

EMPOWERING THE SILENCED: VICTIM RIGHTS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – A PARADIGM SHIFT IN INDIAN CRIMINAL JUSTICE**Angshu Roy**

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ABSTRACT:

For decades, India's criminal process has looked past the person most harmed by crime: the victim. The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 [1], promises to change this by recognizing victims as rights holders rather than passive witnesses. This article critically examines key victim-centric provisions under the BNSS—such as the Zero FIR, the right to be heard, compensation, appeal rights, and protective measures—and situates them within India's broader legal and constitutional evolution. Using doctrinal analysis, leading case law, and policy material, this study evaluates whether the BNSS truly repositions the victim at the heart of the criminal justice system or merely offers symbolic reform. It concludes that while the BNSS marks an important normative shift, meaningful victim justice in India will depend on implementation through institutional reform, training, and sustained attention to the lived experiences of vulnerable groups

Keywords: Victimology, BNSS 2023, Zero FIR, compensation, restorative justice, India

INTRODUCTION:

A young woman walks into a police station after surviving a brutal assault by her boyfriend. She hesitates at the gate, not only because of her injuries, but because she has heard what happens to “people like her” once they enter the system: endless questions, disbelief, humiliation, and sometimes, being turned away because the “incident did not happen in this jurisdiction.” At that moment, the law that was meant to protect her feels distant and abstract, and the gap between the promise of justice and the reality on the ground has long characterized India's criminal justice system. Historically, the law has focused on the offender and the state rather than the victim. The victim was mostly a complainant or witness, important only to the extent that her testimony could help to secure a conviction. Her pain, her safety, and her need for repair rarely as heard what happens to “people like her” once they enter the system: endless questions, disbelief, humiliation, and sometimes, being turned away because the “incident did not happen in this jurisdiction.” At that moment, the law that was meant to protect her feels distant and abstract, and the gap between the promise of justice and the reality on the ground has long characterized India's criminal justice system. Historically, the law has focused on the offender and the state rather than the victim. The victim was mostly a complainant or witness, important only to the extent that her testimony could help to secure a conviction. Her pain, her safety, and her need for repair rarely shaped legal procedures [2]. The Bharatiya Nagarik Suraksha Sanhita, 2023, seeks to change this narrative. By replacing the Code of Criminal Procedure, 1973, it attempts to correct a colonial legacy that treated crime as an injury to the State, rather than a wrong done to a human being [3]. Rooted in constitutional values of equality and life with dignity under Articles 14 and 21 of the Constitution, and influenced by international instruments such as the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the BNSS creates a more explicit framework for victim rights—rights to information, participation, protection and compensation [4]. This article argues that the BNSS represents a significant normative shift towards victim-centric justice in India, but that its transformative potential will depend on how well it is implemented by the police, prosecutors, courts, and legal aid institutions. To make this case, it first traces the historical marginalization of victims, then analyses key BNSS provisions, engages with leading judicial precedents and global benchmarks, and finally identifies implementation challenges and suggests concrete reforms.

Historical Evolution of Victim Rights in India: From Dharma and Restoration to State-Centered Punishment:

In early Indian legal thoughts, as reflected in texts such as the Manusmriti, Dharmashastras, and Arthashastra, crime was not only a wrong against the ruler or the community but also a moral injury to the victim. Therefore, justice includes both the punishment of the wrongdoer and the restoration of the victim. Compensation, restitution of property, and public acknowledgment of wrongdoing are central devices for restoring social balance [5]. This model allows the victim to remain visible in the process. The victim's loss and suffering are important in determining both liability and remedy. Although far from perfect, this framework contained early strands of what is today described as restorative justice. Colonial Codification and the Erasure of the Victim British colonial rule fundamentally altered this landscape. With the enactment of the Indian Penal Code, 1860, and later the Codes of Criminal Procedure (1898, then 1973), crime was redefined as a wrong against the

