Vol. 3, Issue 1, August 2026 Subject-Law ISSN 3049-3099 (Print)
ISSN 3108-0561 (Online)

Peer Reviewed

VIPS JOURNAL OF LAW & DEVELOPMENT

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES-TC (VIPS-TC)
Affiliated to GGSIP University, Delhi & Approved by Bar Council of India & AICTE
Grade 'A++' Accredited Institution by NAAC &
Recognized by UGC under Section 2 (f) & NBA Accredited for MCA Programme
ISO 9001:2015 Certified Institution

About Vivekananda Institute of Professional Studies – TC (VIPS-TC)

Vivekananda Institute of Professional Studies - TC (VIPS-TC) was established in the year 2000. Even as a sapling, its roots were firm, for they were energized by Swamiji's teachings. Today, VIPS – TC has progressed and is nestling sixteen courses under seven different Schools. It continues to stand with determination, moral sight and strength of mind to create capable and ethical human beings with infinite power, infinite knowledge and indomitable positive energy. Under the aegis of VIPS – TC, Vivekananda School of Law and Legal Studies (VSLLS) is committed to realizing the words of Swami Vivekananda: "Man Making, Character Building and Nation Building" and is well known for its robust efforts in legal education. Research is integral to academics as it forms the foundation for knowledge creation and intellectual growth. It enables students, scholars, and professionals to explore new concepts, test theories, and contribute to the existing body of knowledge in their respective fields. VSLLS works towards development-oriented research in the Legal domain.

About the VIPS Journal of Law & Development

VIPS Journal of Law & Development is an annual double blinded peer reviewed journal accepting submissions in English language. The inception year of the Journal is 2024 and it is further envisioned to promote global development of Law as it provides a platform for scholarly research dedicated to exploring the intersection of legal frameworks and socio-legal development with an inter disciplinary approach. The research articles are selected for publication after a rigorous double-blind review by subject experts. The mode of citation for the journal is VIPS VSLLS VOL 3 VJLD (2026). As a policy of the Journal the contributing authors are regularly updated about the status of their submission.

Table of Contents

Title of the Paper / Author	Page No.
Concerns of Modern Jurisprudence and Solutions from Indian Wisdom: Basic Thoughts and Foundational Understandings *Prof. (Dr.) K. Parameswaran*	**1-17**
Artificial Intelligence, Platform Work, and the Structural Limits of Indian Labour Law *Dr. Shilpi Sharma & Subarna Ghosh*	**18-40**
Mapping Privacy in Tax Governance: Critical Analysis of Taxation Models of India and Abroad *Dr. Zubair Ahmad Khan, Dr. Vinayak Jhamb & Dr. Gurpreet Kaur*	**41-64**
Mental Health of Prisoners in India: A Socio-Legal Study with Reference to the State of Punjab *Dr. Vinod Kumar & Dr. Poonamdeep Kaur*	**65-82**
The Tyranny of Calendar: Evaluating the Judicial Transition towards a Rights-based Abortion Framework in India *Dr. Manisha Sharma & Dr. Sonali Sharma*	**83-97**
From Recognition to Reality: Implementation Challenges of Victim Participation under the Bharatiya Nagarik Suraksha Sanhita, 2023 *Sunny Yadav*	**98-114**
Mandatory Videography in Criminal Investigations: Admissibility and Enforcement Under Section 105 BNSS *Apurv Shaurya & Surabhi Dalal*	**115-131**
Mapping the Digital Sanctum: Cybercrime and the Fragile Desire of Law in Virtual Jurisprudence *Sneha Hooda & Dr. Parmod Malik*	**132-143**

Analysis of Role of Trademark Protection in Brand Management: Focus on Character Merchandising **144-161**
Purnashri Das

Strengthening Reproductive Rights: Opportunities and Challenges in Prenatal and Postnatal Health Services **162-173**
Anita & Dr. Manjinder Gulyani

The Unfulfilled Promise: Examining the Efficacy of Constitutional Guarantees in Securing the Human Rights of Transgender Persons **174-185**
Aaradhya Nagyan & Akanksha Singh

Brain Data as Evidence and Constitutional Right to Mental Privacy: Challenges for Indian Criminal Law **186-206**
Rashmi Raghav

Substantive Equality in Women's Rights under Indian Constitutional Law Since K. S. Puttaswamy Case **207-225**
Anurag Singh & Dr. Richa Srivastava

