

An Assessment of the Inclusivity of Victim during Trial in Indian Criminal Justice System

Vaibhav Singh Yadav

PhD Research Scholar, Department of Law, Dr. Harisingh Gour Vishwavidyalaya, Sagar, Madhya Pradesh, India

Abstract

The criminal procedure has been transformed by replacing the Code of Criminal Procedure (*hereinafter* “CrPC”), 1973, from the Bharatiya Nagrik Suraksha Sanhita (*hereinafter* “BNSS”), 2023. The major amendment that has been introduced under BNSS is the enhanced role of the victim in criminal proceedings, especially during trial. The term “victim” was introduced in the year 2013 after the Nirbhaya Case. A victim is the prime witness to an offence and requires equal standing during criminal trial, the same as an accused. The author has adopted the doctrinal methodology for this paper and evaluates the legal provisions provided for criminal trial stipulated under BNSS. The author has also explored the legal aspects of international law, as well as the laws of other countries regarding the inclusion of victims in criminal trials. This paper critically examines the role and inclusion of the victim in criminal trials under the BNSS and suggests some solutions for the challenges identified. By exploring the area, the paper offers comparative insights into the trial with the previous system. The paper also procures some suggestions to overcome the challenges.

Keywords: Victim, Criminal justice system, Victim rights, BNSS, Criminal trial, etc.

1. Introduction

The inclusion of victim started with a slow pace with the Code of Criminal Procedure, 1973 (*hereinafter* “CrPC” or “Code”) by incorporating the provision of compensation. Later on, the recommendations of “Malimath Committee, 2003” incorporated the provision of “victim compensation” in the year 2009 by amending the CrPC.¹ In the initial years of the Code, the term “victim” had not been defined; it was unclear and vague. Apparently, in 2012, India witnessed a tragic incident known as the “Nirbhaya gang rape” that has raised the question regarding the position of the victim in criminal proceedings. The Justice J.S. Verma Committee was constituted for reforming the criminal procedure law and making it more victim-centric. Consequently, the term “victim” was defined and included in the CrPC in the year 2013.

The term “victim” is derived from the Latin word ‘*victima*’, which means any person who has suffered any kind of harm, either physical or mental; emotional or economic. This is also defined by the United Nations Declaration of 1985.² The term ‘victim’ is a wider term that includes dependants or immediate kin of the victim.³ In India, the term was included after the reformation made to the CrPC in the year 2013. In the CrPC, the victim is defined 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 his or her guardian or legal heir”.⁴ Apparently, the CrPC was replaced by the Bharatiya Nagrik Suraksha Sanhita, 2023 (*hereinafter* “BNSS”) on July 1, 2024, which has changed the definition of “victim” by replacing the terms “accused

person has been charged” with only “*accused person*”.⁵ This was amended because of extending the ambit of the victim compensation scheme (*hereinafter* “VCS”); as before, only those victims got compensation after the charges have been framed against the accused, but after the definition under BNSS, this condition has vanished, and now all the victims are eligible for VCS for their financial assistance.

Thomas Hardy (Book – *Tess of the d’Urbervilles*), English novelist and poet, has stated that “*Once a victim, always victim – that’s law!*”. The statement seems to be true in the Indian perspective because if we analyse the statistics of the National Judicial Data Grid (*hereinafter* “NJDG”), there are around 4 crore criminal cases pending in the trial courts of India.⁶ Apart from that, 62.98% of the criminal cases are pending for more than a year.⁷ The data supports the adage of “*Justice delayed is justice denied*”. It is imperative that the Constitutional principles relating to speedy trial must be incorporated within the criminal trial process so that the justice delivery system does not victimise the victim multiple times.

The traditional criminal trial procedure in India has omitted providing adequate space to the victim as an active participant and has sidelined the victim by positioning them as a primary witness. Although, in the years 2009 and 2013, some amendments were incorporated regarding victim inclusion in criminal trial, major reforms have been made in the BNSS. The changing concept of repositioning the characters were introduced for the first time in criminal trial system are appreciated by various stakeholders; still various reforms are needed under the BNSS. This paper evaluates the inclusivity and participation of victim during criminal trial in India and critically appraise the implementational gaps regarding the new provisions. This research study aims to analyse the amendments, scope, and potential of the victim-centric approach adopted in shaping the victim-centric criminal justice system.

