
VICTIM RIGHTS WITHIN PROCEDURAL FRAMEWORKS: THE REALITY BEHIND RESTORATIVE AIMS IN MODERN INDIA

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ABSTRACT

The introduction of the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) represents an important change in India's criminal justice system through the enhanced recognition and participation of victims. This paper attempts to critically analyse whether the above-mentioned reforms really represent a victim-centred approach or just a reiteration of ideal procedural values. In this research, the development of victims' rights is considered; the most important changes that regard victims' participation, compensation, rehabilitation, procedural guarantees and transparency are examined, and the difficulties that exist in the implementation of these reforms are discussed. The research concludes that although the introduction of the new legislative framework leads to an increase in statutory protection, the real achievement of victim justice depends on the institutional ability, accountability of the administration, efficiency of rehabilitation measures and implementation of these reforms.

Keywords: Victim-Centred Justice; Bharatiya Nyaya Sanhita, 2023 (BNS); Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS); Victims' Rights; Criminal Justice Reforms; Restorative Justice.

1. Introduction

"A crime is committed in seconds. A trial may last for years. But where, in this long journey, does the victim stand?"

In cases where crimes take place, attention immediately turns to the perpetrator of the crime, the investigation process, and finally the judgment of the perpetrator as guilty of the crime. But the important thing that is never lost sight of in all the complex machinery of the criminal justice system is the fate of the victim. Victims in India have long been treated in an almost passive manner in a process which had very serious implications for them. Their function generally has only been limited to reporting the crime and being a witness in court while issues of investigation, prosecution, and punishment of the crime remained in the hands of the State. The development of modern criminal jurisprudence has slowly begun to question this notion of offender-focused justice. In jurisdictions worldwide, it has become increasingly apparent that justice is not only about punishing offenders but also about recognizing and respecting the victims of crime. This shift in focus from punishment and retribution to participation and restoration has led to the creation of a new paradigm of justice known as victim-centered justice¹. In this context, the criminal law reforms that have recently been undertaken in India signify a breakthrough. The introduction of the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023, signifies the most thorough reform process of the criminal justice system in India since its independence. It should be noted that one of the main goals pursued during the reforms in question is to shift victims into the center of the criminal justice system.

Some of the measures that have been put in place include those that will increase the participation of the victims, enhance their right to information, ensure proper investigation, and compensate them appropriately for their sufferings. While in theory, these reforms appear to be a major step towards a much more compassionate approach to justice delivery system, in practice, the true yardstick of a good legal reform lies beyond the wording of the laws themselves. The rights stated in statutes mean very little to the victims.

¹ Ankush Shivaji Gaikwad v. State of Maharashtra 2013(victim compensation)

The paper critically discusses if the new criminal laws enacted in India indeed bring about an era of victim-centered justice or simply give the impression of reform. Through the evaluation of the role played by the victims of crime in the criminal justice process, the victim centered measures provided for in the new criminal law regime, and the constraints that still face their implementation, the paper attempts to answer the following question; Are victims stakeholders or spectators in the criminal justice process in India?

2. Evolution of Victim Rights in India

In India's criminal justice system, until comparatively recently, crime had been viewed mainly as an act committed against the State rather than against the person whose rights had been violated. As a result, criminal trials emerged as a battle between the State and the accused, with little place for the victim. The victim was expected to be an informant or a witness, and all other decisions pertaining to the process of investigation, prosecution, negotiation, and sentencing were made by the State alone. The model was clearly influenced by the conventional concept of retributive justice, which focused more on punishing than compensating the victim².

Inclusion of the Code of Criminal Procedure, 1973 (CrPC) was an important step toward procedural reforms; however, it did not guarantee rights of the victims in the criminal justice system. Even though some of the provisions acknowledged compensation and involvement of the witness, the victims were merely onlookers in cases that emerged due to their victimisation. Lack of provisions for the involvement of the victim created a growing concern about the imbalance in the rights of the accused and the victims.

Aware of these weaknesses, both the Law Commission of India and the Justice Malimath Committee on Reforms of Criminal Justice System stressed the importance of the active participation of victims in the criminal justice process. Indeed, it is particularly the Malimath Committee which suggested giving the victims an important role and the importance of compensating and restoring victims in addition to punishing the wrongdoers.

An important milestone achieved in this process was Section 357A of CrPC through the Code of Criminal Procedure (Amendment) Act, 2008. This legislation was an important recognition

² N.V. Paranjape, *Criminology and Penology* (Central Law Publications, 17th ed., 2018).

of the fact that not only does justice include conviction but also taking into account the physical, mental and monetary suffering experienced by the victim.