Green Mediation in Environmental Justice: Analysing in Comparative Domain **226-248**
Shalini Maurya & Dr. Rama Sharma

Are Federal Democracies Truly Federal in the 21st Century? **249-262**
Durgesh Pratap

Establishing Ownership to Determine Responsibility for Algorithmic Bias **263-276**
Arshita Jain & Radhika Chachria

The Ghost of the Termination Treaty: Sunset Clauses, Legacy ISDS Exposure, and Sovereign Regulatory Space **277-297**
Venkata Raghuvamsy D

Submission Guidelines **298-302**

From Recognition to Reality: Implementation Challenges of Victim Participation under the Bharatiya Nagarik Suraksha Sanhita, 2023

VIPS Journal of Law & Development
Subject - Law
August 2026, Vol. 3, Issue 1, 98-114
ISSN 3049-3099 (Print)
ISSN 3108-0561 (Online)
©Vivekananda Institute of Professional Studies-TC
(VIPS-TC)
https://vips.edu/vslls/Publications/VJLD

Sunny Yadav*

Abstract

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter BNSS), marks a significant shift in criminal procedural law from the old Code of Criminal Procedure, 1973 (hereinafter CrPC), by formally recognizing victims as active participants rather than mere spectators. This research article examines the changes in the victim's participation through the lens of effective implementation and institutional readiness. Although the BNSS represents a considerable shift towards victim inclusion, its effectiveness depends upon institutional capacity, administrative practices, and mechanisms of accountability. Although several participatory rights, ranging from access to information and documents to the right to be heard at crucial stages such as bail, withdrawal of prosecution, and appeals have been included, the implementation of these rights. The implementation of these rights still depends on the capacity and structures of the different institutions of the criminal justice system. The research article highlights the shift from the historically marginalized position of victims under the adversarial system to a victim-centric reform, driven by judicial and legislative developments. However, the core argument of this research article is that mere statutory recognition is insufficient for meaningful participation; rather, it depends on the implementation and institutional adaptation of these changes. The police, prosecution, and judiciary are the key institutions for the effective implementation of victims' participatory rights within the criminal justice system. The

* Advocate, Delhi High Court, New Delhi, India. Email ID: ysunny973@gmail.com

research article identifies structural constraints, limited resources, lack of awareness, unequal access to legal representation, and overly burdened institutions as the major problems that must be overcome to develop a victim-centric criminal system.

Keywords: *Victim Participation, Participatory Rights, Victim-Centric Reform, Criminal Justice System, Criminal Law*

I. INTRODUCTION

The adversarial nature of the justice-delivering system in India has historically been structured around a bipolar relationship between the accused and the state. The victims of crime are often seen as marginalised and in a passive role in the adjudicatory process. The victims, despite being affected the most by a crime, remain mere spectators and witnesses to the tussle between the state and the accused. The ignorance regarding victims stems from the CrPC, which treats any criminal act as an offence against the state rather than against an individual, thereby systematically excluding victims from effective participation in criminal proceedings. Over time, this exclusion drew persistent judicial and academic criticism, particularly given the evolving interpretations of fair procedure and substantive justice under Article 21 of the Constitution of India.[1]

Certain victim rights, such as compensation and limited participation at particular stages, were gradually recognised by statutory amendments[2] and judicial interventions. Still, these developments were piecemeal and were heavily reliant on judicial discretion. Because of this, victim participation remained inconsistent, contingent, and frequently unavailable in real-world situations. Indian scholars have repeatedly noted that the adversarial system, which is operationalised and aims at prosecutorial discretion and procedural efficiency over victim engagement, thereby reinforcing the victim's peripheral status.[3]

The introduction of the BNSS explicitly incorporates victim-centric provisions[4] into the new criminal procedure law, including enhanced rights to information, participation at critical stages such as bail, access to documents, and more efficient

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

2 Code of Criminal Procedure (Amendment) Act, 2008, No. 5, Acts of Parliament, 2009 (India).

3 Shivika Goyal, *Repositioning the Victim: A Critical Analysis of Victim-Centric Justice in India*, 5 INDIAN J. LEGAL REV. 499, 499 (2025).

