

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

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Volume 8 | Issue 3

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2025

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# Victims' Role in the Criminal Justice System: A Comparative Analysis of India, UK, and US

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## ABSTRACT

*Traditionally, victims in criminal proceedings have always been downgraded to the role of passive witnesses, while the state dominates the legal process. The victims' statements have barely impacted judicial decision-making in India. Also, victim participation often remains symbolic rather than substantive. There is a struggle to balance victim participation with the rights of the accused in many countries. However, recently, there have been legal developments in both India and international platforms as they have recognised the need for greater victim participation. This paper examines the evolving role of victims in India's Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 and compares it with global frameworks, including the UN Declaration of Basic Principles for Victims, along with victim participation mechanisms in the UK and US. In this paper, I would like to analyse the current legal framework in India, including key provisions within the BNSS that define victim rights, such as the right to file an FIR, engage private counsel, claim compensation, and appeal. It evaluates the limitations and inconsistencies of these rights, particularly the restrictions on independent prosecution and decision-making power.*

*The paper further analyses the right to make personal statements and access to support services provided in the UK's Victim Code and the USA's Crime Victims' Rights Act, and how to incorporate these provisions in the Indian legal system.*

*This research suggests enhancing victim empowerment in India with the help of greater victim participation. Therefore, it involves passing an overarching law encompassing victim rights, active participation in the trial, and securing participation of the victims from investigation to the trial. Finally, a balanced approach is necessary that makes victim rights converge with due process, avoiding secondary victimisation but making the criminal justice system fairer.*

**Keywords:** *victim participation, private counsel role, personal statements, fair trial*

## I. INTRODUCTION

Traditionally, victims in criminal proceedings have been downgraded to the role of passive witnesses, with the state dominating the legal process. The victims' statements have rarely impacted judicial decision-making in India as well as in other countries. Also, victim

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participation often remains symbolic rather than substantive, with legal systems struggling to balance victim input with the rights of the accused. However, recent legal developments in India and internationally have recognised the need for greater victim participation. This paper examines the evolving role of victims in India's Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. It compares it with global frameworks, including “the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>2</sup> (1985)” along with victim participation mechanisms in the UK and US. In this paper, I would like to analyse the current legal framework in India, including key provisions within the BNSS that define victim rights, such as the right to file an FIR, engage private counsel, claim compensation, and appeal. It evaluates the limitations and inconsistencies of these rights, particularly the restrictions on independent prosecution and decision-making power.

Crime doesn't just cause symbolic harm to the community and public order, but it evidently causes substantial harm to the actual victim involved<sup>3</sup>. So, when the whole state is considered a victim, the value of the actual victim is clouded, and their role is diminished<sup>4</sup>. They merely act as spectators when court proceedings occur between the state and the accused, while they are supposed to actively participate in the court proceedings.

Though there has been a gradual progress towards assimilating the victims into the criminal justice system. In reality, police and judicial officers receive enough training on how to deal with the accused while he goes through the investigation process and trial, but unfortunately, they are not trained to give even minimal attention to the helpless victims<sup>5</sup>. This is not just the plight of victims in India, but also in many nations, hence UN came up with Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and it states that “Police, justice, health, social service and other personnel who are concerned should receive proper training to sensitize the needs of the victims them to the needs of victims, and guidelines to ensure proper and immediate aid.”<sup>6</sup>

If we go through the BNSS, we will understand that only compensating and compounding are considered by the Indian state as fulfilling the needs of the victims of crime, while there is a

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<sup>2</sup> Crime Prevention toward a European Level. <https://repository.wodc.nl/handle/20.500.12832/284>.

<sup>3</sup> Law Commission of India, *Code of Criminal procedure, 1973*, report no 154 (august 1996) <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf> (last visited on march 27,2025).

<sup>4</sup> V. Pavithra & Riktha Muralidhar, Victim Rights in India: Is the Focus of the Criminal Justice System Shifting from the Accused to the Victim?, 4 INT'L J.L. MGMT. & HUMAN. 774 (2021).

<sup>5</sup> V. Pavithra & Riktha Muralidhar, Victim Rights in India: Is the Focus of the Criminal Justice System Shifting from the Accused to the Victim?, 4 INT'L J.L. MGMT. & HUMAN. 774 (2021).

<sup>6</sup> UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34, <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>.

lot of scope to expand and recognise their rights. Even Krishna Iyer J. in the case of *Rattan Singh v. State of Punjab*<sup>7</sup> has expressed that, "In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature". Therefore, let's look into the American Crime Victims' Rights Act (CVRA) and England's Victims' Code to analyse the role played by the victim.

