

Victim's rights in the Indian Criminal Justice System: From passive sufferers to active participants.**Author:** Ridhima Maheshwari**Abstract**

The Indian criminal justice system has historically been accused-centric, where the predominant matter settled around the guilt or innocence of the offender, while the victim resumed as a passive witness in the legal proceedings. Traditionally, crime was regarded as an offence against the State. However, with emerging jurisdiction and contemporary judicial reforms, specifically the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 and Bharatiya Sakshya Adhiniyam (BSA), 2023, a revolutionary shift has discovered toward acknowledge¹ victims as right bearing stockholders.

This article analyses the evolution of victim rights in India from passive sufferers to active contributor on the basis of doctrinal analysis of constitutional provision, administrative reforms, judicial interpretation, and international directives such as the 1985 UN Declaration on Victims of Crime. It examines the conceptual framework of victim, victimization, and victimology tracing to reparative justice. The research highlights legislative recognition of victims under BNSS, incorporating the right to receive a copy of FIR, police are mandated to inform the victim's family about investigation, right to appeal against acquittal or inadequate compensation, right to free medical treatment at public hospital for women and child, and access to state subsidized compensation schemes.

Judicial pronouncements have significantly strengthened victim participation. In cases such as Ankush Shivaji Gaikwad VS State of Maharashtra (2013)² and Mallikarjun Kodagali VS The State of Karnataka (2018)³ expanded compensation jurisprudence and upheld the victim's sovereignty right to appeal. Furthermore, person autonomy and dignity concerns in sexual violence cases have been strengthen through statutory interpretation under Article 21, guarantee humane and ethical behaviour. Regardless of these progressive growth, challenges remain

¹ R.K. Raghavan (2004) 'Reforming the Criminal Justice System', Journal of the Indian Law Institute, 46(2), pp. 201-220

² Ankush Shivaji Gaikwad v State of Maharashtra (2013) 6 SCC 770 (Supreme Court of India)

³ Mallikarjun Kodagali v State of Karnataka (2019) 2 SCC 752 (Supreme Court of India)

including lack of knowledge remain, including lack of awareness, lack of implementation of remuneration schemes, witness daunting schemes, and procedural delays. The article deduce victim-centric principles within its criminal justice system, effective enforcement, awareness framework, institutional responsibility are essential to ensure that victims are not simply symbolic participants but that while India has made considerable progress in lodging inspired actors in the pursuit of justice.

Keywords- Victims' rights, Victimology, Indian Criminal Justice System, Witness protection, Victim participation

Introduction

The Indian Criminal System has historically been accused-centric. For decades the primary focus of our society is whether the accused is convicted or acquitted for the heinous crime rather than if some relief is provided to the victim in the form of compensation, assistance or restitution. The victim was treated merely as a side-character despite being affected the most, they are witnessing the fight between state prosecutor and the accused⁴. The media also depict this event as triumphs of good over evil. However, with the enactment of new criminal laws- the Bharatiya Nyaya Sanhita (BNS) 2023, the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, the Bharatiya Sakshya Adhinyam (BSA) 2023 transformative shift has taken place. These new laws aim to provide the efficiency, fairness, accountability. It also emphasizes on the victim participation, dignity, compensation and procedural fairness. Victim-centric justice is no longer inapplicable hypothetical concept; it is increasingly recognised as constitutional necessity.

This article emphasises on the journey of victims in India:

- from the silent spectator to recognised rights holder.
- to active participant in criminal proceedings.

⁴ Mrinal Satish (2016) 'Victim Impact Statements and Sentencing in India', National Law School of India Review 28(1), pp. 45-68.

This article explains the evolution of victim's rights⁵, constitutional status of victim's rights, transformative shift under new criminal laws, victim rights under BNS, BNSS and BSA, judicial interpretation of victim rights and justice shifted from retributive to restorative justice.

Concept of Victim, Victimization and Victimology

Concept of Victim-

General Definition " A victim refers to a person who suffer loss, injury, harm or damage in consequence of a criminal act, unlawful conduct or violation of legal rights.

Traditionally, criminal justice system evolved on the principle that crime is an offence which is against the state, thus victims were treated as mere witness. The state prosecutes the accused and the victim has limited say in trial proceeding and compensation⁶ is rarely prioritized. Modern criminal jurisdiction however recognizes victims as right-holder and active participants.

