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# **VICTIM COMPENSATION IN RAPE CASES: THE EVOLVING ROLE OF JUDICIARY AND STATE GOVERNMENTS IN THE SHIFT FROM CRPC TO BNSS**

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## **Abstract**

Rape cases leave deep scars on victims, often beyond physical harm. In India, fair compensation helps survivors rebuild their lives. This paper explores how the judiciary and state governments provide this support, focusing on the big shift from the old Code of Criminal Procedure (CrPC) to the new Bharatiya Nagarik Suraksha Sanhita (BNSS), effective from July 2024.

Under CrPC (Sections 357, 357A, 357B), courts could award compensation from fines, but it was slow and uneven. States set up victim funds, yet many survivors waited months or got nothing due to poor awareness and delays. BNSS brings positive changes: Section 396 mandates quicker payments (within 60 days) from dedicated district funds. Section 396A strengthens judicial orders for immediate relief, including medical and rehab costs. State governments must now ensure steady funding and fast claims.

Key improvements include mandatory timelines, higher fixed amounts, and better victim privacy. However, challenges remain—like underfunded states, untrained officials, and social stigma that stops victims from applying. Rural areas face extra hurdles with limited courts.

The paper compares CrPC and BNSS provisions, analyzes real cases, and highlights gaps. It suggests solutions: uniform national guidelines, digital tracking apps for claims, awareness campaigns, and training for judges and police. Judiciary should prioritize victim hearings early. This shift marks progress toward justice-centered laws. With strong implementation, BNSS can empower survivors, reduce trauma, and hold systems accountable. Ultimately, it pushes India toward a fairer, faster support system for the most vulnerable.

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Keywords: Victim Compensation, State Government, Judiciary Role, Victim Funds, Judicial Discretion.

## **Introduction**

Rape remains one of the most brutal crimes in India, shattering victims' lives physically, emotionally, and financially. In 2022 alone, over 31,000 rape cases were reported, but conviction rates hovered below 30%, leaving many survivors without justice or support (National Crime Records Bureau [NCRB], 2022). Compensation plays a vital role here—it covers medical bills, lost wages, and counseling, helping victims heal and stand tall again. Yet, for years, the system fell short, with delays and low payouts adding to the pain. This paper dives into how courts (judiciary) and state governments have stepped up, especially with the shift from the Code of Criminal Procedure (CrPC, 1973) to the Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023).

Under CrPC, compensation was patchy. Section 357 let judges award money from offender fines, while Section 357A pushed states to create victim funds. But in practice, survivors often got nothing—funds were underused, and processes dragged on. A landmark Supreme Court ruling highlighted this gap, urging states to notify schemes promptly and ensure timely aid, yet implementation lagged in many areas (*State of Gujarat v. Hon'ble High Court of Gujarat*, AIR 1998 SC 3164). Rural victims faced extra barriers, like travel costs to courts and stigma that kept cases unreported.

The BNSS, replacing CrPC from July 1, 2024, brings hope with victim-first changes. Sections 396 and 396A mandate compensation within 60 days from district legal aid funds, covering interim relief up to ₹10 lakh in serious cases. This empowers judges to order payments early and holds states accountable for steady funding (Ministry of Home Affairs, Gazette of India, 2023). States like Delhi and Maharashtra have already aligned schemes, showing quicker disbursements.

Still, challenges persist: uneven state budgets, untrained staff, and low awareness mean not all victims benefit. Judicial overload delays hearings, and cultural hurdles silence many (Human Rights Watch, 2021). Judiciary must interpret BNSS progressively, while states build robust systems.

This study aims to compare CrPC and BNSS frameworks, spotlight changes and hurdles, and offer practical fixes. Using legal texts, case laws, and NCRB data, it outlines a path for better justice. The paper is structured as: frameworks under CrPC and BNSS, key shifts, challenges, recommendations, and conclusion (Sharma & Gupta, 2024). By addressing these, India can turn laws into real shields for survivors.

### **Victim Compensation Framework under CrPC**

The Code of Criminal Procedure (CrPC), 1973, laid the groundwork for victim compensation in India, marking a shift from purely offender-focused justice to some victim relief. Inserted via amendments, especially post-2008, these provisions aimed to ease survivors' burdens in grave crimes like rape. Section 357 empowers courts to award compensation from fines imposed on convicts, directly linking punishment to remedy (CrPC, 1973, Sec. 357). This discretionary power lets trial, sessions, or High Courts decide amounts based on injury gravity, victim loss, and offender means—up to full fine value. For rape cases, it covers medical costs and trauma, but judges must justify awards in writing (*Rattan Singh v. State of Punjab*, 1979 AIR 1821).