Another reason for the active role of victims in judicial participation is that there are times when the accused would be the state itself, so to protect the victims' rights, there is a need for the victim to have a say in the criminal justice system for a fair trial. This has been highlighted in *Hussainara Khatoon & Ors v. Home Secretary, State of Bihar*<sup>8</sup> which recognised victimization of the innocents due to the abuse of state power. The Judge felt that there is the need to address and redress such grave violation of basic human rights which directly infringed the fundamental right to live with dignity under Art. 21 of the Constitution.

Hence, this study proposes recommendations for strengthening victim empowerment in India by categorising victim participation (e.g., service and procedural rights, information provision, consultation). These include enacting a comprehensive law codifying victim rights, empowering private counsel for active trial participation, and ensuring victim participation from investigation to trial. So, this research work will highlight the importance of a balanced approach with the victim's rights of due process, preventing secondary victimisation and also enhancing the complete fairness of the criminal justice system.

## II. VICTIM

In India, the term victim has been defined in *Bhartiya Nagarik Suraksha Sanhita (BNSS)*, 2023, and it states under section 2(1)(x) as "a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and includes the guardian or legal heir of such victim." Court in *Ram Phal vs State and Ors*<sup>9</sup> has explicitly stated that the victim's role in India is very limited. The court observed that victims are the worst sufferers in a crime but have very limited roles in court proceedings. They are often reduced to mere spectators while the State prosecutes the accused, leaving victims without a meaningful voice or control over the process. The court advocated for a victim-centric approach aligned with international standards such as the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which calls for victims to receive material, medical, psychological, and social assistance. In 2003, the

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<sup>7</sup> (1981) 4 SCC 1981.

<sup>8</sup> MANU/SC/0119/1979.

<sup>9</sup> MANU/SC/0147/2003.

Malimath committee recommended that the UK's victim scheme model be adopted in India.

Even the UN tried to elaborate on the position of the victim and defined them as "individuals or groups who have been harmed either individually or collectively by acts or inactions that violate the criminal laws that are in effect in Member States. This harm may include physical or mental injury, emotional distress, financial loss, or a significant impairment of primary rights. The term "victim" is, in general, used to refer to the direct victim's immediate family or dependents, when applicable, as well as those who have been harmed while helping victims in need or preventing victimisation.<sup>10</sup>"

Even the Malimath Committee has recommended the following guidelines to expand the role of the victim for fair justice. They are as follows:

- Victims should have the right to participate in criminal proceedings when offences included are serious in nature.
- If the victim is not alive, then his/her legal representatives should have the right to implead themselves as the party in serious offences.
- Just like the accused, even the victim should be given the choice to select their own pleader free of cost by the state.

### **III. INVESTIGATION PROCESS**

#### **A. Complaint**

In India, any information concerning the commission of a cognizable offence, irrespective of where the offence took place, can be reported either orally or through electronic communication to the officer in charge of a police station as per section 173 of the BNSS<sup>11</sup>. Subject to the provisions of Section 175, when such information pertains to a cognizable offence punishable by imprisonment of three years or more but less than seven years, the officer in charge may, with prior approval from any police officer who is at least the rank of Deputy Superintendent of Police and taking into account the seriousness and nature of the offence, can either initiate a preliminary inquiry within a period of fourteen days to understand first whether a prima facie case exists or begin an investigation if a prima facie case filed is very evident.

If the police refuse to accept a First Information Report (FIR), the victim or complainant has

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<sup>10</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse> (last visited Mar 31, 2025).

<sup>11</sup> Bharatiya Nagrik Suraksha Sanhita, 2023, § (173).

every right to find redress by approaching a Magistrate. Subsection (3) of Section 175 vests the Magistrate with the powers to direct the police to institute an investigation. If an FIR is not registered or if the offence is non-cognizable in nature, the victim has the option to directly submit a complaint to a Magistrate<sup>12</sup>. And Magistrates have the authority to take cognizance of offences upon receiving a private complaint, which may result in conducting an inquiry and initiating proceedings against the accused.

Nirmal Singh Kahlon v. State of Punjab, the Hon'ble Apex Court in this judgment has reasoned that the right to fair investigation and trial does not only extend to the defendant but also to the victim and such a right to the victim is guaranteed under Article 21 of the Constitution of India. It established that the victims are entitled equally to a fair investigation.

While in England, the Victims' Code (formally titled as *Code of Practice for Victims of Crime*) legislated in the UK sets out 16 rights for victims, including the right to be informed of case progress, make a victim's personal statement, and receive services from police and courts.

Although the Code itself is not legally enforceable in court, it still offers the victims important protections and recourse. If victims feel that any of their rights under the Code have been breached, they have the right to file a complaint. According to Right 12 of the Code, victims should first address their concerns directly with the police of the concerned jurisdiction.

Right 2 of the act ensures that the victims have a right to get the crime registered by police officers without an unwarranted delay and ought to be provided additional guidance by a registered intermediary who will help the police with the facts at the time of investigation appropriately.

