

# **The Rise of Victimology -Evaluating the Legal Maze of Victim Centric Provisions Under the Contemporary Criminal laws in India**

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*“Justice” is due to the accused, but it is due to the accuser also”.*

*- Justice Benjamin Cardozo<sup>1</sup>*

## **Abstract**

*The paper highlights the provisions under new criminal laws ( BNS and BNSS 2023) pertaining to victims. The new law aims to enhance the efficiency, fairness and accountability of the criminal justice system. It recognises the victim as a stakeholder in the criminal proceedings, providing participatory rights and expanded right to information for the victim. The law has been reformed to place victims at the centre of the criminal justice system, offering unprecedented rights and opportunities.*

*Victims were usually a forgotten party in the Criminal Justice system and continued to live on the edge . While the accused were protected with all the resources available at the expenditure of the State, the victim is left to fend for himself with little or no support from the State machinery. The Indian criminal law was in urgent need to cater to situations where victims due to their disadvantaged position were left to go from pillar to post in their pursuit of justice. The recent statutory changes in this regard will be worthwhile in order to cater to the statutory imbalance created in the past. The article highlights the new statutory provisions which allude to the shaping of victim jurisprudence' in this country that had posed a forceful argument to challenge the conservative notions in criminal justice system. It ensures to makes a strong case for victim participation in trial through victim impact statements and explores the scope of victim involvement at stages like discharge, bail and sentencing in a criminal trial. Thereby giving voice to the victim of a crime. Victim justice means that the victim has a right to speak and the nation has an obligation to listen. The present work seeks to effectuate a paradigm shift in criminal justice- both in essence and substance.*

## **Objective of the Study**

- The objective of this study is to critically examine the shift towards a victim-centric approach in India’s new criminal laws—**Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA), 2023**
- To analyse statutory reforms, digital integration, and judicial developments that aim to empower victims of crime.
- The study also proposes novel, actionable recommendations to strengthen access to justice, victim participation, and institutional accountability within the evolving criminal justice framework.

## **1. Research Methodology:**

The research uses a qualitative doctrinal approach, This study adopts a doctrinal legal research methodology, which involves a systematic analysis of primary and secondary legal sources to

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<sup>1</sup>Snyder v. Massachusetts, 291 U.S 97 (1934) United states Reports.

examine the evolving victim-centric framework under India's new criminal laws—Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA), 2023.

*Primary sources* include constitutional provisions, statutory texts, parliamentary debates, reports of law commissions and expert committees, and judicial pronouncements interpreting victim rights and participatory justice.

*Secondary sources* such as scholarly articles, commentaries. The doctrinal approach enables a normative and interpretative analysis of legal texts, focusing on the intent, scope, and implications of victim-centric provisions which helps identify legal gaps, conceptual developments, and policy needs, ultimately contributing to scholarly discourse and legal reform recommendations.

### **3. Introduction**

#### **Victimology;**

Crime is a social phenomenon. No matter how strong is the criminal justice system, no matter which country or area it is, no matter how severe the punishments are, crime do take place in the society. Whenever any crimes take place in the community, most of the discourse and discussion pertains to the criminological aspect of the crime. People often talk about concepts like mensrea and actusreus. However, it is critical that with the criminological dimension of the crime, the concept of Victimology is also given due focus and attention. The term "Victimology" was first used by French lawyer Benjamin Mendelssohn in the year 1947. Although writings about the victim appeared in many early the concept of a science to study victims and the word "Victimology" had its origin with the early writings of Benjamin Mendelssohn (1937; 1940

Andrew Kerman who wrote a text on Victimology entitled-"Crime victims: An Introduction to victimology,1990" broadly defined Victimology is the study of- a) Victimization, b) Victim offender relationship, c) Victim criminal justice system relationship d) Victim and media, e) Victim and the cost of crime and f) Victim and social movements<sup>2</sup>. Victimology is the scientific study of victims of crimes, a sub-discipline of criminology. It seeks to study the relationship between victims and offenders; the persons especially vulnerable to crimes and the victim's placement in the criminal justice system<sup>3</sup>

## **2. The constitutional perspective on victim rights in India**

The Indian Constitution, though not explicitly mentioning "victims' rights," enshrines several provisions that underpin a victim-centric criminal justice approach by safeguarding life, liberty, equality, and dignity. These constitutional mandates form the normative foundation for protecting victims within the legal system

### **Article 14 – Right to Equality**

Article 14 guarantees equality before the law and equal protection of the laws. A victim-centric approach must ensure that victims—regardless of gender, caste, or class—are treated fairly and equitably throughout the criminal justice process.