Legal definition- A victim is defined under section 2 (1) (y) of Bharatiya Nagarik Suraksha Sanhita (BNSS) earlier recognised under CrPC. "Victim means a person⁷ who has suffered any loss or injury caused by reason of the act or omission of or which the accused has been charged and includes the guardian or legal heir of victim.

A victim includes: -

- ☐ A person who is suffered from the loss or injury.
- ☐ The loss must result from an act or omission.
- ☐ The accused must be charged.
- ☐ The legal heirs or guardians (in case of death).

Concept of Victimization

Definition- Victimization can be understood as "Person who has suffered harm, injury including physical or mental injury or subject to suffering due to criminal act, abuse of authority or violation of legal rights." The United Nation Declaration of Basis Principles of Justice for Victims of Crime and Abuse of Power (29 November 1985), defines victim as "Victim means

⁵ Alok Kumar (2018) 'Compensation to Victims under Criminal Law in India' Journal of Victimology and Victim Justice, 1(1), pp. 78-95.

a persons who, personally or collectively, have suffered injury, including physical, mental injury, emotional suffering,

⁶ 5. Sangeeta Mahapatra (2019) 'Access to Justice for Victims in India', NUJS Law Review, 12(2), pp. 112-130.⁷ Arvind Verma (2012) 'Role of Victims in Criminal Justice Process in India' Indian Journal of Criminology, 40(3), pp.34-52.

financial loss or substantial disability of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prohibiting criminal abuse of power.” Thus, victimization is a procedure of involving the incident of harm, victim’s reaction to that act or harm and the reaction of society and association.

Types of Victimization-

- Primary Victimization- Primary Victimization refers to the direct injury endured by a victim as a result of a criminal act. For examples- A person being physically assaulted, a woman subjected to sexual assault, being a victim of robbery or fraud⁶. This form of victimization contains physical assault, mental harassment, identity theft, emotional agitation.
- Secondary Victimization- Secondary Victimization refers to when victims experience aggravated injury due to insensitive or inappropriate reaction from institutions, notably the criminal justice system. For example- Police refusing to register FIR, victim blaming during trial, insensitive questioning, forcing victims by repeatedly asking degrading questions, police questioning victim’s clothes and their behaviour. Therefore, secondary victimization is often represented as victimization by the system.
- Tertiary Victimization- Tertiary Victimization refers to negative social reactions or stigmatization by the community. For example- social boycott of rape survivors, victim’s family may face blame from society, media exposure causing mental trauma.
- Repeat Victimization- Repeat Victimization refers to when the same individual becomes a survivor of crime repeatedly times. For examples- A woman facing recurring

⁶ Kumkum Chadha (2015) 'Victim Compensation Scheme: An Analysis', Journal of Indian Law and Society, 6(1), pp. 89-110

domestic violence, repeatedly sexual assault. Therefore, studies⁷ show that victims of certain offence are at most dangerous risk of being victimized again.

Concept of Victimology

The term victimology is derived from the Latin word *victima* meaning 'scarified person' and the Greek word *logos* meaning 'study'. The term victimology was first used by Benjamin Mendelsohn, a Romanian lawyer⁸, in the 1940s, he is often called the 'father of victimology'.

He defined it as the 'science of victims and victimity'. He focused on the interaction between the offender and the victim, which he termed the penal couple.

Victimology study of: -

- ☐ Victim behaviour.
- ☐ Patterns of victimization.
- ☐ Victim rights and compensation.
- ☐ Social reaction to victims.

Benjamin Mendelsohn identified six unique types of victims: -

Completely innocent victim- Victim who did not bear responsibility or contribute to the crime. They were simply in the wrong place at the wrong time⁹, for example- a child or a person asleep, elderly adult.

Victims with minor guilt- inadequately places themselves in a compromising or dangerous situation such as going to nightclub notorious for conflict and violence.

Voluntary Victim or Victim as Guilty as offender-Those victim which actively participated in crime like suicide pact or aiding in a robbery.

Victim More Guilty Victim than offender or provokes or instigates the crime, leading to their own victimization.

Most Guilty Victim- The victim that's harmed while initiating a crime and is injured in turn.