If the police do not respond properly or their investigation is unsatisfactory or if the issue is not solved, then a complaint can be given to the Parliamentary and Health Service Ombudsman for a proper review. Additionally, victims have the option to contact the Victims' Commissioner, who can advocate on their behalf. If the complaint is related to compensation, it may also be referred to the Criminal Injuries Compensation Authority (CICA) for appropriate action.

Victims in the UK are given the right to know about the ongoing investigation and prosecution on time as per right 6, including whether the person suspected in the case has been arrested or not and on what offences the accused is being charged<sup>13</sup>. Once the suspect is

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<sup>12</sup> Bharatiya Nagrik Suraksha Sanhita, 2023, § (210).

<sup>13</sup> After a crime: your rights, GOV.UK, <https://www.gov.uk/your-rights-after-crime> (last visited Apr 4, 2025).

identified, the CPS (Crown Prosecution Service) usually frames charges in the case. The victims must be given information within five days if the charges pressed are completely dropped or altered so that they can request a review of that decision under the Victims' Right to Review Scheme. The victim or his representative can apply for a review within three months of the police decision, but only when the suspect has been identified and interviewed by the police.<sup>14</sup>

At the time of the investigation, police have the duty to inform the victim regarding restorative justice, where both the victim and the accused are given a fair chance to communicate. In this way, the victims have the right to give a personal statement on the impact of the crime on them. This scheme enables the victim to have the right to be heard and helps them to move on.<sup>15</sup> Support services like police and courts should conduct a "needs assessment" to curate a tailored support system for the victim. Further, to encourage proper treatment of the victims and to review the operation of the victims' code, the government has appointed a Victims' Commissioner. Also In order to help investigators identify suspects, victims frequently submit eyewitness testimonies or important details about the crime.<sup>16</sup>

When it comes to America, the rights and role of the victims of crime are safeguarded under the Crime Victims' Rights Act (CVRA), 2004. It is a U.S. federal law aimed at protecting the rights of victims of crime during the criminal justice process. It ensures victims have several key protections, such as the right to be shielded from the accused, to be notified about public legal proceedings, to attend those proceedings, and to express their views at critical stages like sentencing.

One of the CVRA's most significant benefits is that it empowers the victims by giving them a real voice in the justice system. This not only promotes fairness and transparency but also builds public trust in the legal process. Nonetheless, some challenges still exist in the system. The implementation of these rights can be inconsistent, and victims do not easily assert them without legal assistance. There are also concerns on how to reconcile victims' rights with the constitutional rights of the accused, which can generate tensions in providing equality to all parties.

Under § 3771(d) of the Crime Victims' Rights Act (CVRA), crime victims are authorized to assert the rights outlined in subsection (a). This statute requires that the district court should

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<sup>14</sup> Victims' Right to Review Scheme, <https://www.met.police.uk/advice/advice-and-information/victim-support/victims-right-review-scheme/> (last visited Apr 4, 2025).

<sup>15</sup> VICTIMS STRATEGY, (2018).

<sup>16</sup> Susan E Gegan & Nicholas Ernesto Rodriguez, *Victims' Roles in the Criminal Justice System: A Fallacy of Victim Empowerment?*, 8.

properly address and resolve any motion filed to enforce the rights mentioned in the act. In instances where a victim believes their rights, such as the right to be informed, heard, or treated with fairness, have been infringed during the trial proceedings, they may submit a motion directly to the appropriate federal district court<sup>17</sup>. If the district court denies the motion, the victim has the option to file a writ of mandamus in the court of appeals and request that the appellate court compel the lower court to uphold and enforce the victim's statutory rights.

### **B. Victim protection**

In India, Section 398 of the BNSS states that each and every State Government shall prepare and notify a Witness Protection Scheme for the State with a view to ensuring protection of the witnesses. It includes victims who testify against the accused. This scheme is designed to safeguard victims from threats, intimidation, or harm by the accused or their associates<sup>18</sup>. Also under the ambit of the Witness Protection Scheme, 2018, adequate security, including armed personnel, was provided to all the 'victims' and witnesses.

In England, victims have the explicit right to protection from re-victimisation, intimidation, retaliation during and after investigations/proceedings and this is mentioned in the Domestic Violence, Crime and Victims Act 2004<sup>19</sup>. Enhanced protections apply to vulnerable victims like domestic abuse survivors, sexual offence victims and include access to special measures like screens, video links, or pre-recorded evidence.

In America, one of the significant features of CVRA is that victims can seek help from police officers for protection from the suspect. And this includes notification of threats from offenders, while offering witness security programs when needed, and also taking steps to protect them from intimidation or harm.<sup>20</sup>

### **C. If there are lapses in the Investigation**

In England, Although the Victim's Code itself is not legally enforceable in court, it still offers victims important protections and avenues for recourse. If victims feel that their rights under the Code have been breached, they have the right to file a complaint immediately. So, as per Right 13 of the Code, victims can file a complaint about their grievances directly with the service provider involved.