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<sup>2</sup> Prof. R. Deb,"Victimology"Cr.L.J.1986 at 17

<sup>3</sup> Ahmed Siddique, Criminology Problems and Perspectives,1993 p.505

*The judiciary has interpreted Article 14 to mandate equal treatment not only for the accused but also for victims seeking redress<sup>4</sup>.*

### **Article 21 – Right to Life and Personal Liberty**

Article 21 guarantees **the** right to life and personal liberty, which includes the right to live with dignity, the right to access justice, and freedom from trauma and secondary victimisation.

The Supreme Court has held that the right to life includes a victim’s right to a fair investigation and trial.<sup>5</sup> Further, a victim’s right to dignity must be protected during court proceedings, especially in cases involving sexual violence.<sup>6</sup>

### **Article 19(1)(a) – Right to Freedom of Speech and Expression**

Victims, especially of sexual or state-related violence, must be empowered to speak freely without fear. This freedom, protected under Article 19(1)(a), includes the **right to narrate** their trauma, participate in the trial, and express views during bail, parole, and sentencing stages.

### **Directive Principles of State Policy (Part IV)**

Though non-justifiable, DPSPs guide the State to uphold social justice and human dignity:

- Article 38: Promote the welfare of the people and eliminate inequalities;
- Article 39A: Ensure equal justice and provide free legal aid;
- Article 41: Secure the right **to** public assistance in cases of disability and undeserved want—relevant for victims of violent crimes.

These principles reinforce the **State’s responsibility to protect victims**, provide compensation, and ensure access to legal support.<sup>7</sup>

### **Article 32 and 226 – Remedies for Rights Violations**

Victims whose fundamental rights are violated through improper investigations, custodial torture, or miscarriage of justice—may **approach the Supreme Court or High Courts directly** under Articles 32 and 226.

In *Nilabati Behera v State of Orissa*, the Court awarded compensation to the victim’s family under Article 32, establishing a precedent for constitutional torts and victim compensation.<sup>8</sup>

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<sup>4</sup> *Bodhisattwa Gautam v Subhra Chakraborty* (1996) 1 SCC 490.

<sup>5</sup> *Zahira Habibullah Sheikh v State of Gujarat* (2004) 4 SCC 158.

<sup>6</sup> *state of Punjab v Gurmit Singh* (1996) 2 SCC 384.

<sup>7</sup> Law Commission of India, *154th Report on the CrPC* (1996) para 2.1.

<sup>8</sup> *Nilabati Behera v State of Orissa* (1993) 2 SCC 746

## **Right to be Heard Before Grant of Bail**

Section 532 of the **BNSS, 2023** mandates that in serious crimes, including sexual offences and grievous hurt, the victim must be given an opportunity to be **heard** before bail is granted to the accused.

This provision reflects a growing recognition of victims' procedural rights, aligning with earlier jurisprudence acknowledging their role in bail hearings<sup>9</sup>

### **3.1 Criminal Law a Recent Overhaul**

The Indian parliament recently overhauled the whole criminal law and apart from the nomenclatural change certain changes and advancements were made for victims of crime. The change prioritizes the nation's outlook towards crime and the criminal justice system. In particular, it has vastly improved the protection of women and children against sexual offenses.

#### **3.1.1. Streamlined procedures and leverage technology in legal arena .**

The augmentation and reinforcement of legal processes now use a robust digital infrastructure. It shows the government's commitment to digitize and modernize the criminal justice system. This digital infrastructure operates under the banner of the Inter-Operable Criminal Justice System.<sup>10</sup> This infrastructure comprises five pillars: e-FIR, e-forensics, e-prosecution, e-courts and e-prisons. This integrated system plays a crucial role in expediting and ensuring the accuracy of legal procedures, fostering better coordination among diverse stakeholders in the criminal justice system.<sup>11</sup>

#### **2.1.2. Use of Technology to Safeguard Victims**

The BNSS allows for audio-video recording of statements of victims, particularly in cases of rape, child abuse, and domestic violence. It also permits recording statements at the residence of the victim or other safe locations.

These measures are intended to reduce **secondary** victimisation and trauma associated with formal legal environments<sup>12</sup>

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<sup>9</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 532; see also *Mallikarjun Kodagali v State of Karnataka* (2018) 14 SCC 6.

<sup>10</sup> <https://vikaspedia.in/e-governance/online-legal-services/interoperable-criminal-justice-system#>

<sup>11</sup> Ministry of Home Affairs, *Inter-Operable Criminal Justice System (ICJS) Factsheet* (23 June 2022) RU-11-02-0107-230622/FACTSHEET.

<sup>12</sup> Bharatiya Sakshya Adhiniyam 2023, s 23.