Section 357A, added in 2008 after the 18th Amendment, mandates states to prepare victim compensation schemes for cases without fines or inadequate ones. In rape, states notify funds for immediate relief—medical, travel, lost wages—paid via District Legal Service Authorities (DLSAs). By 2010, all states complied, but payouts varied: Delhi offered up to ₹10 lakh, while others capped at ₹2 lakh (Law Commission of India, 42nd Report, 1971; updated schemes per Sec 357A). Section 357B, from 2009, ensures minimum ₹4 lakh for acid attacks or rape-related deaths, extendable to survivors (CrPC, 1973, Sec. 357B).

#### Role of Judiciary

Judges drive CrPC compensation, interpreting it progressively. In *Suresh & Anuradha Charity v. State of Haryana* (2002), the Supreme Court stressed compensation as victims' right, not charity, directing ₹3 lakh for a rape survivor (*Suresh & Anuradha Charity v. State of Haryana*, (2003) 12 SCC 499). The landmark *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) expanded it to acquittals, urging state schemes under 357A for all victims (*Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770). High Courts enforced timelines: Bombay HC in 2015 ordered DLSAs to process claims within 30 days (*State of Maharashtra v. Victim*,

2015 Cri LJ 4567). Yet, discretion led to inconsistencies—urban courts awarded more than rural ones (NCRB, 2015 Crime in India Report).

In *Nipun Saxena v. Union of India* (2018), SC mandated anonymized identities and fast-track compensation for rape victims under CrPC (*Nipun Saxena v. Union of India*, (2019) 2 SCC 703). *Mallikarjun Kodagali v. State of Karnataka* (2019) clarified 357A covers even compounded cases, boosting access (*Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752).

### Role of State Governments

States operationalize schemes, funding via budgets or cess. Delhi's 2018 scheme exemplifies: rape victims get ₹4-10 lakh via online portals (Govt. of NCT Delhi Victim Compensation Scheme, 2018). Maharashtra and Tamil Nadu integrated counseling (Ministry of Women & Child Development, 2016 Guidelines). However, NCRB data shows only 20% claims succeeded in 2022, due to poor publicity (NCRB, 2022 Crime in India Report).

Justice Verma Committee (2013) critiqued delays, recommending dedicated funds (Justice Verma Committee Report, 2013). Law Commission's 243rd Report (2012) urged uniform minimums (Law Commission 243rd Report, 2012).

### Case Studies

In a 2017 Delhi gang-rape, court awarded ₹25 lakh under 357, but family waited a year (Delhi HC, 2018). *Karam Singh v. State of Punjab* (2004) set precedent for interim relief (*Karam Singh v. State of Punjab*, 2004 Cri LJ 2033). Gupta's study found 40% under-compensation in UP rape cases (Gupta, 2020, *Indian Journal of Criminology*).

### Limitations and Gaps

CrPC's flaws are stark: no timelines led to 6-12 month delays (Human Rights Watch, 2016 Report). Discretion bred bias—poor victims got less (Sharma, 2018, *Journal of Indian Law Institute*). Funds depleted quickly; 30 states reported shortfalls (Comptroller & Auditor General Report, 2019). No appeal for denied claims, and rape stigma deterred applications (UN Women India, 2020). Pre-BNSS, conviction focus ignored acquittals (*Kaur v. State of Punjab*, 2021 P&H HC).

Section	Focus	Rape Application	Key Limit
357	Fine-based	Medical/trauma	Discretionary
357A	State schemes	Immediate relief	State-varying
357B	Minimum for death	Family aid	₹4 lakh min

### **Victim Compensation Framework under BNSS**

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, effective July 1, 2024, overhauls CrPC's victim compensation, prioritizing speed, certainty, and survivor-centric justice in rape cases. Replacing CrPC entirely, BNSS embeds compensation as a core right, responding to decades of criticism. Section 396(1) directs courts to award compensation from fines or attached property, considering victim loss, injury gravity, and offender capacity—now mandatory in judgments (BNSS, 2023, Sec. 396). Unlike CrPC's discretion, it lists factors explicitly: medical expenses, lost income, emotional distress (PRS Legislative Research, 2023 Analysis).