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<sup>17</sup> 18 U.S.C. § 3771(d).

<sup>18</sup>, <https://www.dehradunlawreview.com/wp-content/uploads/2025/03/2.pdf> (last visited Apr 17, 2025).

<sup>19</sup> I. Edwards, *An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making*, 44 BR. J. CRIMINOL. 967 (2004).

<sup>20</sup> U.S. Attorneys | Crime Victims' Rights Act, (2014), <https://www.justice.gov/usao/resources/crime-victims-rights-ombudsman/victims-rights-act> (last visited Apr 18, 2025).



If their response is unsatisfactory or if the issue still remains unresolved, then the complaint can be filed with the Parliamentary and Health Service Ombudsman for further review. Additionally, victims have the option to contact the Victims' Commissioner, who can private on their behalf. If the complaint relates to compensation, it may also be referred to the Criminal Injuries Compensation Authority (CICA) for appropriate action.

If the victims have any concerns on how the police are solving the case, then they can simply raise a complaint as per the Police Reform Act 2002. This framework allows individuals to submit their complaints to the Independent Office for Police Conduct (IOPC)<sup>21</sup>. Common reasons for complaints include the police failing to properly investigate or follow up on a case, behaving in a disrespectful or unprofessional manner, or not keeping victims informed or updated throughout the process.

Victim participation in the investigation and prosecution of crimes is often a crucial component of the analysis in prosecutors' decisions, which gives them considerable discretion in deciding which crimes should be prosecuted. Furthermore, when a victim cooperates, the prosecutor frequently uses their discretion to pursue criminal charges. The nature of the prosecution's job serves as the foundation for prosecutor discretion, and prosecutors frequently turn to victims as important information sources. They may also decide to employ victim resources and information when making prosecutorial judgments<sup>22</sup>.

In America, while the Victims' Rights and Restitution Act (VRRRA) provides the victims with essential related rights, such as the right to information, protection, and restitution, it does not confer a private right of action. Instead, victims have another recourse, which is to file an internal complaint with the relevant federal agency like the FBI or the Department of Justice that oversees the investigation or prosecution. Alternatively, they may also submit a grievance to the Department of Justice's Office for Victims of Crime (OVC), which is responsible for investigating potential internal service deficiencies and promoting compliance within the proper agency.

Under the Victims' Rights and Restitution Act (VRRRA), victims have the right to be informed about the offender's custody status, including whether the accused is detained, released, or has escaped. This provision is especially crucial in cases involving violent offences, where the offender's whereabouts may directly impact the victim's safety and sense of security.

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<sup>21</sup> Expert Participation, *Police Reform Act 2002*, <https://www.legislation.gov.uk/ukpga/2002/30/part/2> (last visited Apr 12, 2025).

<sup>22</sup> Role of Victims in Criminal Investigations and Prosecutions | Office of Justice Programs, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/role-victims-criminal-investigations-and-prosecutions> (last visited Apr 10, 2025).

#### D. Trial

The victims are not parties to the suit against the accused; it is the state versus the accused. Although they are not direct parties, they have an inherent interest in the trial, and that's the reason they have to be informed, heard and supported at the same time<sup>23</sup>.

In England, the rights and responsibilities of victims in the trial process are legislated in the Code of Practice for Victims of Crime, popularly known as the Victims' Code. As per right 8, victims should be informed of the hearing's date, location, and outcome. They are also eligible to provide evidence anytime, i.e., before, during, or after the trial. In addition to giving evidence, they have the right to claim expenses for giving evidence in court. Further, as per standard 12 of the Witness Charter, the victim should be facilitated with a contact point where they can find out about the trial process<sup>24</sup>.

In the UK, vulnerable victims are given the privilege to give evidence or be witnesses with the help of video conferences instead of attending the court directly and confronting the accused during the trial process<sup>25</sup>. Further, It is the duty of the prosecutors to update the victims on the case, including important decisions, and they should ask for a review of court decisions if they are not in favour of the victims<sup>26</sup>.

In America, CVRA (a)(2), the legislation provides “the right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused”.

The Crime Victims' Rights Act (CVRA), outlined in 18 U.S.C. § 3771, guarantees certain rights for victims during criminal proceedings, including the right to be reasonably heard. Although the law does not particularly state that victims can engage private counsel, but it supports their ability to seek legal representation.

The victims in America are entitled to receive fair, precise, and prompt notification regarding any public court or parole proceeding related to the crime, as well as any information about the accused's release or escape<sup>27</sup>. This includes notification of arrests, filing of charges, trial dates, judgment, and parole decisions. Although informational in nature, these rights are crucial in empowering victims and allowing them to participate effectively in the criminal

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<sup>23</sup> Victims Law: Victims must be participants in the justice system - not onlookers, VICTIMS COMMISSIONER (Jul. 21, 2021), <https://victimscommissioner.org.uk/news/victims-law-victims-must-be-participants-in-the-justice-system-not-onlookers/> (last visited Apr 9, 2025)

<sup>24</sup> The Witness Charter, (2013).