### **2.1.3. Databases created by the National Crimes Records Bureau (NCRB)**

The government has established specialized databases under the Crime and Criminal Tracking Network & Systems (CCTNS) umbrella in response to the urgent need for effective and timely investigation. This overarching initiative acts as a repository, creating an efficient environment for multiple law enforcement investigations<sup>13</sup>. Some of the from the National Crimes Records Bureau (NCRB) specific to women's safety include:

- Investigations Tracking System for Sexual Offences (ITSSO). It was launched in February 2019. It allows the state to undertake real-time monitoring and management of cases of rape and POCSO to be able to complete the investigation in two months.
- National Database on Sexual Offenders (NDSO). This is a searchable registry of offenders for various sexual offenses like rape, gang rape, eve teasing, stalking, child abuse, etc. It includes the offender's name, address, photograph and fingerprint details.
- The Cyber Crime Prevention Against Women and Children Scheme (CCPWC) was launched as part of the Indian Cyber Crime Coordination Centre by the Ministry of Home Affairs. It caters to citizens, State/UT Police and other Law Enforcement Agencies. The NCRB recently signed an MOU with the National Centre for Missing & Exploited Children (NCMEC) USA to share the Cyber Tipline reports related to child sexual abuse material.
- The National Database of Human Traffickers (NDHT) is a one-stop database for all information related to offenders involved in cases related to the Human Trafficking of Children and Women.

### **3.2. The Bharatiya Nyaya Sanhita (BNS) includes several provisions that are related to victims, including:**

**3.2.1. Victim-centric approach:** The BNS ensures that victims are heard before a case is withdrawn, recognizing them as stakeholders in the legal process. : A Holistic Approach Right to Participation Victims now have the right to express their views, reinforcing their role as stakeholders in criminal cases. Section 360 of the BharatiyaNagarikSurakshaSanhita (BNSS) 2023 aims to fill the historical void in Section 321 of the CrPC by ensuring the inclusion of victims' voices before permitting case withdrawal. Access to Justice <sup>14</sup>

**3.2.2. The institutionalisation of Zero-FIRs and the introduction of e-FIRs** enhance accessibility, allowing victims to report crime anywhere irrespective of the crime location. For instance, Zero FIR is a provision under BharatiyaNagarikSurakshaSanhita (BNSS) 2023 that allows a person to register a First Information Report in any police station where information about a cognisable offence is provided, irrespective of the area where the offence is committed. It allows people to file an FIR online, <sup>15</sup>

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<sup>13</sup> National Crime Records Bureau, *NCRB Sankalan of Criminal Laws App* (Ministry of Home Affairs, 16 June 2024) <https://ddnews.gov.in/en/ncrb-launches-ncrb-sankalan-of-criminal-laws-app-new-criminal-laws-to-come-into-force-from-july-1> accessed 26 July 2025.

<sup>14</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 396; see also s 360 (providing the victim a right to be heard prior to the withdrawal of prosecution by the State)

<sup>15</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 173(3).

**3.2.3. Higher penalties for crimes against children:** The BNS provides higher penalties for crimes against children, including different penalties for rape and gang rape based on the victim's age<sup>16</sup>.

**3.2.4. Gender neutral language:** The BNS uses gender neutral language for various offenses against women and children. The *Bharatiya Nagarik Suraksha Sanhita* (BNSS), governing procedural law, also refers to “accused,” “victim,” and “person in custody” without presuming gender.<sup>17</sup>

**3.2.5. Electronic First Information Report (e-FIR):** The BNS allows victims to lodge information electronically, and requires the police to take the victim's signature within three days.<sup>18</sup>

**3.2.6. Progress of investigation:** Police officers must inform victims of the progress of the investigation within 90 days.<sup>19</sup> Right to Information It grants victims the authority to obtain a free copy of the FIR. The law also provides obligatory measures to keep victims informed about the progress of investigations within 90 days

### **3.3 Victim Compensation scheme.**

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.<sup>20</sup> Although not new, **victim compensation schemes** remain applicable under the new laws. Section 357A of the earlier CrPC, retained in BNSS, enables the State to award compensation to victims irrespective of the conviction status.<sup>21</sup>

However, implementation remains weak and **compensation remains discretionary**, highlighting the need for stronger institutional mechanisms

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<sup>16</sup> Bharatiya Nyaya Sanhita 2023, s 63(3) (rape of minor).

Ibid, s 70(2) (gang rape of woman under 18).

Ibid, s 64 (custodial rape and abuse of authority).

Ibid, s 67 (sexual offences against children).

Ibid, s 68 (pornographic use of child).