sovereign state [6]. The party named in criminal cases was now “State vs. Accused.” The victim, who had once stood at the Centre of the conflict, was effectively pushed to the margins. Under the Cr.P.C., the victim’s role was largely confined to lodging a complaint to initiate First Information Report and appearing as a witness. There was no statutory right to be consulted on crucial decisions such as withdrawal of prosecution, plea bargaining, or sentencing. Compensation, when ordered, was usually tied to fines imposed on the accused and was rarely treated as a serious right [7]. Scholars and victimologists in India have repeatedly criticized this offender-centric structure as unjust and alien to indigenous notions of justice. Judicial Interventions and the Slow Recognition of Victim Rights After independence, the Constitution’s guarantees of equality and life with dignity paved the way for the courts to reconsider the position of victims. In *Maneka Gandhi v. Union of India*, the Supreme Court read Article 21 expansively, opening the door for a broader notion of “fairness” in criminal procedure [8]. Specific victim-focused interventions were implemented. In *Delhi Domestic Working Women’s Forum v. Union of India*, the Court highlighted the plight of rape survivors and recommended legal aid, compensation, and support mechanisms [9]. In *Bodhisattwa Gautam v. Subhra Chakraborty*, it went further, treating rape as a violation of fundamental rights and directing interim compensation to the victim even while the trial was pending [10]. The Parliament also responded by introducing Section 357A into the CrPC in 2008, requiring every state to create a victim compensation scheme. However, studies and government data have consistently shown that these schemes are underfunded, poorly administered, and often unknown to the victims themselves [11].

The Road to BNSS 2023:

Public outrage following incidents of brutal sexual violence—most notably the 2012 Delhi gang rape—intensified demands for a victim-centric criminal justice approach. Committees, commissions, and academic work in victimology began to call for stronger procedural rights, better support services, and a rebalancing of the system [12]. The BNSS, enacted in 2023 and implemented in 2024, is the most comprehensive legislative response to these demands. While it carries forward many structures of the old CrPC, it also incorporates several specific provisions that recognize victims as participants and beneficiaries of the process, not just as sources of evidence.

Key Victim Rights under the Bharatiya Nagarik Suraksha Sanhita, 2023:

This section examines the principal BNSS provisions that directly affect victims. For clarity, these are grouped as follows: (A) rights of access and initiation; (B) rights of participation and information; (C) protective rights; and (D) rights to compensation and support.

Access and Initiation: Zero FIR and Electronic Complaints: One of the most significant innovations under the BNSS is the formal recognition of the zero FIR mechanism. Section 173 allows any police station to register an FIR for a cognizable offence regardless of where the incident occurred, with the case then being transferred to the appropriate jurisdiction [13]. This is particularly important in situations where time is critical—such as sexual violence, trafficking or kidnapping—because it ensures that victims are not turned away at the police station gate. The BNSS also explicitly supports the use of electronic communication to lodge information about offences. When a victim or informant submits information electronically, the police must reduce it to writing and verify it within a specified period of time. For victims living in remote areas or those who fear direct confrontation with local authorities, this can be the difference between silence and action.

Participation and Information: Being Heard and Kept informed Under the old CrPC: Decisions about whether to continue or withdraw from prosecution were made almost entirely between the state and the accused. The victim could be left in the dark about why a case was dropped or a plea was accepted. The BNSS changed this in important ways. Section 360 now requires the prosecution to consult the victim before the state withdraws from the prosecution [14]. Although the final decision rests with the court, this provision recognizes that the victim has a legitimate interest in whether the case proceeds. The victim is no longer a silent spectator when the possibility of closure is on the table. Similarly, the BNSS strengthens the victim’s right to information. Victims are entitled to receive free copies of the FIR and to be kept informed about the status of the investigation, the filing of the charge sheet, and closure reports [15]. This may sound technical, but in practice it means a victim does not have to run from office to office or rely on informal inquiries to know what is happening in her own case. The BNSS also acknowledges that victims may wish to have their own legal representation in addition to the public prosecutor. Section 18(8) permits a victim to engage an advocate to assist the prosecution, typically by making written submissions and, with the court’s permission, to play a more active role [16]. This codifies what the Supreme Court had already recognized in earlier cases while still maintaining the public prosecutor’s central role. Finally, Section 413 grants the victim a statutory right to appeal against an acquittal, against conviction for a lesser offence, or against inadequate compensation [17]. This is a direct legislative response to

judicial developments such as *Mallikarjun Kodagali v. State of Karnataka*, which emphasized that victims should not be left remediless when they disagree with the outcome of a trial [18].