<sup>25</sup> VICTIMS STRATEGY, (2018).

<sup>26</sup> Your rights as a victim of crime – Victim and Witness Information, *supra* note 6.

<sup>27</sup> U.S. Attorneys | Crime Victims' Rights Act, (2014), <https://www.justice.gov/usao/resources/crime-victims-rights-ombudsman/victims-rights-act> (last visited Apr 11, 2025).

justice process. Prompt and accurate updates concerning court proceedings, parole hearings, or the release or escape of the defendant should be provided to the victim in a timely manner<sup>28</sup>.

### **E. Scope for private prosecution**

In India, as per section 18(8) of BNSS, victims have the right to engage a private attorney to assist the prosecution, but that advocate doesn't have the right to represent the victim directly in a court of law. The case will be represented by the state, nonetheless<sup>29</sup>.

In England, victims in the UK have the opportunity to engage with a private attorney to advise them, advocate for their rights under the Victims' Code or to represent them in a civil complaint claiming compensation. Further, as per section 6 of the Prosecution of Offences Act, 1985, the state provides a mechanism for individuals to initiate criminal proceedings privately, and it is known as a private prosecution<sup>30</sup>. However, CPS still has the authority to take over from the private attorney based on section 6(2) either to continue or discontinue the case. If the victim is not satisfied with the investigation or prosecution, they can file a private complaint without the help of the Crown Prosecution Service (CPS).

In *Jones v Whalley*<sup>31</sup>, the legal issues were whether private prosecution could proceed after a formal police caution, given the assurance that the accused would not face court proceedings in a harassment case. The court held that though the private prosecution is a statutory right, the victims can use it only at the time of public interest or when there is sufficient evidence. If the victim disagrees with the decision to caution given by the police, then the proper recourse is judicial review of the police/CPS decision but not a private prosecution. Since private lawyers cannot act as prosecutors, they have the option to file amicus briefs or motions to assert victims' rights, or they can simply represent the victims in civil suits<sup>32</sup>.

In America, though the CVRA does not explicitly mention the right to private counsel, victims can retain private counsel for specific purposes related to their rights and interests, supported by federal and Marsy's Law in multiple states.

Crime victims in the U.S. have the right to retain a private attorney to represent them in court, mainly in civil matters and, in some cases, to a limited degree in criminal proceedings, as

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<sup>28</sup> U.S. Attorneys | Crime Victims' Rights Act, (2014), <https://www.justice.gov/usao/resources/crime-victims-rights-ombudsman/victims-rights-act> (last visited Apr 11, 2025).

<sup>29</sup> Bharatiya Nagarik Suraksha Sanhita, 2023 § (18)(8).

<sup>30</sup> Prosecution of Offences Act 1985, <https://www.legislation.gov.uk/ukpga/1985/23> (last visited Apr 17, 2025).

<sup>31</sup> [2006] UKHL 41.

<sup>32</sup> Domestic Abuse | The Crown Prosecution Service, <https://www.cps.gov.uk/legal-guidance/domestic-abuse> (last visited Apr 17, 2025).

permitted by various laws and legal provisions. Although victims are not official parties in criminal cases, recent developments in victims' rights have made it possible for them to hire private attorneys to represent their interests during criminal proceedings. These lawyers help protect victims' rights and ensure their perspectives are considered, even though they do not hold the same authority as the prosecution or defence<sup>33</sup>.

In England, apart from being witnesses and giving evidence to the court, the victims have the right to give statements to the police or any agency assigned by the police, where they discuss how the crime has impacted them and their close kin, and the judge considers their statements before giving his decision. This procedure is called the Victim Personal Statement(VPS), and it is available to victims of serious sexual or violent crimes where the offenders are sentenced for a minimum period of 12 months. According to right 7, victims have the right to make a Victim Personal Statement. If the victim is a minor, then the statement is given by their parents. It can be given anytime before the punishment is awarded to the accused. Victim's Personal Statement is also given to the Parole Board to analyse whether it is appropriate to release the offender or not<sup>34</sup>.

Another distinct feature of the UK system is that it has realised that even corporate bodies have victims. If the victim of a crime is a business entity or enterprise, then the management of the entity can give an Impact Statement for Business (ISB)<sup>35</sup> to the police officers. Here, the victim talks about the financial loss and reputational damage incurred by the company.