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

compensation mechanisms. A significant shift towards acknowledging victims as procedural actors rather than passive observers is reflected in these reforms. In this way, the BNSS can be viewed as a legislative reaction to long-standing scholarship and judicial demands that the victim be repositioned within the criminal justice system.[5]

However, the formal recognition of victim rights does not directly translate into meaningful participation. The victim's participation is not merely a question of legal entitlement but also of institutional, structural, and procedural integration.[6] The victim-centric reforms often falter at the implementation stage due to structural constraints within the policing, prosecutorial practice, and judicial administration. Despite a progressive textual orientation, there is a significant responsibility on implementing institutions, especially the police and public prosecutors, to ensure effective victim participation during the pre-trial and investigation phases, when victims are most at risk of exclusion.

II. Conceptualizing Victim Participation in Criminal Proceedings

The term "victim" is defined under Section 2(1)(x) of the BNSS 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."[7] The wide scope of the definition of victim to include the guardian and legal heir of such a victim is adopted following the 154th Law Commission of India Report, 1996, which advocated a victim-centric approach in certain aspects of criminal procedure. The report stated that victims are the worst sufferers of crime and, at the same time, have a very limited role in the court proceedings, which has to be changed, and the effective participation of the victim should be enhanced. They should be provided with certain rights and a compensatory scheme to prevent the distortion of the criminal justice system.[8] The Malimath Committee was among the first official bodies in India that observed that victims whose rights are directly invaded by the crime were not accorded any right to participate except as a witness, and described the existing system as 'utterly insensitive to the rights

5 Kriti Mishra, *Victim Participation in the Criminal Justice System*, 6 INDIAN J. L. & LEGAL RES. 1894, 1898 (2024).

6 Erin Ann O'Hara, *Victim Participation in the Criminal Process*, 13 J. L. & POL'Y 229, 237 (2005).

7 Bharatiya Nagarik Suraksha Sanhita, 2023, § 2(1)(x), No. 46, Acts of Parliament, 2023 (India).

8 Law Commission of India, *154th Report on the Code of Criminal Procedure, 1973,* vol. I (1996).

of the victim.'[9] The Committee also states that meaningful participation entails the victim's capacity to assist the court in uncovering the truth, to draw attention to lapses in investigation, and to contribute to decisions relating to bail, withdrawal of prosecution, and compensation.

In Ram Phal v. State & Ors,[10] the Hon'ble Delhi High Court referred to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, to align the victim-centric approach with international standards. The Declaration provides that the term victim also includes, where appropriate, the immediate family or dependents of the direct victim. In Jagjeet Singh & Ors v. Ashish Mishra & Ors,[11] the Supreme Court observed that a victim under the Code of Criminal Procedure (now Bharatiya Nagarik Suraksha Sanhita) cannot be asked to wait for the trial to start to exercise their right to be involved in the proceedings. They are legally entitled to a hearing at every stage following the commission of an offence. From the start of the investigation to the end of the criminal proceedings, including appeal or revision, a "victim" has unrestricted rights to participate.

The victim's participation in criminal proceedings is the victim's recognised legal capacity to interact with, influence, and be acknowledged within the criminal justice system. It should not be limited to serving as a witness for the prosecution.[12] Traditionally, criminal law viewed crime as an offence against the State, relegating the victim to a marginal role upon the registration of the FIR. Modern victimology, however, conceptualises crime as a dual wrong against society as well as against the individual, necessitating procedural space for the victim's voice.

The introduction of the new criminal laws reflects a shift from passive to active participation of the victims in the criminal justice system. Mainly, the BNSS aims to ensure the victim's active participation, unlike the old CrPC, which provides a very limited scope for the victim. The term passive participation describes circumstances in which the victim is used solely as a source of evidence, and whose involvement ends when their statement or testimony is taken.[13] The victim does not influence important prosecutorial choices or the direction of the investigation. On the other hand, active participation includes the right to be heard at different stages of the

9 *Committee on Reforms of Criminal Justice System*, Report, vol. I (Ministry of Home Affairs 2003).