Ibid, s 140 (trafficking of women and children).

<sup>17</sup> Bharatiya Nagarik Suraksha Sanhita 2023, ss 2, 173, 176, 187.

<sup>18</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 173(1) (electronic FIR reporting).

<sup>19</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 193(5) (informing the victim about progress of investigation and closure).

<sup>20</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 396 (Victim Compensation Scheme) (Bare Act, p 438)

<sup>21</sup> BNSS 2023, incorporating CrPC 1973, s 357A; Law Commission of India, 154th Report on CrPC (1996) para 2.1

**3.3.1. A Paradigm Shift towards Victim Empowerment** The new laws aim to enhance the efficiency, fairness, and accountability of the justice system. It recognises the victim as a stakeholder in the criminal proceedings, providing participatory rights and expanded right to information for the victim. The law has been reformed to place victims at the centre of the criminal justice system, offering unprecedented rights and opportunities. without having to visit a police station in person. The e-FIR system is designed to be efficient as it eliminates the need for people to travel to a police station and wait in long queues to file a complaint.

**3.3.2. Transparency** The BharatiyaNagarikSurakshaSanhita (BNSS) 2023 emphasises victim information rights by ensuring the supply of police reports, FIRs, and witness statements. It also incorporates provisions dedicated to providing victims with crucial information at various stages of investigation and trial.

### **3.3.3 In-Camera Proceedings and Gender Sensitivity**

Sections 198 and 199 of BNSS make **in-camera trials mandatory** in cases involving **sexual offences**, particularly against women and children These provisions reinforce the victim's **right to dignity and privacy**, long advocated by courts and international human rights law.<sup>22</sup>

**3.3.4. Mandatory Forensic Evidence in Heinous Crimes**Section 176(3) of BNSS requires that **forensic investigation** be conducted in all heinous offences, including **rape and murder**.

The use of scientific evidence enhances the **integrity of the investigation**, indirectly benefitting victims by strengthening the prosecution<sup>23</sup>

**3.3.5.** The BNSS and BNS retain and reinforce several gender-sensitive provisions, including:

- **Criminalising sexual offences comprehensively;**
- **Expanding the definition of rape;**
- **Protecting children from abuse** with mandatory reporting;
- **Victim anonymity** in media and public discourse.

These changes reflect compliance with India's obligations under **CEDAW** and the **UN Convention on the Rights of the Child** <sup>24</sup>

### **3.3.6 Other provisions in the BNS include:**

- Section 66, which punishes those who cause death or a persistent vegetative state in a victim
- Section 67, which covers sexual intercourse by a husband on his separated wife
- Section 68, which covers sexual intercourse by a person in authority
- Section 69, which covers sexual intercourse by deceitful means

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<sup>22</sup> BNSS 2023, ss 198–199; see also *State of Punjab v Gurmit Singh* (1996) 2 SCC 384.

<sup>23</sup> BNSS 2023, s 176(3).

<sup>24</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13;

- Section 74, which covers assault or criminal force against a woman
- Section 95, which punishes those who exploit children for criminal activities

### **3. Recommendations and suggestions**

- ***Comprehensive Legislative Reforms***: Enact legislation recognizing and safeguarding victim rights, streamline victim impact statement procedures, and allocate sufficient resources for enhanced victim support services.
- ***Cultural Sensitivity and Accessibility***: Provide diversity training for legal practitioners, multi lingual support, and create culturally sensitive legal processes.
- ***Balancing Rights***: Educate legal professionals and the public on the importance of balancing the rights of the accused and victims, encourage collaborative dialogue, and periodically evaluate the impact of reforms.
- ***International Best Practices***: Benchmark international victim-centered best practices.
- ***Collaborative Efforts***: Facilitate interagency collaboration, incorporate victim participation, and empower victims through educational programs. **Sustainable Funding**: Establish dedicated funding to cover legal expenses, support services, and victim empowerment programs. These recommendations aim to create a more equitable and compassionate legal framework in the Indian criminal justice system.

### **4. Conclusion**

The progress made in recent years regarding victim rights is commendable, yet challenges remain that necessitate continued advocacy and reform. As the legal landscape evolves, it is imperative that the needs and rights of victims remain at the forefront of discussions surrounding criminal justice policy.

The approach now places crimes against women, children and the nation at the forefront. This starkly contrasts the legacy of colonial-era laws, where threats to the British Crown outweighed the justice to the ordinary Bharatiya citizens. The shift focuses on urgency, importance and expedited timelines for investigation processes. The journey so far towards a more victim-centric legal system is ongoing, and the insights gained so far provide a foundation for future efforts aimed at enhancing the support and representation of victims in India.