

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 9 | Issue 3

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

From Victims to Rights Holders: Assessing the Position of Victims under India's New Criminal Laws

HARSHITA CHOUBEY*

ABSTRACT

With the replacement of colonial-era statutes by the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA), the Indian criminal justice system is undergoing a significant overhaul, at the heart of which lies a claimed transition from an offender-centric model to a victim-centric paradigm. This paper critically evaluates that transition, moving beyond a descriptive account of the new provisions to assess whether victims have truly emerged as autonomous rights holders. Identifying a research gap in the critical appraisal of these laws' implementation mechanisms, it asks whether the BNS, BNSS, and BSA effectively transform victims into rights holders or merely reinforce existing procedural dependencies. Adopting a doctrinal methodology, the study scrutinises key provisions, including the right to information, participation in the withdrawal of cases, and compensation, against the backdrop of landmark judicial precedents such as Mallikarjun Kodagali, Jagjeet Singh, and Ankush Shivaji Gaikwad. The analysis reveals that, while the new laws provide a stronger normative framework for victim participation, they often lack enforceable penalties for non-compliance, leaving victims largely dependent on judicial and prosecutorial discretion. The paper concludes that, although India has made significant strides, the transition from victim to rights holder remains incomplete and requires further structural reform to secure full autonomy and restorative justice.

Keywords: *Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), victim rights, victim-centric justice, criminal justice reform, victim participation, restorative justice.*

I. INTRODUCTION

For decades, the Indian criminal justice system operated under the shadow of a colonial legacy that prioritised the state's power to punish over the victim's need for justice. The victim was often treated as a forgotten entity, a mere witness whose primary utility was to facilitate the

* Author is an Assistant Professor at the School of Law and Public Policy, Avantika University, Ujjain, Madhya Pradesh, India.

state's prosecution of the accused. The twenty-first century, however, has witnessed a global and domestic shift towards victimology, a field that demands the recognition of victims as central stakeholders in the adjudicatory process.

The criminal justice system, at its core, is designed to maintain social order, punish offenders, and deter crime. For a significant period, the focus of this system in India, much like that in many other jurisdictions, lay predominantly on the state and the accused. The victim, the primary sufferer of the crime, often found themselves on the periphery, their role largely confined to that of a complainant or a witness for the prosecution. This offender-centric approach frequently overlooked the profound physical, psychological, and financial impact of crime on victims, producing a sense of alienation and secondary victimisation within the very system meant to deliver justice.

The clamour for greater victim participation and recognition began to gain momentum globally in the latter half of the twentieth century, influenced by victimology movements and international human rights discourse. In India, this shift has been gradual but discernible, propelled by judicial activism and the recommendations of various committees. The introduction of the Code of Criminal Procedure (Amendment) Act, 2008, which, for the first time, statutorily defined the victim and introduced provisions for victim compensation, marked a significant turning point. The true test of a victim-centric approach, however, lies in its comprehensive integration into the foundational criminal laws.

The recent enactment of the *Bharatiya Nyaya Sanhita* (BNS), 2023, the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023, and the *Bharatiya Sakshya Adhinyam* (BSA), 2023, replacing the *Indian Penal Code*, 1860, the *Code of Criminal Procedure*, 1973, and the *Indian Evidence Act*, 1872, respectively, represents a monumental overhaul of India's criminal justice framework.¹ These new laws are purported to be more modern, efficient, and, crucially, victim-centric. This paper assesses the extent to which they have succeeded in transforming victims from passive subjects into active rights holders. It analyses the specific provisions within the BNS, BNSS, and BSA that pertain to victim rights, examines their practical implications, and evaluates their alignment with international best practices. Through this analysis, the paper seeks to determine whether the promise of victim-centric justice in India is indeed becoming a reality or whether significant gaps and challenges persist.

¹ The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India); The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India); The Bharatiya Sakshya Adhinyam, 2023, No. 47, Acts of Parliament, 2023 (India).

A. Research gap

While initial commentaries on the new laws have extensively catalogued the changes from the CrPC to the BNSS, there is a dearth of critical scholarship analysing the enforceability of these new rights. Most existing literature remains descriptive, failing to address the structural power imbalance that persists between the accused, the state, and the victim. This paper fills that gap by providing a critical appraisal of the practical autonomy granted to victims under the new regime.