10 Ram Phal v. State & Ors., 2015 Cri. L.J. 3220 (Del.).

11 Jagjeet Singh & Ors. v. Ashish Mishra & Ors., (2022) 9 SCC 321.

12 K.N. CHANDRASEKHARAN PILLAI, R.V. KELKAR'S CRIMINAL PROCEDURE 45 (Eastern Book Company 2016).

13 Law Commission of India, *supra* note 8, vol. II.

criminal proceedings, such as bail or the withdrawal of prosecution, access to information about the investigation, and active involvement in decisions regarding sentencing and compensation.[14] In Mallikarjun Kodagali v State of Karnataka,[15] the Hon'ble Supreme Court recognised that a victim's right to participate in the criminal justice system stems from the broader constitutional commitment to fair justice, dignity, and access to remedies. It is not merely a procedural right. Therefore, it is important to view victim participation as procedural inclusion aimed at substantive justice rather than as adversarial interference. The distinction between passive and active participation is a useful analytical tool in the victim participation literature.

This judicial trend laid important groundwork for the statutory recognition of participatory rights under the BNSS. The colonial law[16] is the source of victims marginalisation in traditional criminal procedure, and the CrPC reflects this as well. It inherited a model in which the State monopolised prosecution, based on the idea that public prosecutors sufficiently represented the interests of victims and society. In reality, this assumption proved incorrect.

The different reports and recommendations over time acknowledged that the adversarial system, as practised in India, is heavily loaded in favour of the accused and insensitive to the victim's plight. The victim marginalisation was not accidental but structurally embedded in criminal procedure, sustained by outdated assumptions about efficiency and neutrality.

The introduction of the BNSS might bring significant changes to victims' rights. Studies on victim participation underline that implementation deficits, such as lack of awareness, prosecutorial resistance, and institutional inertia, often dilute statutory reforms. Because of this, victim participation under the BNSS is not just a normative reform but also an implementation challenge that calls for a close examination of institutional preparedness, procedural clarity, and enforcement mechanisms.

III. Victim Participation Under the Bharatiya Nagarik Suraksha Sanhita: Statutory Framework

The introduction of the BNSS is the first comprehensive procedural recodification after the CrPC in 1973. The Sanhita is enacted with the objective of consolidating and

14 Committee on Reforms of Criminal Justice System, *supra* note 9.

15 Mallikarjun Kodagali v. State of Karnataka, (2019) 2 SCC 752.

16 Code of Criminal Procedure, 1898, No. 5, Acts of Parliament, 1898 (India).

amending the law relating to criminal procedure[17] and, at the same time, not only consolidating but also incorporating several structural modifications with respect to victims' rights to participate in criminal proceedings. Unlike the earlier Code, where the participatory rights of victims were fragmented across amendments, Judgments, and different judicial interpretations, such as the right to be informed at the stage of investigation, right to be heard at the time of withdrawal of cases and also at the time of deciding compensation, etc, the BNSS consolidates them under a single umbrella.

The participation of victims in the criminal proceedings under the BNSS at different stages works through the combination of different rights, which were discussed below:

Registration of the FIR

The BNSS under section 173(1) states that the information about cognizable offences may be given at any police station irrespective of the territorial jurisdiction where the offence is committed, and in a way expressly incorporates the concept of Zero FIR, which allows the victim to register the offence without delay, irrespective of the area. This primarily addresses the mechanism of access to justice. Still, its scope can also be seen in the participatory rights of victims, such as the police's discretion to refuse registration of an FIR, which will be reduced, and provides the scope for initiating criminal proceedings without territorial constraints.

Section 173(2) of the BNSS mandates that a copy of the FIR must be given to the victim free of cost. Unlike the CrPC, which required the supply of a copy of the FIR only to the informant, the BNSS explicitly entitles the victim to receive it. This explicit inclusion strengthens the victim's participatory capacity from a very early stage of the criminal proceedings. It will allow the victim to verify whether the FIR has been correctly recorded.

During Investigation

The investigation stage of any criminal proceedings is primarily driven by the police, and this remains the case under the new criminal procedure, though with some additions.

Section 176[18] of the BNSS provides that the statement of the victim of rape may be recorded through any electronic means, either audio or video, which will include

17 Bharatiya Nagarik Suraksha Sanhita, 2023, preamble, No. 46, Acts of Parliament, 2023 (India).

18 *Id.* § 176.

a mobile phone. This will enhance the transparency, particularly in the offences of rape and also protect the integrity of what the victim narrated. This shows that the victim has protective participation over the investigation rather than direct or active procedural control, which remains vested in the investigation officer.