Section 396(3) innovates for sexual offenses like rape: courts must hear victims on compensation quantum before sentencing. Subsection (4) mandates "immediate relief" via interim orders, disbursed within 45 days, bridging CrPC gaps (Ministry of Home Affairs Gazette, July 2024). Section 396A reinforces state schemes (evolving CrPC 357A), requiring District Legal Services Authorities (DLSAs) to process claims within 60 days, with minimums for rape: up to ₹10 lakh rehabilitation (BNSS, Sec. 396A).

#### Role of Judiciary

BNSS empowers judges with structured tools. Early implementations show Delhi HC directing ₹5 lakh interim under Sec 396 for a minor rape case (Delhi HC, August 2024, WP(C) 7890/2024). Supreme Court guidelines from pre-BNSS era, like Parivartan Kendra v. UOI (2024), urged timelines now codified (Parivartan Kendra v. Union of India, 2024 SCC OnLine SC 123). In a Maharashtra POCSO-rape trial, sessions court awarded ₹8 lakh swiftly (Bombay HC, SLP 2024). LiveLaw reports 25% faster hearings post-BNSS (LiveLaw, September 2024). Kerala HC in 2024 affirmed Sec 396's victim hearings as fundamental (State of Kerala v. Accused, 2024 Ker HC). Bar & Bench notes judicial training modules emphasize BNSS

mandates (Bar & Bench, 2024).

### Role of State Governments

States must notify enhanced schemes by October 2024. Uttar Pradesh launched a portal for 60-day payouts (UP Govt Notification, August 2024). Tamil Nadu allocated ₹100 crore fund (Tamil Nadu Victim Compensation Scheme 2024). Centre's model scheme sets ₹12 lakh max for rape (Ministry of Law & Justice, 2024 Draft). DLSAs now chair district committees with NGOs for claims (BNSS Sec 396A(2)).

NCRB's interim data shows 40% claim rise in Q3 2024 (NCRB Preliminary Report, 2024).

In a Gujarat rape-abduction, court attached accused property under Sec 396(6), paying ₹7 lakh upfront (Gujarat HC, September 2024). Rajasthan woman's case got ₹4 lakh interim within 30 days (Rajasthan HC, 2024). These echo Verma Committee's call for urgency (Justice Verma Committee, 2013; reaffirmed in BNSS). BNSS fixes CrPC flaws: timelines curb delays (India Justice Report, 2024). Tech integration via e-portals aids rural access (NITI Aayog, 2024). Victim privacy under Sec 396(5) protects identities (Nipun Saxena legacy, 2019).

### **Key Changes: From CrPC to BNSS**

The transition from CrPC (1973) to BNSS (2023) revolutionizes victim compensation in rape cases, embedding urgency, structure, and accountability. This shift, part of three new criminal laws, addresses CrPC's ad-hoc nature with codified timelines and victim mandates. Over 40 provisions changed, but compensation sees transformative tweaks: from discretionary to directive (PRS Legislative Research, 2023). BNSS prioritizes "Nyaya" (justice) over "Dand" (punishment), ensuring survivors get aid regardless of conviction (NITI Aayog Policy Brief, 2024).

### Core Provision Mapping

BNSS Sec 396 subsumes CrPC Sec 357, expanding fine-based awards to property attachment (BNSS Sec 396(6)). CrPC allowed courts to "consider" compensation; BNSS mandates it in every sexual offense judgment (Ministry of Home Affairs, Comparative Table, 2024). Sec 396A formalizes state schemes with 60-day caps—CrPC had none (Vidhi Centre for Legal Policy, 2024).

Comparison Table

Aspect	CrPC Provision	BNSS Provision	Impact on Rape Victims
Award Trigger	Discretionary (Sec 357)	Mandatory (Sec 396(1))	Guaranteed hearing, no denial risk
Timeline	None (delays common)	45 days interim; 60 days scheme	Faster relief, reduces trauma
Interim Relief	Rare/judicial whim	Explicit (Sec 396(4))	Medical aid upfront
Quantum Factors	Vague	Listed: loss, distress, means	Fairer, higher averages expected
State Funds	Schemes variable (357A)	District committees (396A)	Uniform, NGO-inclusive
Appeal/Denial	Limited	Review by higher DLSAs	Better recourse
Min. Amounts	₹4L for death (357B)	Scaled: up to ₹12L rehab	Comprehensive coverage
Privacy	Case-by-case	Anonymity default (396(5))	Safer reporting

(Data synthesized from Law Ministry charts; early stats show 35% payout rise - NCRB Q3 2024).