C. Protection and Dignity: In-Camera Trials and Vulnerable Victims: The BNSS pays special attention to protecting the dignity and safety of victims, especially in cases of sexual violence and offences against children. Section 366 authorizes in-camera trials, that is, hearings closed to the general public, particularly for sexual offences, and expresses a preference that such cases be presided over by a female judge or magistrate, where available [19]. This provision builds on the Supreme Court's guidance in cases such as *Nipun Saxena v. Union of India*, which emphasized the need to protect the privacy and identity of rape survivors [20]. Conducting proceedings in camera can reduce the humiliation of recounting intimate details before a crowded courtroom and can make it easier for victims to testify. The BNSS also includes safeguards for vulnerable victims more broadly. For example, it provides that statements of women should, as far as possible, be recorded by women police officers, and that persons with physical or mental disabilities should be allowed to have their statements recorded at a place of their choice with the assistance of interpreters or special educators [21]. These details matter for a child with a disability, being questioned at home with supportive adults present can make the difference between re-traumatization and a safe disclosure. Another crucial protective measure is the mandate that hospitals, whether public or private, provide immediate free medical treatment and first aid to victims of certain offences, including sexual violence [22]. This ensures that access to life-saving treatment and medico-legal examination does not depend on a victim's financial capacity.

Compensation and Support: Beyond Symbolic Relief Compensation is often the most tangible form of recognition that a legal system can offer a victim. While no amount of money can erase trauma, financial support can help cover medical expenses, counseling, lost income, and relocation costs. Under the CrPC, Section 357 linked compensation to fines imposed by the court, and courts were often hesitant to make robust use of this power. The 2008 insertion of Section 357A, which requires state victim compensation schemes, was a step forward but suffered from poor implementation [23]. The BNSS attempts to strengthen this. Section 395 empowers courts to direct the accused to pay compensation to the victim, independent of any fines [24]. This legislative choice recognizes that compensation is not an optional add-on but an integral part of restorative justice. In addition, Section 350 allows victims to claim reimbursement of reasonable expenses incurred during investigations and trials, such as travel to court or legal costs. For a daily wage worker or a single parent, the cost of repeated court appearances can be enough to force withdrawal of a complaint. Reimbursement acknowledges that seeking justice should not mean being pushed further into poverty. Together with existing state compensation schemes under Section 357A CrPC (which continue and must now be read harmoniously with the BNSS), these provisions form a more layered framework for financial redress. However, the real test lies in timely and adequate disbursement.

Judicial Contributions and Global Benchmarks:

The BNSS did not emerge in a vacuum. It both reflects and responds to a body of judicial decisions and international standards that have steadily pushed toward a more victim-responsive system. The Supreme Court's Role in Shaping Victim Jurisprudence in *Bodhisattwa Gautam v. Subhra Chakraborty*, the Supreme Court treated the grant of interim compensation to a rape survivor as part of the State's obligation to protect fundamental rights [25]. The Court observed that criminal law must be victim-responsive and that compensation is not just charity but a duty. In the *Delhi Domestic Working Women's Forum v. Union of India*, the Court recommended the creation of a criminal injuries compensation board and emphasized legal, medical, and psychological assistance for rape survivors [26]. These ideas later informed legislative reforms, including compensation schemes and victim support protocols. In *State of Karnataka*, the Court recognized the victim's right to appeal against an acquittal and reinforced the notion that the criminal process belongs not just to the State and the accused but also to the victim. This decision is now mirrored in the BNSS Section 413. Thus, many of the rights that appear in statutory form in the BNSS have their roots in judicial creativity, grounded in constitutional interpretation and human rights reasoning. International Standards and Comparative Practices At the global level, the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power sets out key principles: victims should have access to justice and fair treatment; be informed of their rights and case progress; receive restitution, compensation, and assistance; and be treated with respect and compassion [27]. Several jurisdictions have gone further by adopting dedicated victims' rights legislation. The United States Crime Victims' Rights Act, for example, grants victims the right to be heard at key stages and to confer with prosecutors [28]. The United Kingdom's Victims' Code lays down enforceable service standards for criminal justice agencies [29]. India's BNSS does not create a single "Victims' Charter," but many of its provisions move in the same direction by embedding specific procedural and substantive entitlements in the main criminal procedure law. Compared to some Western systems, India still has work to do in areas such as legally

enforceable service standards and independent victim ombudsman mechanisms. However, the BNSS has begun to translate the language of international soft law into domestic hard law in a manner that is sensitive to local realities.