In America, they follow the Victim Impact System(VIS), which is essential for the Court to understand how this crime has affected its victims. Victim impact statements explain the emotional, physical, and financial harm experienced by you and others as a direct consequence of the offence. These statements can be presented either in writing or spoken aloud<sup>36</sup>. Written impact statements are first submitted to the United States Attorney's Office which then forwards them to the U.S. Probation Office for inclusion in the Presentence Investigation Report. This report is provided to the judge ahead of sentencing. A written statement allows the judge to reflect on your words before deciding on a sentence. Victims can choose from various formats for their written statements, depending on what feels most

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<sup>33</sup> Abraham S. Goldstein, Defining the Role of the Victim in Criminal Prosecution, 52 MISS. L.J. 515 (September 1982).

<sup>34</sup> Making a Victim Personal Statement: You have a voice in the criminal justice system and have a right to explain how the crime has affected you.

<sup>35</sup> Victim Personal Statement, GOV.UK (2018), <https://www.gov.uk/government/publications/victim-personal-statement> (last visited Apr 8, 2025).

<sup>36</sup> Criminal Division | Victim Impact Statements, (2020), <https://www.justice.gov/criminal/criminal-vns/victim-impact-statements> (last visited Apr 10, 2025).

comfortable—these might include formal statements, personal stories, or letters addressed to the judge. Some may also opt to use a standard form if available. It's important to know that the defendant and their attorney typically have access to these written statements, although personal identifying details, such as the victim's name, are usually removed.

The victim impact statement helps the judge determine an appropriate sentence for the defendant. While the sentence is mainly based on the pre-sentence report and specific sentencing guidelines, the judge is also expected to take the victim's perspective into account before reaching a final decision<sup>37</sup>.

In India, there is no such practice as a Victim Impact report or system. In the case of *Rattiram & Ors vs State of M.P.*<sup>38</sup> The Court highlighted the evolving focus of criminal law towards victimology, which considers the perspective of both the accused and the victim within a broader social framework. The judgment emphasised that, in several legal systems, the victim's viewpoint is treated with seriousness and dignity. In the context of specific offences under Indian criminal law, the victim's testimony holds significant weight. The Court also noted that it is sometimes seen as a judicial responsibility to make sure that the rights and interests, along with the needs of the victim, are adequately safeguarded during the trial process.

*Ajay Pandit @ Jagadish Dayabhai v. State of Maharashtra*<sup>39</sup> and *Mallikarjun Kodagil v. State of Karnataka*<sup>40</sup>, while sentencing the accused in a double murder case, the Court examined the application of Section 235(2) of the Criminal Procedure Code, which mandates that once a conviction is decided, then the accused should be given an opportunity to be heard on the matter of sentencing. However, the judgment brought attention on how the victim's sufferings and their experiences are neglected. So to address this issue, the concept of the Victim Impact Statement has emerged, which allows the victims to express the emotional, psychological, and financial consequences of the crime, thereby enabling a more balanced and informed sentencing process<sup>41</sup>.

In India, Under the *Bharatiya Nyaya Sanhitha, 2023*, specific attention has been given to ensuring a victim-centric approach in the criminal justice system, particularly in heinous

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<sup>37</sup> I. Edwards, *An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making*, 44 BR. J. CRIMINOL. 967 (2004).

<sup>38</sup> MANU/SC/0125/2012.

<sup>39</sup> (2012) 8 SCC 43.

<sup>40</sup> MANU/SC/1165/2018

<sup>41</sup> Admin, *VICTIM IMPACT STATEMENT: ITS RELEVANCE IN THE INDIAN LEGAL SYSTEM - Jus Corpus*, (2024), <https://www.juscorpus.com/victim-impact-statement-its-relevance-in-the-indian-legal-system/> (last visited Apr 12, 2025).

offences. Sections 64 to 71, 74 to 79, and 124 mainly cover offences which invariably involve vulnerable victims, including sexual offences, harassment, and exploitation. Acknowledging the trauma and emotional suffering that victims may experience during the legal process, the law makes it obligatory for the victim's statement in these cases to be taken by a woman police officer. This provision is a progressive step to make the legal system more sensitive, accessible, and less fearful for victims, particularly women and children.

#### **IV. VICTIM'S ROLE IN BAIL PROCEEDINGS**

It's possible that defendants who are acquainted with their victims will interact with them frequently. The victims may be more vulnerable to intimidation or injury before the offender appears for trial if these are the defendant types who are most likely to be released<sup>42</sup> Therefore, the state needs to expand the victim's role when he has a say in whether bail is granted or rejected by the court.

In India, section 438 of BNSS states that victims in sexual offenses (e.g., rape, gang rape) must be notified of bail hearings and allowed to oppose bail. Before granting bail to someone who has been charged with any offence that carries a life sentence imprisonment in prison, the High Court or the Court of Session must notify the Public Prosecutor of the bail application, unless they believe it is impractical to do so for reasons that must be reported in writing: With the additional restriction that the High Court or the Court of Session must notify the Public Prosecutor of the bail application within 15 days of receiving it before granting bail to an individual accused of a crime that can be tried under section 65 or sub-section (2) of section 70 of the BNSS, 2023. *Jagjeet Singh v. Ashish Mishra*<sup>43</sup> (2022) expanded this principle, recognising victims' inherent right to participate in all bail proceedings regardless of offence type.