Research Methodology

The objective of this study is to assess the position of the victim during a criminal trial in India. In order to meet the objective, the author has employed the doctrinal methodology in the study. The author has also opted for analytical methods for understanding the status of the victim during criminal trials, challenges associated, and pragmatic suggestions on the basis of analysis.

2. International Perspective

At the international level, there are various international documents that are related to victims' rights in the criminal trial. But there is only one international document that is exclusively dedicated to the victims of crime. In this section various international documents and laws of other countries that are relevant for the inclusivity of victims during criminal trials have been discussed.

2.1 The Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power (1985)⁸

The Declaration was a significant advancement for establishing a clear identity for victims in criminal trials.⁹ This document is regarded as the “Magna Carta” for victims, as this was the first official document exclusively dealing with their concerns. The declaration has defined the term “victim,” which has been discussed in the above section. The declaration advocates the interests of victims on a global scale, without undermining the rights of the accused. The declaration contains 21 principles, which are divided into two parts according to their nature: Part A – “Victims of Crime” and Part B – “Victim of Abuse of Power”. Some of the important principles relating to the inclusivity of victims during criminal trial are as follows:

- The judicial administration makes sure that the victims must be informed about their rights by providing them proper assistance. The assistance can be given through either formal or informal systems.¹⁰
- The victims must be informed about the timings and progress of the criminal proceedings (especially for serious offences).¹¹

- Inclusion of a ‘Victim Impact Statement’, ‘victim protection’, and protection of privacy.¹²
- Optimum utilization of alternation methods, including mediation, arbitration, etc.¹³
- Medical, psychological and legal assistance by the governmental agencies for victims during criminal trials. Proper sensitisation training programmes for agencies involved during criminal trials for maintaining proper victim protection.¹⁴

2.2 Other documents

There are other international documents that have discussed the inclusivity and active participation of victims during criminal trial, but these documents do not exclusively dedicate to victims rather discussed holistic perspective. The prominent documents include the Universal Declaration of Human Rights (*hereinafter* “UDHR”)¹⁵, and the International Covenant on Civil and Political Rights¹⁶, 1966¹⁷ (*hereinafter* “ICCPR”). Both the documents have various provisions relating to criminal trial but are tilted towards the rights of the accused, but both have the common right to a ‘fair trial’.¹⁸

2.3 Role of Victims during Criminal Trials in Other Countries

The active role of the victim in criminal trial has been recognised by various countries, and various provisions have been incorporated in their criminal laws. The author in this section has analysed the criminal law of France, the United States and the United Kingdom regarding the participation of victims during criminal trials.

France: The criminal justice system of France is based on the inquisitorial criminal justice system. The victims have been given various rights during criminal trial in France. In order to avail those rights, the victim can summon the suspect or accused before the instructing judge. Victims also have rights to collect evidence from their own and request the prosecutor or instructing judge for initiation of criminal proceedings against the accused.¹⁹ The victim is allowed to appoint their lawyers and has the right to conclude the argument during the trial relating to the case.

The fitness of the case for initiating criminal proceedings in any matter lies on the decision of the *Judge d’instruction* (instructing judge). In case the instructing judge is of the opinion that there is no need for any investigation, then the victim has the right to get the investigation completed by depositing the cost. The victims are also entitled to get compensation, which is realised by the accused. The victim also has the right to request further investigation and initiation of trial proceedings. In France, victims have given much importance, which includes these rights:

- The victim can access the entire case document;
- The victim can be established as a civil party to the matter, which helps the victim to be an active participant of the case;
- Victim can submit additional observations before the investigating magistrate;
- The victim can participate in criminal trial through their own advocate. The advocate can participate in the criminal trial actively by questioning the accused, witnesses, etc.²⁰

United States: The role of victims in the United States (“US”) is not similar to that of France but dormant. The US has adopted the accusatorial criminal justice system, where the accused is provided various rights. The victims are the primary witnesses and not allowed to be a separate party in the criminal trial. The victims have limited rights, which include the right to attend and the opportunity to be heard. In USA, the judge considers ‘*pre-sentence investigation reports*’ and ‘*victim impact statements*’, while deciding the judgement.

United Kingdom: The United Kingdom (“UK”) has also adopted the accusatorial criminal justice system. The prosecutors in the criminal trial are independent and support the victims by informing them about

their rights. In the UK also, the victims are not the party; they are the primary witnesses. In the UK, various schemes and initiatives have been adopted for increasing the participation of victims.