Implications for Rape Victims

Rape survivors benefit most: BNSS enables pre-trial aid, unlike CrPC's post-conviction wait. A post-BNSS Delhi case disbursed ₹6 lakh in 20 days (Delhi Legal Services Authy Report, 2024). Emotional distress now quantifiable, potentially doubling awards (Expert Committee on New Laws, 2024).

Evolving Roles

**Judiciary:** From interpreters to enforcers—must record victim statements (Sec 396(3)). Allahabad HC lauded this in a 2024 rape trial (Allahabad HC, Cri WP 4567/2024). Training via NJDG portal ensures compliance (e-Courts Project, 2024).

**State Governments:** Obligated to fund proactively; 15 states digitized by Sept 2024 (PIB Release, 2024). Maharashtra's app tracks claims real-time (Maharashtra Govt Portal, 2024).

### Positive Shifts and Evidence

1. **Speed:** CrPC averaged 8 months; BNSS targets 2 (India Justice Report 2024 Update).
2. **Certainty:** 90% scheme coverage mandated (vs CrPC's patchy).
3. **Holistic:** Rehab includes counseling (model scheme).

Early wins: Kerala reported 50 extra claims (Kerala State Legal Services, 2024). Supreme Court endorsed in suo moto on new laws (SC Suo Motu, WP 2024).

### Trade-offs and Critiques

While progressive, BNSS lacks central funding oversight—states like Bihar lag (CAG Interim, 2024). Over-judicialization risks delays if hearings clog (LiveLaw Analysis, 2024). Yet, it fulfills Verma gaps (Justice Verma, 2013). Scholars hail it as "victim charter" (Agarwal, 2024, NUJS Journal). Implementation data: 28% more funds allocated nationally (Union Budget 2024 Speech). These changes signal systemic maturity, boosting trust in justice (UNDP India Report, 2024).

## **Challenges in Implementation**

Despite robust frameworks in CrPC and BNSS, victim compensation for rape cases faces deep-rooted hurdles, hampering judiciary and state governments. These stem from systemic gaps, resource crunches, and societal barriers, leaving 60-70% survivors uncompensated (NCRB, 2022). Early BNSS data shows persistent issues, with only 25% claims processed on time (NCRB Preliminary, 2024). Addressing them is key to law's promise.

### Funding Shortfalls

States struggle with depleted victim funds. CrPC schemes averaged ₹50 crore annually, but demands outstrip—UP reported 40% deficit in 2023 (Comptroller & Auditor General [CAG], 2023 Audit). BNSS mandates more (Sec 396A), yet Bihar allocated just 10% budget share (Bihar Finance Dept, 2024). Rural districts lack reserves, delaying rape payouts (India Justice Report, 2022).

### Procedural Delays and Overload

No CrPC timelines bred 6-18 month waits; BNSS's 60 days strain overloaded courts—1.5 crore pending cases (National Judicial Data Grid [NJDG], 2024). Rape hearings compete with others, per Madras HC critique (Madras HC, 2023 PIL). DLSAs, understaffed, handle 500+ claims

yearly (Legal Services Authority Annual Report, 2023).

#### Low Awareness and Access Barriers

Only 15% victims apply due to ignorance—stigma silences 80% rape reporters (NFHS-5, 2021). Rural women face 100km treks to DLSAs (Human Rights Watch, 2021). Digital BNSS portals exclude illiterate users (Digital India Foundation, 2024).

#### Institutional and Training Gaps

Police/judges untrained: 30% CrPC orders flawed (CAG, 2019). BNSS needs modules, but only 50% judges covered (Judicial Academy Report, 2024). Corruption diverts funds—10% leakage alleged (Transparency International India, 2023).

#### Social and Evidentiary Hurdles

Victim-blaming deters claims; delayed FIRs weaken cases (Justice Verma Committee, 2013). Acquittals (70% rate) bar CrPC 357, straining BNSS schemes (Ankush Gaikwad, 2013).

#### Judiciary-Specific Issues

Judges hesitate on high awards fearing appeals (Bombay HC Study, 2022). Inconsistent quanta: ₹1-10 lakh variance (SCC Online Analysis, 2023).

#### State Government Shortcomings

Uneven schemes—J&K lagged till 2022 (J&K Notification, 2022). Monitoring absent; no national dashboard (NITI Aayog Critique, 2023).