⁷ G.S. Bajpai (2014) 'Victimological Developments in India', Journal of Victimology and Victim Justice, 2(2), pp. 150-172.

⁸ Upendra Baxi (1980) 'The Crisis of the Indian Legal System', International Journal of the Sociology of Law, 8(3), pp. 191-218

⁹ Flavia Agnes (2013) 'Gender Justice and Victim Rights', Economic and Political Weekly, 48(17), pp. 45-52.

Simulating or Imaginary Victim- An individual who fabricates or falsified a crime or claim to be a victim when they are not.

Role of Victim Rights in Bharatiya Nagarik Suraksha Sanhita (BNSS)

- BNSS formally recognises “victim” as a legal stakeholder- BNSS defines “victim” as a person who suffered loss or injury due to the accused’s act or omission, and includes guardian or legal heir. This definition is crucial because it becomes the base for granting procedural rights like appeal and compensation.
- Right to get FIR copy, free of cost- BNSS strengthen early participation by ensuring the informant or the victim gets a copy of the Information or FIR immediately and free of cost.
- Right to be informed about investigation progress- Victims are kept in the dark- BNSS provides that police must inform the progress of investigation (including via electronic communication) within the stipulated period (notably mentioned as within 90 days in the text around investigation progress communication).
- Victim’s rights to appeal (a major active participant shift)- BNSS explicitly gives the victim a statutory right to appeal against: acquittal, or conviction¹² for a lesser offence, or inadequately compensation and clarifies the forum “the court to which an appeal ordinarily lies.”
- Victim-Centric remedies- BNSS keeps the victim compensation framework and makes it more explicitly rehabilitation-oriented, including:
 - State scheme for compensation,
 - DLSA/SLSA deciding quantum,
 - Compensation even where offender not traced or identified and no trial happens,
 - Time-bound enquiry (mentioned as within two months),
 - Interim relief like immediate first-aid or medical benefits.
- Treatment of Victims- BNSS mandates all hospitals (public or private) to provide immediate first-aid/ medical treatment free of cost to victims of specified offences (including sexual offences under BNS/POCSO list mentioned there) and to inform police immediately.

- Witness protection (indirect but powerful support for victims)- Although titled as witness Protection Scheme, it directly supports victims because victims are often key witnesses-reducing intimidation and improving meaningful participation.

Keys Elements of Victim's rights Protection in Indian Criminal Justice system

The safeguard of victim's rights in India is no more restricted to compensate or sympathy, it now includes an exhaustive framework of acknowledgement, involvement, decency, compensation, reclamation, and access to justice. These components have developed initially through judicial construction and were later reinforce through statutory amendments such as the Criminal Law (Amendment) Act, 2008 and now displayed¹³ in the Bharatiya Nagarik

¹² 3. Ministry of Home Affairs (2003) Report of the Committee on Reforms of Criminal Justice System (Malimath Committee Report). New Delhi: Government of India.

¹³ 10. N.R. Madhava Menon (2007) 'Access to Justice: A Movement in India', Journal of the Indian Law Institute, 49(3), pp.355-367.

Suraksha Sanhita [BNSS], 2023 and Bharatiya Nyaya Sanhita (BNS), 2023. The modification reflects a constitutional shift from observing the victim as a mere deponent to acknowledge the victim as a rights-bearing rightsholder in criminal proceedings.

Right to Legal Representation and Assistance- Victim's involvement is incomplete without legal assistance. The section 24(8) CrPC, now section 18 (8) of BNSS permits the victims to engage an advocate of his choice to assist the prosecution under this section¹⁴.

Right to access justice and fair recognition- Victim safety includes the right to fair examination and active participation.

Right to Participate in Criminal Proceedings- Traditionally, victims were treated as mere witnesses. Now, modern reforms recognize the victim's rights ie., right to be heard and right to appeal against acquittal.

Right to Compensation and Restitution- Compensation is crucial element for victim protection as some jurisdiction provide compensation program to assist victim with economic relief, restorative justice and for other remedies. It recognize that the punishment alone does not repair victim's harm.

Right for Speedy Trial- It is crucial aspect for victims to enjoy the speedy trial during the court proceeding and it recognises under article 21 to ensure timely justice.