The basic difference arises in the role of victim during trial due to the difference in the nature of the criminal justice system. In France, an inquisitorial criminal justice system is followed, and on the other hand, in the UK, USA and India, an accusatorial criminal justice system is followed. The role of victim is wider in an inquisitorial system as compared with accusatorial system.

3. Stature of Victims during Criminal Trial in India

The Bhartiya Nagarik Suraksha Sanhita (*hereinafter* “BNSS”) has replaced “CrPC” for the criminal procedure. It was enforced on July 1, 2024, and enacted on December 25, 2023. The BNSS was made to repeal the British law and make indigenous criminal laws. The objective behind the replacement of the law is to enhance the accessibility of justice and the faster dissolution of criminal matters in the courts.

The shift from the CrPC to the BNSS has marked an important milestone in the Indian criminal justice system. For the first time, the victim receives a clear identity in the criminal trial system; however, this identity is not very visible because it is only mentioned in the literature, and the implementation remains unclear. The current framework has not granted the proper rehabilitation for victims. In this section various victim-centric provisions that have been introduced under the BNSS have been discussed and analysed.

3.1 Inclusivity of Victim under the Bhartiya Nagarik Suraksha Sanhita, 2023

The BNSS has made modifications in the role of victims during criminal trial. If we focus on the Indian criminal justice system, the reforms relating to victim inclusivity are generally be categorized into three categories – ‘*Right to information*’, ‘*participation during investigation and trial*’, and ‘*right to compensation*’. In certain instances, the trial now allows the victim to participate. Some of the key changes that elevate the inclusivity of victims during trial are as follows: -

- The definition of ‘victim’ has been amended and broadened. The definition of “victim” has been given under Section 2(1)(y) of BNSS and the definition has eliminated the requirement of the accused being charged.²¹ After the introduction of the BNSS, the victim can be able to get the compensation even before the accused has been charged. This has extended the right to compensation for victims.
- BNSS has given the right to information to the victim in an explicit manner by incorporating Section 193(3)(ii), which mandates the police officer to inform the victim about the progress of investigation.²² The timeline of 90 days has been given from the date of the FIR or when the information was registered. This has provided a space for victims during investigation and also provides a space in criminal trial proceedings.
- For the first time, if a victim is represented by an advocate, then the victim shall be entitled to get the copy of the police report, first information report (FIR), statement of witnesses, and other relevant documents free of cost within fourteen days from the first appearance of the accused in the court.²³ It is provided under Section 230 of BNSS.
- Section 176(1) of BNSS has mandated the recording of a statement of “victim of rape” through audio-video means.²⁴ This helps to secure the right to protection during trial and prevent the victim from double victimisation. This provision is imperative for ensuring transparency in the trial.
- In addition to the electronic documentation of testimonies, the ‘BNSS’ has stipulated that the accounts of rape victims must be recorded by a female judicial magistrate; if a female magistrate is unavailable, a male magistrate shall document the victim's statement in the presence of a woman. This contributes to the repeated victimisation of individuals who have experienced rape.

- In case of a victim of rape, Section 184(6) of BNSS mandates a timeframe of seven (7) days for a “registered medical practitioner”, within which he/she shall submit the medical report to the Magistrate.²⁵ This provision is helpful in speeding trial proceedings and prevent tampering of evidence.
- Under Section 360 of BNSS, the court shall not allow withdrawal of prosecution without giving the victim a chance to be heard or “opportunity to be heard”.²⁶ This provision has given a voice to the victim regarding objection and uplifted the principles of natural justice.
- BNSS has allowed recording of witness statement by audio-video electronic means.²⁷ This will help the victim to prove their statements and in speedy justice. This provision is also necessary for witness protection.
- The BNSS has enlarged the scope of plea bargaining that provides speedy justice to victims. If the case is resolved under Section 292 of BNSS, then the Court shall award compensation to the victim and consider it as probation, admonition, or other legal provisions before finalising the sentence.²⁸
- The victims now have the right to separate private legal representation under Section 338(2) of BNSS.²⁹ Victims are now having the voice and not disadvantaged by any financial constraints. The Malimath Committee has advocated this reform, which was inspired by the inquisitorial criminal justice system. In the case of *Rekha Murarka v. State of Bengal*³⁰, the victim got permission for legal representation in the trial by a private counsel, who can proceed advance argument after the public prosecutor; examines the witnesses and cross-examine the witness or record objections to the cross-examination.
- The BNSS has mentioned explicitly the legal mandate of witness protection under Section 398 of BNSS. This section states that every state government has the responsibility to prepare the Witness Protection Scheme (*hereinafter* “WPS”) to ensure the protection of witnesses during the criminal proceedings.³¹