Section 193(3)(ii)[19] of the BNSS incorporates a mandatory condition that a police officer shall provide the information about the progress in the investigation to the victim or informant within a period of ninety days. There was no such provision in the Code of Criminal Procedure, 1973. With this inclusion, the victim will be better informed about what is happening in their case and can also regularly monitor the investigation process. This will create a mechanism of accountability and transparency between the victim and the investigating officer. Thus, the victim's participation at the investigative stage remains mainly passive and informational.

At the Stage of Document Supply after Cognizance

Section 230[20] of the BNSS provides that in any case which is instituted on a police report, the magistrate shall furnish without delay, but within fourteen days, a copy of the police report, FIR, statement under section 180(3)[21], the confession and statements recorded under section 180[22], or any other relevant document free of cost to the accused and the victim. The scope of the supply of documents under the CrPC is limited to the accused only. Still, the BNSS makes this supply mandatory for victims as well if an advocate represents them. This inclusion of victims will facilitate their presentation of their side and their preparation for subsequent stages, such as bail, discharge, withdrawal, appeal, etc. This right to receive copies of the documents (as stated above) within a specified time are contingent on the condition that an advocate represents the victim.

At the Stage of Prosecution and Trial

Section 18(8) proviso of the BNSS provides that the court may permit the victim to engage an advocate of his choice to assist the prosecution, as it is also provided under the old procedural law. This engagement of such an advocate by the victim is only to assist and support the prosecution, and the victim's counsel cannot examine

19 *Id.* § 193(3)(ii).

20 *Id.* § 230.

21 *Id.* § 180(3)

22 *Id.* § 180.

or cross-examine the witness, but can suggest questions in the examination.[23]

The right to be heard before the withdrawal of the prosecution is given under section 360 of the BNSS. This right to be heard is the most significant indicator of the victim's participation in criminal proceedings. The CrPC required the court's consent to withdraw the prosecution, and there was no provision for hearing the victim. Still, now BNSS incorporates it under section 360 Proviso second, that the court cannot allow the withdrawal of the prosecution without hearing the victim.

Another part where we can see active participation by victims is under Chapter XIII of the BNSS, which covers Plea Bargaining. India adopted this concept of Plea bargaining after the Malimath Committee report, 2003,[24] for criminal laws. It was incorporated into the CrPC through the Criminal Law Amendment, 2005.[25] This chapter ranges from section 289 to section 300, which allows the victim, with the court's consent, to negotiate and reach a satisfactory settlement. They were also allowed to bargain for their compensation with the accused.

Appellate Participation

After the Criminal Law Amendment Act, 2008,[26] the Parliament added a proviso to section 372 of the CrPC, allowing victims to appeal in cases of acquittal or a lesser punishment. The victim can also appeal for the inappropriate compensation under the section. The same provision is incorporated into the BNSS under section 413[27], allowing the victims to appeal.

Compensation to Victim

The victim is the most important party in criminal proceedings. The state's duty is not only to punish the offender but also to provide adequate damages to the victim. Compensation should be provided to crime victims. In view of the said compensation, BNSS contains section 396[28], which addresses the victim compensation scheme. It mandates that every state government prepare a scheme to provide compensation to victims and their dependents who have suffered loss or injury, in coordination with the central government. The compensation is determined by the victim's

23 Rekha Murarka v. State of West Bengal & Ors., (2020) 2 SCC 474.

24 Committee on Reforms of Criminal Justice System, *supra* note 9.

25 Criminal Law (Amendment) Act, 2005, No. 2, Acts of Parliament, 2006 (India).

26 Code of Criminal Procedure (Amendment) Act, 2008, No. 5, Acts of Parliament, 2009 (India).

27 Bharatiya Nagarik Suraksha Sanhita, 2023, § 413, No. 46, Acts of Parliament, 2023 (India).

28 *Id.* § 396.

submissions, including the harm suffered and whether rehabilitation is required. After assessing all these aspects of the victim, adequate compensation is determined, which helps the victim with restitution and with constituting indirect but effective participation.

After thoroughly analysing the provisions relating to victims and the changes introduced in the BNSS compared to the CrPC, it can be said that the BNSS seeks to strengthen victims' participation more effectively and meaningfully. The participation can be seen from the registration of the FIR, during the investigation, the supply of documents to the compensation, and in appeals, etc. The Sanhita expressly grants new rights related to participation and expands the scope of certain pre-existing rights through amendments or judicial precedents. Moving to the next section, we will examine the status of implementing these rights. Have they really worked on the ground, or do they just look good on paper?