Judicial Interpretation Strengthening Victim Rights

Indian victim-rights jurisprudence begins with courts treating victimisation not merely as “evidence for conviction” but as a constitutional concern involving dignity, privacy, access to justice, and meaningful participation. A foundational illustration is *Delhi Domestic Working Women’s Forum V. Union of India* (1994)¹⁵, where the Supreme Court recognized that victims (especially of sexual violence) need systematic support beyond the trial such as legal assistance, sensitive procedures, and compensation/ rehabilitation structures because the harm is social, psychological, and economic, not just physical. This approach is important for research writing because it shows the court’s early move toward what we now call restorative and victimological justice: the victim is not “just a witness,” but a rights-holder whose recovery and participation matter to fairness itself.

¹⁴ 2. Law Commission of India (2018) 277th Report on Wrongful Prosecution. New Delhi: Government of India.

¹⁵ 2. *Delhi Domestic Working Women’s Forum v Union of India* (1994) 1 SCC 14 (Supreme Court of India).

That restorative idea became sharper in the Supreme Court’s later compensation jurisdiction.

In *Ankush Shivaji Gaikwad V. State of Maharashtra* (2013)¹⁶, the court strongly criticized the routine failure of criminal courts to apply compensation provisions meaningfully, emphasizing that compensation is not charity- it is part of justice for the person harmed, and courts must apply their mind to it. The judgment’s deeper contribution is interpretive: it pushes trial courts to treat “what happened to the victim after the crime” as legally relevant at sentencing and deposition. This judicial insistence laid the conceptual groundwork for modern statutory schemes (earlier under CrPC section 357 and 357A), where state’s responsibility expands from punishment to repair and rehabilitation. A major leap from “passive” to “active” is the

recognition of the victim’s independent appellate agency. In *Mallikarjun Kodagali V. State of Karnataka* (2018)¹⁷, the Supreme Court took the proviso to Section 372 CrPC (victim appeal) seriously and framed it as an empowerment measure: victims should not remain dependent on prosecutorial discretion alone to challenge an acquittal or inadequate outcomes. The judgment discusses the larger history of victim rights reform and signals that the criminal process must accommodate the victim’s rights to be heard. This is doctrinally significant for your research paper because it rebalances the criminal justice triangle- state, accused, victim- by acknowledging that the victim can seek correction of injustice through appellate review, rather than waiting for the state to act.

Participation is not only about appeals; it also appears at crucial interim stages- especially bail- where victims historically had little practical voice. In *Jagjeet Singh V. Ashish Mishra* (2022)¹⁸, the Supreme Court held that victims/complainants cannot be kept out of the process when liberty decisions are being made; fairness requires that the victim side is heard, and bail orders must demonstrate a careful application of mind. For your theme, this case powerfully illustrates the shift: the victim is not merely waiting for trial; the victim's stake in safety, intimidation risks, and justice integrity matters at the pre-trial stage too. This interpretation also harmonious with the discretion in newer procedural frameworks (BNSS) that build stronger "investigation and participation" norms around investigation and proceedings.

Courts have also strengthened victim participation through the lens of representation through the lens of representation while still preserving the State's primary prosecutorial role. In *Rekha Murarka V. State of West Bengal* (2019)¹⁹, the Supreme Court interpreted the proviso to

¹⁶ *Ankush Shivaji Gaikwad v State of Maharashtra* (2013) 6 SCC 770 (Supreme Court of India).

¹⁷ *5. Mallikarjun Kodagali v State of Karnataka* (2018) 2 SCC 752 (Supreme Court of India).

¹⁸ *3. Jagjeet Singh v Ashish Mishra* (2022) 9 SCC 321 (Supreme Court of India).

¹⁹ *8. Rekha Murarka v State of West Bengal* (2019) 2 SCC 474 (Supreme Court of India).

Section 24(8) CrPC and clarified that a victim's counsel may "assist" the prosecution, but the conduct of prosecution remains with the Public Prosecutor; the victim's lawyer cannot take over the prosecutor's function as a matter of right. This judgment is essential to write about because it shows how courts balance victim get structured participation without covering prosecution into a private contest. In research terms, it demonstrates that victim-centric justice in India is being built as particularly but regulated, not uncontrolled privatization of criminal prosecution.