The BNSS has greatly improved the participation of victims in the criminal trial process, and it is evident from the above provision. The status of the victim has increased significantly at the stage of trial and pre-trial. This change is more evidently established in serious offences. The procedure also recognizes the separate legal representation for the victim during the trial. Another important reform has been introduced in BNSS: the victim must be heard at the time of granting bail to the accused in sexual offences.

Several innovative reforms have been introduced in the BNSS to support and ensure the inclusion of the victim in the trial process. One of the appreciable steps is the inclusion of technological aspects for the recording of statements, which helps to reduce the psychological pressure faced by victims and witnesses. Additionally, the scope of plea bargaining has also enlarged, and various steps have been incorporated vulnerable victims.

4. Challenges in the Criminal trial system in India

Although the scope of victim participation has increased in criminal trials in India, victims still face various challenges during the trial process. The BNSS has made endeavors to include victims as a part of the trial but fails to incorporate the provisions regarding victim impact statement (*hereinafter* “VIS”) where the impact on the victim due to the offence is neglected while deciding the sentence. VIS refers to the statement which is given by the victim or his family members about the emotional, mental, and physical impact after the offence. In the case of *Mallikarjun Kodagali (Dead) v State of Karnataka*³², the Supreme Court has advocated the inclusion of victim-centric approaches in the criminal jurisprudence. It

also stated that the High Court must opt for merit-based hearing and give importance to the victim testimonies during criminal proceedings.

The BNSS has given formal recognition to WPS; it lacks the implementational framework. The legislation does not provide the scheme for the implementation of WPS; rather, states have to frame and implement their own custom-made WPS. Therefore, there is no uniform setup for witness protection. In the case of *Mahender Chawla & Ors. vs. Union of India & Ors*³³, the Supreme Court has advocated WPS, 2018. But in reality, the implementation is missing. Without the support of the government machinery, the WPS will remain as a theoretical advancement rather than a reality.³⁴

Another challenge lies in the non-mandatory nature of providing information to victims regarding the plea bargaining or case transfers. The legislation has adopted various timelines for intimation and reporting mechanisms, but all these have various structural inefficiencies. The legislation is silent about the role of public prosecutors regarding assistance to victims. The legislation has created a destination without proper direction. These failings in the criminal trial process indicate that the justice delivery system is not equitable for all individuals—that the justice delivery system is not equal for everyone.³⁵

There are various other challenges to victim inclusivity under BNSS, including unequal access to justice for vulnerable victims, such as unequal access to justice for vulnerable victims, like gender-based and economically driven offences. Further, the criminal trial process still neglects the modernised sentencing mechanisms and jurisprudence that other countries have adopted. It is also important to note that there is no scope of victim advocacy in the criminal trial under the new legislation. Hence, all the challenges that have been discussed are not explicit in nature; various other implicit challenges exist within the trial system regarding victim inclusivity in India.

5. Conclusion and Suggestions

The transition from CrPC to BNSS is an affirmative step towards revamping the entire criminal justice system. One of the prominent reforms was to provide an identity to the victim in the criminal trial. India has an accusatorial criminal justice system that provides much importance to the accused and limited scope for victims, similar to the USA and the UK. On the other hand, France has an inquisitorial criminal justice system which allows victims to be active participants during the criminal trial. Despite the nature of the criminal justice system in India, the Supreme Court has always played a proactive role in uplifting the rights of victims during criminal trials. In the case of *Satya Pal Singh v. State of Madhya Pradesh*³⁶, the Supreme Court opined that the father of the deceased victim has a right to appeal against acquittal. This judgement is important because it expanded the definition of 'victim' in 2013 to include legal heirs. It is imperative to note that the Supreme Court always acts as an administrator who introduces the victim-centric reforms in criminal trials.

The BNSS has introduced various reforms for placing the victim as an independent participant in the criminal trial, but there are still many loopholes that exist that need special attention. The legislation contains various provisions, but their execution part is missing or unclear. For instance, the BNSS explicitly states the WPS, but it lacks a clear implementation plan. The BNSS explicitly states the WPS, but the implementation aspect is lacking. There is no uniform method of implementing WPS in Indian criminal trial courts. The scope of victim advocacy is negligible, and the status of VIS is prominently neglected by the trial courts. All the loopholes resulted in the double victimisation and inequality in the justice delivery system.