In addition to these, there were further advancements by the judiciary with respect to this evolving concept of victims' rights in India. The Supreme Court in its judgment in ³Ankush Shivaji Gaikwad v. State of Maharashtra held that "Victim Compensation is an inseparable aspect of Criminal Justice". ⁴Similarly, in the case of Reena Hazarika v. State of Assam, it again reiterated that "compensation and rehabilitation are important components for restoring the dignity of the victim."

3. Promise, Participation, and Protection: Victim-Centric Features under the BNS and BNSS

In the event that the standard for measuring the quality of a country's criminal justice system is its approach towards the people who have been injured, then it can be said that the criminal laws of India aim at revolutionizing the concept of the victim in the criminal law process. The laws of 2023 such as the Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita consider the victims as stake holders in criminal proceedings and not simply as witnesses.

Among the most significant reforms in this regard is the focus on procedural efficiency and time-bound investigations. In the past, the delay in conducting an investigation and the long processes of the trial have been detrimental to the confidence of the victims in the judicial process. This reform, through the BNSS, provides a timeline within which the different aspects of investigation and trials will be conducted. Through this, the BNSS hopes to resolve one of the realities that victims experience in the legal process: delayed justice is denied justice.

The other aspect of this new structure is that technology is used as an empowering tool. Complaints can be filed online; information is communicated electronically; audio video recording of specific processes is used; and the increased use of digitization in criminal proceedings. This makes it easier for the victim of crime to stay updated about his/her case progress without going through any difficult bureaucratic procedures.

³ Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770

⁴ Reena Hazarika v. State of Assam, (2019) 13 SCC 289.

Just as important, however, is the focus of the BNSS on transparency and victim involvement. Under the legislation, it is required that the investigating officer keep both the informants and the victims updated on the progress of the investigation according to set deadlines. On the face of it, the new legislation appears to be quite procedural in nature, but there is great symbolism attached to it nonetheless. For years, victims had been kept uninformed of developments in their cases.

Moreover, these reforms provide greater protection measures that can prevent victim harassment and intimidation as well as minimize unnecessary delays. While improving the use of technology and streamlining procedures, the reforms will increase accountability measures, which can help minimize such problems. On the other hand, the law also provides greater obligations for the investigating agency.

The new approach, when viewed in comparison to the old Code of Criminal Procedure, 1973 (CrPC), constitutes a fundamental change in both form and substance. Although the CrPC had some crucial laws related to victim compensation and well-being, it kept on treating victims as marginal characters. However, the BNSS⁵ endeavors to give the victims a chance of obtaining more information and better procedural protection and playing an active role in the criminal proceedings. How effective such changes will be depends on their practical application. Yet, it represents a significant move from mere presence to involvement.

However, the 154th report⁶ on the Code of Criminal Procedure, 1973 prepared by the Law Commission of India highlighted the fact that all these years victims were on the periphery of the criminal justice process. It underlined the importance of improving the rights and role of victims in the criminal justice process, along with a better balance between the rights of the accused and the victims.

4. Compensation, Care, and Closure: Compensation beyond Monetary Relief

While justice may mean more to some victims than the mere arrest of the accused but rather how they manage their lives after the crimes have occurred. With this in mind, the issue of compensation for the victims has become increasingly significant in terms of contemporary

⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 173, 193, 530, 531.

⁶ Law Commission of India, *154th Report on the Code of Criminal Procedure, 1973* (1996), paras 15.1–15.15

criminal law. The addition of Section 357A in the Code of Criminal Procedure, 1973 and the retention of the same in the new laws is indicative of the realization that the victims of crimes need financial help to deal with their immediate problems caused by the victimization⁷.

However, monetary assistance is not the only thing that can be relied upon to ensure full recovery of the victims. Sometimes, the effects of crimes do not stop at being purely economic in nature, meaning that the victim could still end up suffering even though his/her rights have been recognized. This means that while compensation could offer relief to the victim, it is rehabilitation that offers resilience⁸.

Taking into account this truth, courts have laid more stress on victim rehabilitation in addition to compensation. On an international level, the victim support programs in countries like the United Kingdom and Canada involve financial help in addition to counseling and other measures. As India moves towards adopting a more victim-oriented criminal justice system, efforts need to be made to move beyond mere monetary compensation and consider an integrated approach involving compensation and rehabilitation⁹.

5. Voice, Visibility, and Vindication: The Role of Victims in Investigation and Trial

The journey of a victim towards securing justice does not simply end after filing a complaint but continues through the course of investigation and prosecution of the case in court. It was not until recently that victims in India had been largely shut out of criminal processes and kept in the dark regarding developments in their own case, and this is something which the new reforms to the criminal law hope to rectify.