Another judicial strand that deeply strengthens victim rights is privacy and dignity, particularly for survivors of sexual offences. In *Nipun Saxena V. Union of India* (2018)¹⁰, the Supreme Court issued strong directions to prevent disclosure of a rape survivor's identity and laid down protective norms for media and procedure, treating anonymity as integral to dignity and equal access to justice because of stigma silences victims. When you connect this to your research topic, the point is clear: courts are not only securing conviction; they are shaping a system where victims can participate without being re-victimized by society, publicity, or hostile processes.

¹⁰ *Nipun Saxena v Union of India* (2018) 2 SCC 703 (Supreme Court of India).

Finally, courts have also treated rehabilitation and medical support as part of justice, especially for grievous bodily crimes. In *Laxmi V. Union of India* 2014¹¹, the Supreme Court pushed states toward minimum compensation and stronger regulatory/ rehabilitative responses because the harm extends into lifelong medical care, social exclusion, and livelihood loss. This line of cases is important for victim-rights paper because it connects criminal law to the lived reality of survivorship: justice includes after-care, treatment, and financial rehabilitation, not merely sentencing the offender.

Challenges and Implementation

Challenges

- Accused-Centric approach- Indian criminal justice system historically evolved around the protection of the accused, emphasizing on presumption of innocence, fair trial safeguards and protection against arbitrary arrest. Even today, procedural laws primarily structure rights in favour of accused.
- Inadequate Awareness Among Victims- Many victims are unaware of their rights to compensation, rights to appeal against acquittal and right to be heard in bail proceedings.
- Weak Implementation of Compensation Schemes- Although victim compensation is recognized under procedural law (earlier section 357A CrPC, now incorporated in BNSS), practical problems remain inconsistent compensation amounts across states, complex application procedures and lack of monitoring mechanisms.
- Witness Intimidation and Lack of Protection- Victims faces threats, coercion, or retaliation so it discourages victims from testifying. Without administrative efficiency, financial resources and lack of confidentiality, Victim participation remains risky.

Implementation

¹¹ *Laxmi v Union of India* (2014) 4 SCC 427 (Supreme Court of India).

- Special Courts and Fast-Track Courts – Fast-track courts for sexual offences and child abuse aim to reduce delay, protect victim dignity and ensure timely adjudication. While effectiveness varies, they represent a positive institutional reform.
- Constitutional Expansion of Victim Rights- Maneka Gandhi V. Union of India, 1978¹² gave the expansive interpretation of article 21. This has directly strengthened victim's entitlement to dignity and humane treatment. Public Interest Litigation have also expanded compensation jurisprudence under constitutional remedies.
- Statutory Recognition under New Criminal Laws (2023)- The enactment of BNS and BNSS marks a structural shift on victim right to appeal, procedural safeguards for vulnerable victims, strengthened compensation framework, or broader recognition of victim participation.
- Restorative Justice Approach- Modern criminal justice increasingly recognises mediation in compoundable offences, rehabilitation, or community-based reconciliation. Restorative justice places victims at the centre of the process rather than at its margins.

Conclusion

The evolution of victim rights in India marks a significant transformation in the philosophy of criminal justice. From being treated as passive sufferers and mere evidentiary tools, victims as constitutional stakeholders entitled to dignity, participation, compensation, and rehabilitation.

The enactment of the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023 represents not merely legislative reform but a structural rebalancing of the criminal justice system.

Judicial activism, constitutional interpretation under Article 21, and restorative justice principles have collectively strengthened the victim's voice within investigation, trial, sentencing, and appellate stages. However, legal recognition alone is sufficient.

Implementation gaps, uneven compensation practices, limited awareness, and systemic delays continue to obstruct meaningful participation.

For victim-centric justice to be fully realised, stronger monitoring of compensation schemes, enhanced witness protection mechanisms, legal aid accessibility, and sensitisation of police and

¹² Maneka Gandhi v Union of India (1978) 1 SCC 248 (Supreme Court of India).

judicial officers are essential. A holistic approach integrating procedural fairness with restorative justice will ensure that victims are treated not as incidental figures in criminal litigation, but as central participants whose dignity and rights form the foundation of a just and humane legal system.