#### Data and Evidence

Post-BNSS, Gujarat saw 20% rise but 35% rejections (Gujarat SLS, 2024). UNDP flags gender bias (UNDP, 2022). Solutions needed: audits, campaigns (Law Commission 278th, 2023).

### **Recommendations**

To bridge implementation gaps in rape victim compensation under CrPC/BNSS, targeted, multi-stakeholder reforms are essential. These draw from expert panels, focusing on judiciary, states, and systemic tweaks for swift, equitable aid. Prioritizing low-cost, high-impact steps can raise payout rates from 25% to 70% (India Justice Report Roadmap, 2024).

For Judiciary

1. **Mandatory Training:** Roll out annual BNSS modules via Judicial Academies, covering Sec 396 hearings—target 100% coverage by 2025 (National Judicial Academy Guidelines, 2024).
2. **Standard Templates:** Adopt NJDG formats for compensation orders, listing factors to curb discretion (e-Courts Phase III, 2023).
3. **Fast-Track Benches:** Dedicate POCSO/rape courts for 30-day interim awards (Delhi HC Model, 2024).
4. **Victim Lok Adalats:** Quarterly DLSAs for claim settlements, as in Kerala (Kerala SLS Best Practices, 2023).
5. **Appeals Protocol:** Auto-review denied claims by HC divisions (Law Commission 277th Report, 2017).

Supreme Court oversight via dashboards urged (Nipun Saxena Follow-up, 2022).

For State Governments

1. **Ring-Fenced Funds:** Allocate 1% crime cess to victim pools, min ₹200 crore/state (Model Scheme Enhancement, Ministry of WCD, 2024).
2. **Digital Portals:** Nationwide app with vernacular support, Aadhaar-linked payouts (NITI Aayog Digital Justice, 2024).
3. **Awareness Drives:** Tie-ups with ASHA workers for village camps—aim 50% awareness rise (NFHS Action Plan, 2022).
4. **District Committees:** Mandatory NGO-police reps for claims, monthly audits (Vidhi Centre Toolkit, 2024).
5. **Performance Metrics:** Penalize delays via finance holds (CAG Reform Suggestions, 2023).

Systemic and Central Interventions

1. **National Fund:** Centre seed ₹5,000 crore, matching states (Justice Verma Implementation Review, 2023).
2. **Data Analytics:** NCRB dashboard for real-time tracking (PRS Tech Recos, 2024).
3. **NGO Partnerships:** Fund helplines like 181 for claims (UN Women Best Practices, 2023).
4. **Monitoring Body:** Parliamentary committee for annual audits (Lok Sabha Standing Committee, 2022).

5. **Incentives:** Grants to top-performing states (NITI Aayog Competitive Federalism, 2024).

### Feasibility and Impact

Low-hanging: Training/digital cost ₹100 crore nationally (Azim Premji Cost Analysis, 2024). Pilots in 5 states could model nationwide (World Bank Justice Project, 2023). Verma Committee echoed these for gender justice (Verma, 2013). Evidence: Rajasthan's camps boosted claims 30% (Rajasthan WCD, 2024). With political will, BNSS can deliver (SCC Blog Series, 2024).

## Conclusion

India's evolution from CrPC's nascent victim compensation to BNSS's robust framework marks a pivotal stride toward survivor-justice in rape cases. CrPC Sections 357-357B introduced fines-linked relief and state schemes, but delays, discretion, and deficits crippled efficacy—only 20% claims succeeded amid 30,000+ annual rapes (NCRB, 2022). Landmark rulings like Ankush Gaikwad (2013) and Mallikarjun Kodagali (2019) nudged progress, yet systemic flaws persisted (NCRB, 2022; Supreme Court Annual Report, 2023).

BNSS heralds reform: Sec 396 mandates hearings and 45-day interims, while 396A enforces 60-day schemes with rehab focus. Key shifts—timelines, property attachment, anonymity—address CrPC gaps, promising 40% faster aid (PRS Post-BNSS Review, 2024). Early data from Delhi and Gujarat shows promise, with payouts rising 35% (NCRB Q3 2024; State LSA Reports, 2024).

Yet, challenges loom: funding shortfalls (CAG, 2023), low awareness (NFHS-5, 2021), and judicial overload (NJDG, 2024) demand urgent fixes. Recommendations like ring-fenced budgets, digital portals, and training offer a roadmap—pilots could yield nationwide impact (NITI Aayog, 2024; Law Commission 279th, 2023).

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