An important development in this regard is the focus on the rights of the victims to be informed. According to this new framework, the investigating agencies are supposed to keep the victims and whistleblowers updated about the process of investigation of cases at certain specified time intervals. This helps increase transparency and allows victims not to remain mere spectators hoping to get an update about their cases.

⁷ Andrew Karmen, *Crime Victims: An Introduction to Victimology* (Cengage Learning, 9th ed., 2015).

⁸ United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985), paras 14–17.

⁹ United Nations Office on Drugs and Crime, *Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (UNODC, New York, 1999), 45–52.

The role of the victim has assumed greater importance within the process of prosecution and some phases of the appeal procedure. The more active involvement of the victim will allow the court to see the human implications of crime and ensure that the voice of the victim will not be overlooked in the normal confrontation between the State and the defendant. In so doing, the criminal justice process will rise above the traditional offense-centered model to recognize the fact that true justice entails not just establishing guilt but recognizing the injury inflicted on the victim. Truly, voice and visibility are sometimes the first steps to vindication¹⁰.

Nevertheless, the participation of victims should not override the rights of the accused, such as the right to a fair trial and the presumption of innocence. The victim-oriented process should not be accused-denied¹¹. On the contrary, what needs to be achieved is that victims' rights can coexist alongside those of the accused in the quest for justice and fairness. In sum, the increased participation of victims boosts the credibility of the **criminal justice system**. The more victims feel knowledgeable and listened to, the higher the credibility of the legal system will be. In essence, the justice system is not simply about punishing criminals but also listening to their voices.

6. The Right on Paper but Relief in Reality: Problems and Criticism

Though the criminal law reforms of India provide the country with a big move in the direction of justice-oriented law, its success depends upon its practical implementation. The major problem that arises here is how to change the rights given on paper into something real for the victims.

One of the important problems is the lack of knowledge about rights and options among victims. It is further complicated due to lack of resources and infrastructure. Courts being burdened with cases, lack of personnel in investigative agencies, and lack of technological facilities hamper the proper functioning of the criminal justice system even after the enactment of deadlines under statute. The issue of case backlog continues, which is evident from the data provided by National Crime Records Bureau (NCRB).

¹⁰ *Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka*, (2019) 2 SCC 752.

¹¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

Issues still persist in relation to the question of whether victim compensation is adequate enough. While it can be noted that victim compensation schemes offer a financial benefit to the victims, they do not cover the wider ramifications of being a victim. Victim compensation does not cover the psychological, legal, and social assistance that many victims need in order to reintegrate into society. This aspect has been well-covered in the UNODC Handbook on Justice for Victims.

Moreover, the application of measures for the support of victims is unevenly distributed among the states, thus creating differences in terms of their access to such measures. In order to make victim-oriented justice a reality and not just an expectation of legislation, India needs to create specific victim support institutions that will be able to provide comprehensive assistance to the victims.

7. Recommendations

In order to implement victim-centered justice from mere principles into realities, the first step that India needs to take would be to improve the support institutions for victims. The Victim Assistance Centers need to be set up which will be responsible for providing legal aid, psychological counseling and rehabilitation all under one roof and in cooperation with the National Legal Services Authority (NALSA). At the same time, compensation needs to be guaranteed in an efficient manner through proper monitoring. Moreover, the Witness Protection Scheme, 2018 should be implemented properly in order to protect the victims from any sort of intimidation and retaliation.

8. Margins to Mainstream: Conclusion

The recently enacted laws in India can be seen as an effort to fundamentally rethink the place of victims in the criminal justice process. With their greater rights to information, greater prospects of participation, better systems of compensation, procedural guarantees, and increased emphasis on transparency and accountability, the new laws are meant to change victims from mere bystanders to key stakeholders. In several ways, this is a very important move from an exclusive focus on offenders to a more holistic approach to criminal justice.

Nevertheless, the process of achieving justice from a victim's perspective does not stop here. The success of these provisions will depend greatly on the manner in which they are implemented. Some of the problems that remain prevalent include low levels of awareness, difficulties in implementation due to various reasons, delayed action, limited availability of rehabilitation facilities, and non-uniform implementation across all States. In the absence of proper infrastructure, qualified personnel, and support systems, even the best legal provisions might remain inconsequential.

As mentioned in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by United Nations (1985), the concept of justice goes beyond punishing the offenders; it includes offering recognition, support, protection, compensation, and rehabilitation to the victims¹². While the changes in India have certainly established the groundwork for a victim-oriented justice system, a lot still needs to be done in this regard.

In essence, the effectiveness of the new Indian criminal laws will be determined not by what is promised in the legislative language, but by how much the victims have access to justice, participate, are protected, and rehabilitated. It is only then that the promise of elevating victims from marginality to mainstream will be realized.

¹² United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34 (29 November 1985)+