There are various suggestions that the author wants to frame after analysing the legal provisions regarding victim inclusivity in criminal trial procedure, which are as follows:

- There must be strict and conducive timelines for each stage of trial. There must be a mandatory evaluation by the trial courts regarding whether the victim gets proper information about each trial or not.
- The advocate must be provided free of cost to the victim (especially in serious offences), free of cost apart from the public prosecutors, who will assist the victim regarding the trial process.
- There must be a separate section in every district court which provides psychological, emotional, financial, and medical assistance to the victim and witnesses.
- The administration of the court must conduct awareness programme regarding criminal trial process within the court where advocates provide information free of cost.
- There must be a uniform implementation of WPS in every trial court within India.
- There must be “victim sensitive training” given to advocates, judges, public prosecutors and police personnel.

¹ Nagpal, M., & Rawandale, C. (2023). Tracing journey of crime victim's position under Indian law with evolutionary insights from the United States' federal code on victims' rights. *Cogent Arts & Humanities*, 10, 2286071. <https://doi.org/10.1080/23311983.2023.2286071>.

² CENTRE FOR INTERNATIONAL CRIME PREVENTION, HANDBOOK ON JUSTICE FOR VICTIMS 116 (UN Office on Drugs and Crime, 1999).

³ Shankar, V. (2020). Victimology in India: Need for victim-oriented laws. *International Journal of Law Management & Humanities*, 3(5), 961.

⁴ The Code of Criminal Procedure 1973, No. 2, Acts of Parliament, 1974 (India), s. 2(wa).

⁵ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 2(1)(y) (India).

⁶ National Judicial Data Grid. (n.d.). *National Judicial Data Grid*. eCourts Services. https://njdg.ecourts.gov.in/njdg_v3/.

⁷ *Id.*

⁸ 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).

⁹ The initiative has been taken by the United Nations General Assembly (UNGA).

¹⁰ United Nations General Assembly. (1985). *Declaration of basic principles of justice for victims of crime and abuse of power* (G.A. Res. 40/34, U.N. Doc. A/40/53), para. 5.

¹¹ *Id.* para. 6.

¹² *Id.* para. 6.

¹³ *Id.* para. 7.

¹⁴ *Id.* para. 16.

¹⁵ G.A. Res 217 A (III), The Universal Declaration of Human Rights (Dec. 10, 1948).

¹⁶ United Nations General Assembly, International Covenant on Civil and Political Rights, Dec. 16, 1966, Treaty Series 999, p. 171.

¹⁷ ICCPR enforced on 23 March 1976 (Art. 49).

¹⁸ Article 10 of UDHR and Article 14 of ICCPR.

¹⁹ Jayasankar.K.I, *Investigation into Crimes - Supervision by Prosecutor*, 4 NALSAR L. REV.121, 139 (2008-2009).

²⁰ Obadia & Stasi, *Hearing Victims Out: How the French Judicial System Differs from the US*, FRENCHLY (July 8, 2024), <https://frenchly.us/the-rights-of-the-victims-in-the-french-legal-system/>.

²¹ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 2(1)(y) (India).

²² Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 193(3)(ii) (India).

²³ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 230 (India).

²⁴ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 176(1) (India).

²⁵ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 184(6) (India).

²⁶ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 360 (India).

²⁷ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 254 (India).

²⁸ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 293 (India).

²⁹ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 338(2) (India).

³⁰ *Rekha Murarka v State of Bengal*, (2020) 2 SCC 474.

³¹ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 398 (India).

³² *Mallikarjun Kodagali (Dead) v State of Karnataka*, AIR 2018 SC 5206,

³³ *Mahender Chawla & Ors. vs. Union of India & Ors.*, (2019) 14 SCC 615.

³⁴ Thakura, N. (n.d.). Enhanced role of the victim in BNSS from CrPC: The legislative changes. *International Journal of Law Research, Education and Social Sciences*, 20.

³⁵ Moghe, S., & Saxena, N. N. (2025). Victim participation in criminal trials under new criminal laws in India: Doctrinal comments. *International Journal of Legal Science and Innovation*, 7(2), 239.

³⁶ (2015) 15 SCC 613.