B. Research question and hypothesis

The research question is whether the BNS, BNSS, and BSA effectively transform victims into autonomous rights holders with enforceable claims, or whether they merely enhance their procedural participation within an accused-centric framework.

The hypothesis is that, while the new criminal laws significantly strengthen the normative position of victims and provide them with a seat at the table, they do not fundamentally alter the accused-centric structure of criminal proceedings, as victims remain largely dependent on the discretion of state agencies and the judiciary for the realisation of their rights.

C. Literature review: the shift towards victimology

The evolution of victim rights in India can be traced through several distinct stages, reflecting a gradual but persistent shift in legal and societal perspectives. Early scholarship focused predominantly on the state's paramount duty to prosecute and punish offenders, with victims often relegated to a secondary role. The Malimath Committee Report (2003), however, marked a watershed moment, fundamentally shifting the discourse by advocating justice to victims as a core objective of the criminal justice system. Scholars such as G.S. Bajpai have since argued that robust victim participation is not merely a matter of fairness but is essential to the overall legitimacy and effectiveness of the criminal justice system itself.

Despite these advances in theoretical recognition, the practical implementation of victim-centric measures, such as compensation schemes, has remained uneven across the Indian states. This disparity highlights a persistent gap between legislative intent and on-ground reality. Internationally, recent studies on instruments such as the EU Victims' Rights Directive (2012) suggest that a truly rights-based approach requires not only the formal inclusion of victims in legal processes but also the comprehensive provision of support services, protection mechanisms, and clear enforcement pathways. In the Indian context, the Justice Verma Committee (2013), constituted in the aftermath of the Delhi gang-rape case, further emphasised that victims of sexual violence in particular require specialised procedural protections extending

far beyond traditional trial participation, including measures for privacy, dignity, and psychological support. While the new laws incorporate some of these critical recommendations, this paper argues that the absence of robust rights-enforcement mechanisms remains a significant weakness in both the current scholarship and the legislative framework, thereby limiting the transformative potential of these reforms.

II. THE EVOLUTION OF VICTIM RIGHTS IN INDIA: A HISTORICAL OVERVIEW

Historically, the Indian criminal justice system, derived from the colonial period, prioritised the state as the injured party, viewing the victim primarily as a provider of evidence. The *Code of Criminal Procedure*, 1973, although offering certain options for victims, did not clearly acknowledge their distinct rights. The emphasis remained mainly on prosecuting and punishing the offender.

The demand for victim-focused reform gained momentum through several committee reports and judicial pronouncements. The Malimath Committee Report on Reforms of the Criminal Justice System (2003) marked a pivotal point, firmly supporting increased victim involvement and compensation. The Committee recommended, among other matters, that victims should have the right to participate in serious criminal cases, receive appropriate compensation, and be able to appeal against acquittals or inadequate sentences.² These recommendations laid the foundation for later legislative reform.

III. VICTIM-CENTRIC PROVISIONS IN INDIA'S NEW CRIMINAL LAWS

The *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023, in particular, introduces several provisions aimed at enhancing the rights and position of victims. These provisions can be broadly categorised into rights to information, participation, and compensation.

A. Right to information

The BNSS strengthens the victim's right to information regarding the progress of their case. Section 230 of the BNSS provides that copies of the police report, the first information report (FIR), and other relevant documents be furnished to the accused and, where the victim is represented by an advocate, to the victim, thereby promoting transparency and keeping the victim informed at various stages of the investigation and trial.³ This is a crucial step towards empowering victims, as access to information enables them to participate effectively and to protect their interests.

² Committee on Reforms of Criminal Justice System, Report of the Committee on Reforms of Criminal Justice System, Vol. I (Ministry of Home Affairs, Government of India, 2003).

³ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, § 230 (India).

B. Right to participation

The right to be heard and to participate in criminal proceedings has been a long-standing demand of victim-rights advocates. The BNSS addresses this through several key provisions.

Right to be heard at the time of withdrawal of cases. Section 360 of the BNSS, mirroring the amended Section 321 of the CrPC, now explicitly provides that the victim must be heard before any criminal case against the accused is withdrawn.⁴ This ensures that the victim's perspective is considered before a prosecution is terminated, a significant departure from the previous regime in which the prosecutor's discretion, with the court's consent, was paramount.