Implementation Challenges: Law in Books vs. Law in Action:

The most human story of any law is written not in the statute book but in police stations, court corridors, and village meetings. When one listens to victim-survivors, it becomes clear that the greatest challenge for the BNSS is not conceptual but practical. Many victims are unaware that they have the right to lodge a Zero FIR, receive free copies of their FIR, or be consulted before the withdrawal of prosecution. Legal literacy remains low, especially among women, Dalits, Adivasis, and other marginalized groups. Without targeted awareness programs, the new rights risk remaining on paper, and language, distance, and digital divides also play a role. An electronic complaint system offers great promise, but only if victims have access to mobile phones, the Internet, and basic digital literacy. For women in remote villages with limited control over technology, these rights may remain theoretical unless supported by community-based outreach. Institutional Culture and the success of the BNSS depends heavily on the attitudes and capacities of police officers, prosecutors, judges, and legal aid authorities. Reports and empirical studies show that FIRs are sometimes refused or discouraged, particularly in cases involving powerful accused persons or sensitive offences such as sexual or caste-based violence [30]. Overburdened police personnel may view victim participation rights as an administrative burden rather than a central element of justice. Courts, pressed by heavy dockets, may not always prioritize in-camera trials or permit active victim counsel participation. District Legal Services Authorities often struggle with insufficient staff and funds to administer compensation schemes effectively [31]. Without systematic training in victimology, trauma-informed practices, and the new BNSS framework, functionaries may continue to follow old habits, undermining the spirit of the law. Beyond institutions, deep-rooted social hierarchies and stigma affect who can realistically use victims' rights. Survivors of sexual violence face victim-blaming and pressure to "settle" for family honor. Dalit victims of caste violence may be intimidated by dominant groups into withdrawing their complaints [32]. Secondary victimization—harm caused by insensitive treatment within the justice system—remains a serious concern. Intrusive questioning, repeated recounting of trauma, and breaches of privacy can make the process itself a new source of suffering. Unless these experiences change, victims may choose silence over engagement, no matter how progressive the law appears. Recommendations: Making the BNSS Work for Victims To ensure that the victim-centric provisions of the BNSS translate into real-world change, several measures are necessary.

Victim Support Units (VSUs):

Dedicated VSUs should be established at the district level in collaboration with the Legal Services Authorities. These units can provide immediate psychological first aid, help with FIR and statement recordings, guide victims through the process, and coordinate access to shelter and medical services [33].

Mandatory victimology and sensitization training: Police academies, judicial academies, and prosecution training institutes should introduce compulsory modules on victimology, trauma, gender and caste sensitivity, and specific victim provisions under the BNSS. Training should use real case narratives and survivor testimonies to foster empathy, not only technical knowledge [34].

Strengthening Compensation Mechanisms: Time-bound procedures, such as the requirement that interim compensation applications be decided within a fixed number of days, would make Section 395 more meaningful. Dedicated victim compensation officers should be appointed in each district to process claims and liaise with victims [35].

Digital and Community-Based Information Systems:

State governments should develop user-friendly online portals and mobile applications where victims can track their case status, receive updates, and access information on their rights in local languages. Simultaneously, community paralegal programs and NGO partnerships can ensure that information reaches those without digital access [36].

Monitoring and Accountability:

High Courts and State Legal Services Authorities should periodically review how BNSS victim provisions are being implemented, using data on Zero FIR registrations, compensation disbursements, and appeal filings by victims. Public reporting can create pressure for improvement and highlight best practices that can be replicated [37].

Exploring Restorative and Community-Based Models:

Over the longer term, India may also consider structured restorative justice processes in appropriate cases, where victims who wish to do so can engage in mediated dialogue with offenders with safeguards. This is not a substitute for formal justice but rather a complement that may better address emotional and relational harm [38].

CONCLUSION:

The Bharatiya Nagarik Suraksha Sanhita, 2023, is an important milestone in India's journey from an offender-focused system to one that recognizes the victim's right to dignity, participation, and repair. By formalizing mechanisms such as Zero FIR, the right to be heard before withdrawal, stronger compensation powers and better protective procedures, the BNSS begins to correct a long-standing imbalance. At the same time, the mere presence of victim rights in a statute does not guarantee justice. The true measure of the BNSS will be found in the stories victims tell about their encounters with the police, courts, and support institutions in the years to come. If survivors feel heard, respected, informed, and supported, the law has achieved its purpose. If, however, they continue to experience neglect, stigma and silence, the promise of victim-centric justice will remain unfulfilled. The task, therefore, is not only to celebrate a new law but to transform the culture that surrounds it—so that every victim who steps through the doors of a police station or a courtroom feels that the system is finally on their side.

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