innovations (CrPC 357A, BNSS 396) and judicial dynamism have made victim recompense a constitutional duty under Article 21. However, structural flaws including inefficient bureaucracy, insufficient budget, ignorance, and enforcement gaps prevent transformational potential. Future reforms will require a variety of approaches, including: (1) institutional redesign through permanent compensation commissions at the district level; (2) procedural simplification through digital apps and single-window systems; (3) financial sustainability through victim recovery funds and dedicated budgets; and (4) holistic rehabilitation that incorporates both financial and psychological support. Only by addressing these aspects will compensatory jurisprudence advance beyond rhetorical commitment to actual justice for India's crime victims.

8. Suggestions

Pass a law dedicated to victim rights: 1. Replace fragmented provisions with comprehensive law (based on the UK's Criminal Injuries

Compensation Act) that integrates state duties, victim rights, and compensation principles.

Establish Funding Mechanisms: 1. Mandate a 0.1% GDP state budgetary contribution in addition to victim compensation taxes on luxury products, traffic penalties, and CSR funds to ensure long-term financing.

Create District Compensation Authorities: 1. Substitute quasi-judicial district-level authorities with the power to decide compensation within ninety days for bureaucratic DLSA panels.

1.

Incorporate Rehabilitative Networks: 1. Replace bureaucratic DLSA panels with quasi-judicial district-level authorities that have the authority to determine compensation within ninety days.

2.

Make Claims Management Digital: 3. A national AI-powered gateway for online applications with auto-verification using CCTNS/health databases should be created in order to eliminate paperwork hurdles.

3.

Implement Corporate Liability: Adjust the BNSS to make companies and organisations firmly accountable for workplace mishaps and negligence-based crimes (Bhopal/Silkyara models).

4.

Mandatory Statements on Victim Impact:5. Require prosecutors to produce victim impact reports for all violent offences, and make restitution a major part of punishment under Section 396 BNSS.

5.

Start Campaigns for Victim Awareness:6. Establish multilingual legal assistance desks at police stations, include restitution clauses in FIRs, and notify all registered victims via SMS.

6.

Boost Recuperation Systems: Create asset recovery cells to execute criminal restitution orders via pre-trial property attachment and wage garnishment (Sec 396 BNSS).

7.

Building Judicial Capacity: Establish faster appellate benches for compensation disputes and mandate victim-centric jurisprudence training for trial judges.

8.

9. References

1. A thorough examination of compensatory jurisprudence. [Last Accessed July 5, 2025].
2. Jain H. The development of victim compensation in India's criminal justice system from the past to the present. International Journal of FMR, 2025, p. Seven.
3. LinkedIn. New issues and advancements in compensatory jurisdiction. 4. Litigation 2025-India | Global Practice Guides | Chambers and Partners [Last Accessed July 5, 2025]. [Last Accessed July 5, 2025].
5. Goel A, Goel S. India's legal system and court rulings on compensation for crime victims in the context of global norms and standards. SSRN Electron J., 2009.