Engagement of an advocate. The BNSS, like the amended CrPC, allows victims to engage an advocate to assist the prosecution. This provision ensures that victims have legal representation to articulate their concerns and protect their rights during the trial.

Victim impact statements. Although not detailed as a separate provision, the enhanced participatory rights implicitly pave the way for victims to present the impact of the crime on their lives, which can inform sentencing decisions. This aligns with international best practice, where victim impact statements play a significant role.

C. Right to compensation and support services

The new criminal laws, particularly the BNSS, seek to strengthen victim compensation and support mechanisms.

Victim compensation schemes. The BNSS continues to emphasise the establishment of victim compensation schemes by State Governments, building upon Section 357A of the CrPC. These schemes are designed to provide financial assistance to victims for medical expenses, rehabilitation, and other losses incurred as a result of the crime. The District or State Legal Services Authority is typically responsible for determining the quantum of compensation and ordering interim relief.

Medical treatment for victims. The BNSS guarantees free first aid and medical treatment, at all hospitals, to victims of specified offences, particularly offences against women and children.⁵ This is a vital step towards ensuring immediate and accessible support for victims.

⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, § 360 (India).

⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023, § 397 (India).

IV. JUDICIAL PRECEDENTS AND THE EXPANSION OF VICTIM RIGHTS

The Indian judiciary has played a pivotal role in expanding the scope of victim rights, often filling legislative gaps and pressing for a more victim-centric approach. Several landmark judgments have significantly shaped victim jurisprudence in India.

In *Mallikarjun Kodagali v. State of Karnataka* (2018), the Supreme Court clarified and affirmed the victim's right to appeal against an order of acquittal, conviction for a lesser offence, or inadequate compensation under the proviso to Section 372 of the CrPC.⁶ The Court held that leave to appeal is not required for a victim to prefer an appeal, thereby removing a significant procedural hurdle and empowering victims to challenge unfavourable outcomes.

In *Jagjeet Singh v. Ashish Mishra* (2022), the Supreme Court emphasised the victim's right to be heard at every stage of the criminal process, particularly in bail proceedings.⁷ The Court observed that the victim's rights are independent and not merely auxiliary to those of the state, and that the victim has a legally vested right to participate effectively from the stage of investigation until the culmination of the proceedings. The judgment underscored the importance of effective victim participation and the need to consider the victim's perspective even in matters of bail.

In *Laxmi v. Union of India* (2014), although not directly related to the new criminal laws, the Supreme Court significantly advanced victim compensation, particularly for acid-attack victims.⁸ The Court issued comprehensive guidelines for the regulation of acid sales and mandated a minimum compensation for acid-attack survivors, highlighting the judiciary's proactive role in ensuring justice and rehabilitation for victims.

In *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013), the Supreme Court held that courts must record reasons for awarding or refusing compensation under Section 357 of the CrPC.⁹ This principle is vital for the new regime, as it moves compensation from a matter of mercy to a matter of reasoned judicial duty.

In *Delhi Domestic Working Women's Forum v. Union of India* (1995), the Supreme Court established important guidelines for the police in handling rape cases, including the provision of legal representation to victims and the safeguarding of their dignity throughout the process.¹⁰

⁶ *Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752 (India).

⁷ *Jagjeet Singh v. Ashish Mishra*, (2022) 9 SCC 321 (India).

⁸ *Laxmi v. Union of India*, (2014) 4 SCC 427 (India).

⁹ *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770 (India).

¹⁰ *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14 (India).

Although predating the new laws, its principles underpin the enhanced focus on victim protection and support.

V. COMPARATIVE ANALYSIS: INTERNATIONAL PERSPECTIVES ON VICTIM RIGHTS

Examining international frameworks provides a valuable benchmark for assessing India's progress in victim-centric justice. The global movement for victim rights has produced several key instruments.

The *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985) outlines principles for the treatment of victims, emphasising their right to be treated with compassion and respect, to have access to justice, and to obtain prompt redress.¹¹ It calls for measures to provide victims with information, assistance, restitution, and compensation. India's new laws align with many of these principles, particularly in providing information and compensation mechanisms.

The *EU Victims' Rights Directive* (2012/29/EU) establishes minimum standards on the rights, support, and protection of victims of crime across the European Union.¹² It requires that victims receive appropriate information, support, and protection tailored to their individual needs, and it emphasises the right to be heard and to receive compensation. While India's new laws have made strides, a comprehensive and unified directive akin to the EU model could further strengthen victim rights and support services.