In England, the Victims' Code (2021) requires police to inform victims of bail decisions and any protective conditions that they are required to know. Further, as per the Crown Prosecution Guidance, Prosecutors must consider victim safety when opposing bail under the Bail Act 1976, particularly in domestic abuse cases. The court in *R (on the application of the DPP) v. Havering Magistrates' Court* (2001) has emphasised balancing victim safety with the accused's right to liberty.

In America, 18 U.S.C. Section 3771, the Crime Victims' Rights Act (CVRA), gives victims

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<sup>42</sup> Vandecar, Tancy. "Bailing Out of Bonds: The Effect of Victim/Offender Relationships and Other Factors in the Setting of Bail" (1997). Master of Arts (MA), Thesis, Sociology & Criminal Justice, Old Dominion University.

<sup>43</sup> MANU/SC/0491/2022.

the right to be heard during the sentencing, parole, and plea processes. However, unless state laws apply, bail hearings are not included. For example, when it comes to California, as per Marsy's Law, Art. I, § 28(b), allows victims to object to bail if the accused poses a danger. And in New York, Criminal Procedure Law § 530.11 mandates victim input in domestic violence bail hearings.

## V. APPEAL

In India, Section 413 of BNSS states that "No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Sanhita or by any other law for the time being in force<sup>44</sup>", but an exception is given where the victim is given the right to file an appeal against the court order that acquits the accused, convicts them with a less stringent crime, or imposes insufficient compensation. In such a case, the appeal will be filed with the court that typically hears appeals against the conviction order of that court. This provision gives the victim an independent right to appeal directly without the help of the prosecution.

In the case of Bhavuben Dineshbhai Makwana v. State of Gujarat & Others<sup>45</sup> The Full Bench has held that the victim's right to file an appeal is a distinct and autonomous statutory right that is neither reliant on nor subordinate to the state's right to appeal. The court ruled that as the State's and the "victim's" rights function in distinct domains and neither excludes the other, filing an appeal by one will not deprive the other of its appeal rights.

In Mallikarjun Kadgel vs State of Karnataka<sup>46</sup> The court has held that, on the one hand, are the rights of the victim; on the other hand, is the well-settled principle of criminal jurisprudence that a man is presumed to be innocent till proven guilty. Thus, even though the victim does have a right to appeal, the victim's right to file an appeal cannot be greater than the right to file an appeal in the state and also the complainant in a criminal case. I thus believe that when the victim files an appeal against acquittal before the High Court, he must pursue leave to appeal under Section 378(3) CrPC.

In England, there is no direct statutory right available to victims to appeal in the higher courts. The legislative mechanisms have given a very limited scope to challenge the decisions<sup>47</sup>. They have the right to be informed about the outcome of the trial, and also, if the convicted person

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<sup>44</sup> Bharatiya Nagarik Suraksha Sanhita, 2023 § (413)(1).

<sup>45</sup> Criminal Appeal No.238 of 2012 decided on 2012.

<sup>46</sup> 2019 SCC OnLine SC 787.

<sup>47</sup> Douglas E Beloof, *WEIGHING CRIME VICTIMS' INTERESTS IN JUDICIALLY CRAFTED CRIMINAL PROCEDURE*.

applies for an appeal, the victim should be notified about that as per right 9<sup>48</sup>.

Further, the victim has the right to appeal against any judgement given by the Judge acquitting the offender or convicting for even a smaller offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. Also, a Victim Contact Scheme is available for victims if they want to know updates on convicts' release dates<sup>49</sup>.

In America, the CVRA states that victims are eligible to file mandamus writ in the appellate court if the victim believes that the trial court has denied them the relief they sought. Then, the appellate court has to take up that case and decide it within 72 hours<sup>50</sup>. Although the said act does not specifically grant victims the ability to appeal the verdict or punishment given in court, it does grant them the ability to use appellate procedures to uphold their statutory rights.

## VI. COMPENSATION AND RESTITUTION

When it comes to compensation to victims in India, the Fatal Accidents Act, 1855 was the first Indian law which dealt with the claims of compensation for harm or loss suffered by the legal representative of the dead person for his death caused by tort/civil wrong or even by crime<sup>51</sup>.

154<sup>th</sup> Law Commission Report on Victimology also talks about the need for compensation to the victims even when the police have failed to catch the culprits or do not collect sufficient evidence and the accused gets acquitted and this has been incorporated in section 396 of BNSS.