VI. CHALLENGES AND THE ROAD AHEAD

Despite the progressive provisions enshrined in India's new criminal laws and the proactive stance adopted by the judiciary, several significant challenges persist in fully realising a victim-centric justice system. The transition from legislative intent to tangible impact on the ground requires that these systemic hurdles be addressed.

Implementation gaps. The effectiveness of the new laws hinges on their robust and uniform implementation across all states and union territories. Adequate allocation of resources, comprehensive training for law-enforcement agencies, public prosecutors, and judicial officers, and widespread awareness campaigns among victims themselves are all crucial. Without these, the statutory rights risk remaining merely on paper. Disparities in infrastructure, funding, and

¹¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

¹² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA, 2012 O.J. (L 315) 57.

political will across states can lead to uneven application of these progressive provisions, undermining the goal of universal victim empowerment.

Access to justice. While the legal provisions exist, practical barriers continue to hinder victims from fully exercising their rights. These include financial constraints, which often prevent victims from affording legal representation or pursuing prolonged litigation; a pervasive lack of legal awareness, particularly among marginalised communities; and societal pressures, including stigma and fear of retaliation, which can deter victims from reporting crimes or participating in proceedings. Overcoming these barriers requires not only legal aid but also community outreach, victim support centres, and robust protection mechanisms.

Protection for victims and witnesses. Thorough victim and witness protection programmes are essential to ensure that victims can engage with the justice system without fear of intimidation, harassment, or retaliation. Although some initiatives are in place, a stronger, consistently applied, and adequately financed framework is urgently required. This encompasses physical safety, protection of identity, relocation assistance, and emotional support. The absence of a robust framework may cause victims to withdraw from cases, thereby weakening the very foundation of a victim-centred approach.

Restorative justice. The new laws, while progressive, focus primarily on the punitive and compensatory aspects of justice. Exploring and integrating restorative justice practices, which prioritise repairing harm, promoting reconciliation between victims and offenders, and involving the community in the healing process, could offer a more holistic approach to victim justice. This might include victim-offender mediation, community conferencing, and other alternative dispute resolution mechanisms that focus on healing and reintegration rather than solely on punishment.

Shifting the societal mindset. Beyond legal and procedural reform, a fundamental shift in societal attitudes towards victims is imperative. Overcoming victim-blaming, ensuring dignity and respect for survivors, and fostering a supportive environment require sustained public-awareness campaigns, educational initiatives, and a commitment from all stakeholders, including the media, civil society, and community leaders, to challenge entrenched biases and promote empathy.

VII. CONCLUSION

The transition from an offender-focused to a victim-focused criminal justice system in India has been lengthy and challenging, characterised by gradual reform and sustained advocacy. The enactment of the *Bharatiya Nyaya Sanhita*, the *Bharatiya Nagarik Suraksha Sanhita*, and the

Bharatiya Sakshya Adhiniyam marks a substantial legislative advance, reflecting a definite intent to strengthen the position of victims and to acknowledge them as holders of rights. Measures concerning the right to information, increased involvement in proceedings, and strengthened compensation systems are commendable steps that bring India's legal framework closer to global best practice.

The true measure of this transformation, however, lies not merely in the statutory provisions but in their effective implementation and their tangible impact on the lives of victims. While the legal framework is now more robust, continuous effort is required to address persistent implementation challenges, improve practical access to justice for all victims, and foster a societal mindset that prioritises the dignity, autonomy, and rights of victims. The analysis reveals that, although victims have gained a stronger normative position, their journey towards becoming fully autonomous rights holders, independent of state discretion, remains incomplete. The absence of explicit enforcement mechanisms for certain victim rights, and the reliance on judicial interpretation for their full realisation, underscore the need for further legislative refinement and systemic reform.

In conclusion, the promise of victim-centric justice in India is no longer a myth but a developing reality that demands sustained commitment and continuous reform. This includes strengthening victim and witness protection programmes, exploring the integration of restorative justice principles, and ensuring that adequate resources are allocated for the effective training of all justice-system stakeholders. Only through such comprehensive and sustained effort can India ensure that every victim receives the justice, support, and respect they deserve, thereby transforming them from passive subjects into truly empowered rights holders within a fair and equitable criminal justice system.