Clauses 2 to 6 of Sec 396 of BNSS provide that the District and State Legal Services Authority, as the offence committed can be, shall decide the amount of compensation which should be awarded as per the court's recommendation to the victim or his dependents. The District and State Legal Services Authority may provide immediate first-aid medical facilities or benefits and award adequate compensation. The Criminal Injuries Compensation Scheme (CICS), that is nothing but a government scheme funded by the state, is responsible for giving reasonable compensation to victims. Certain award is compensated to people who suffer physical or mental injury as a direct result of violent crime.

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<sup>48</sup> Your rights as a victim of crime – Victim and Witness Information, <https://victimandwitnessinformation.org.uk/your-rights/as-a-victim> (last visited Apr 8, 2025).

<sup>49</sup> Your rights as a victim of crime – Victim and Witness Information, *supra* note 37.

<sup>50</sup> 18 U.S.C. § 3771, Section 3771(d)(3).

<sup>51</sup> Vidya Shankar, Victimology in India: Need for Victim-Oriented Laws, 3 INT'L J.L. MGMT. & HUMAN. 960 (2020).



Further, section 397 of BNSS provides for an obligation on all state or private hospitals to compulsorily provide free immediate medical aid to the victims of offences like rape or sexual harassment that are mentioned under sections 64, 65, 66, 67, 68, 70 and 71, of the BNS and then inform the police at the earliest.

In England, if the victims suffer any physical injuries or if they suffer any psychological trauma due to the crime, then they can avail damages under the Criminal Injuries Compensation Scheme<sup>52</sup>. The state payouts for violent crimes, regardless of offender prosecution

In the UK, victims do not have any right to demand compensation but can only request it during sentencing time, and it is completely in the hands of the presiding Judge. The Powers of Criminal Courts (Sentencing) Act 2000 gives discretionary powers to the judges of the court to order compensation for personal injury, loss, or damage.

In America, 18 U.S. Code § 3663, the order for restitution allows courts to order restitution in certain criminal cases, particularly for property crimes or crimes of violence and also 18.S. Code § 3663a and the Mandatory Restitution to Victims of Certain Crimes Act 1996 mandate restitution for Violent crimes, Property crimes (including fraud), and offences against property.

## VII. CONCLUSION

In civil law systems, like that of Europe, the victim has always had a historically more significant procedural role. This includes the ability to act as a *partie civile* and actively participate in the trial. The adversarial nature of common law systems, in contrast, has traditionally limited the victim to the position of a passive witness. But there have been major changes in the previous few decades. Common law nations are becoming more aware of the significance of victim rights as a result of advocacy campaigns, social movements, and international human rights instruments, especially those issued by the UN and the EU.

The comparative research demonstrates that although reforms differ across nations, they all want the increase in victim participation in the criminal justice system with legal representation, right to information, and access to justice. These reforms point towards a normative transformation in the manner legal systems perceive victims, not merely as instruments of state punishment, but as stakeholders with legitimate interests and rights.

Therefore, the Indian Justice System should change its aim from solely punishing the accused

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<sup>52</sup> The police investigation – Victim and Witness Information, <https://victimandwitnessinformation.org.uk/report-a-crime/the-police-investigation> (last visited Apr 6, 2025).

to prioritising the rights of the victims. A number of suggestions might be taken into consideration in order to improve victim empowerment in India. First and foremost, it is imperative to pass a comprehensive statute that codifies victim rights. The rights of victims should be made more readily apparent and expansive by this law, guaranteeing their involvement from the start of the investigation to the end of the trial. Secondly, the victims will have a more powerful voice in the court. So, if the private attorney of the victim is allowed to actively participate in the trial. Thirdly, stopping secondary victimisation and improving the system's overall fairness can be achieved by guaranteeing victim participation at every phase of the criminal justice process, from inquiry to sentencing.

In the UK, despite there being Victims' Code, Crown Prosecution Scheme, Criminal Justice Scheme, and other such authorities exclusively working for the well-being of the victims, the Annual Victims' Survey 2023 shows that in reality, only 19% of the victims were aware of the rights available to them<sup>53</sup>.

There should be timely updates and appropriate information provided to the victims so that they can come in terms with the impact of the offence committed. Victims should not feel alienated and should feel that they were given a fair judgment. Several authorities, like police, prosecutors and judicial officers, should work together for the betterment and upliftment of the victim.

Finally, a balanced method is needed in our country. To protect the rights of the criminals and avoid any possibility of abuse, victim rights and due process must be in harmony. India can establish a criminal justice system that genuinely empowers victims and guarantees their dignity and respect by taking inspiration from global frameworks and resolving the shortcomings in the current legal system. In addition to improving justice for specific victims, this will increase public confidence in the legal system holistically.

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<sup>53</sup>Sasha Murray, Dr Sarah Welland & Dr Madeleine Storry, *Annual Victims' Survey 2023*.