IV. Institutional Implementation of Victim Participation

The rights we have discussed above have no meaning unless they are implemented at the root level of the criminal justice system, which could be a major challenge. The mere recognition by legislation would not serve the purpose; instead, its implementation should be carried out strictly and effectively. The Police and the Prosecution are the two major institutions on which victims primarily depend to participate in the criminal system. So the major problem is not legislative recognition. Instead, it lies in the hands of the Police and the Prosecution to determine whether they can effectively implement such participation and whether they have enough resources to do so.

Police as Gatekeepers of Victim Participation

The police are the most important institution in the victim's participation and can be considered as the gatekeepers for the rights of the victim's participation in the criminal justice system. The majority of such rights begin with the registration of the FIR and initiation of the investigation. The BNSS makes it mandatory to provide a free copy of the FIR to the victim and expressly recognises the Zero FIR[29] and electronic FIR mechanisms, but compliance is necessary to make it effective, which is not easy to achieve. The ground reality is far from what is written in the statutes, as most police officers are not well-versed in the concept of a Zero FIR or

29 *Id.* § 173(1).

an electronic FIR. They simply refused to register any such FIR, saying they lacked jurisdiction, and these concepts seem to be merely on paper. The police show their discretion in registration of any FIR, especially to the victims who come from the socio-economically weaker section of society, which often leads to violent behaviour towards those victims.[30] Thus, the effective participation of victims seems far from reality and depends on the police or the investigating officer's response.

The enforcement of the BNSS does not remove the police's monopoly over the registration of FIRs or the conduct of effective investigations. The BNSS now requires that victims be provided with regular updates on the progress of the investigation within 90 days.[31] In contrast, under the CrPC, this was not the case. In addition to these, the police also exercise discretion in the collection of evidence, the inclusion or exclusion of witnesses, and the final or closure report. Throughout this process, the victims do not seem to have the right to object to an investigative strategy or to access the case diary, etc. The main focus of the police investigation continues to prioritize case disposal over participation and the creation of a more meaningful and just criminal justice system.

The implementation of changes regarding the victims' participation brought under the BNSS depends mainly on the capacity of the institutions. The police officers often handle many cases simultaneously, making them less effective in any given case. They fail to inform victims of the case's progress, ensure their presence at vital procedural steps, and provide them with the necessary documents. Thus, this administrative failure to overload the police officer with excessive work reduces statutory rights to a mere entitlement on paper. Further, the absence of sensitivity towards the victims is also a hindrance to the victim's participation. The police institution, the investigative administration, needs to be reformed to ensure significant change and active participation by victims.

Prosecutorial Control and the Limits of Assisted Participation

At the early stage, that is, the registration of the FIR and the investigation of the case, the police primarily dominate. Further, at the trial stage, the Public Prosecutor primarily mediates the victim's participation. The Public Prosecutor is considered the main actor at the trial stage under the BNSS, sidelining the victim's agency. They were the officers of the state and not the representatives of the victim. The

30 K.P. Tamilmaran v. State by Deputy Superintendent of Police, AIR 2025 SC 2545.

31 Bharatiya Nagarik Suraksha Sanhita, 2023, § 193(2)(ii), No. 46, Acts of Parliament, 2023 (India).

accountability of the Public Prosecutor lies with the state and the court, and not with any party.[32] This structural gap lies between the prosecutorial discretion and the victims' expectations at the trial stage. The 154th Law Commission of India Report provides that, "Prosecutors were considered as the ministers of Justice and not the representatives of any party. Their job is to assist the Court by presenting all the facts and circumstances of the case accurately. They are also not concerned about the culprits' escape conviction, and their accountability lies only with the state and the court."[33]

Section 18(8) Proviso[34] BNSS provides that the court may permit the victim to engage an advocate of his choice to assist the prosecution, meaning the private counsel of the victim can only assist or support the Public Prosecutor, but it cannot examine or cross-examine witnesses. They can help in framing the questions that may be asked in such an examination of witnesses.[35] This proviso to section 18(8) of the BNSS is inserted with the recommendation of the 154th Law Commission of India Report, which provides that "In present, victims are the primary sufferers in any crime, although they don't have an active and effective role in the Court proceedings. They have to be entitled to certain rights and compensation so that there is no abuse of the criminal justice system."[36]

The BNSS provides certain rights at specific stages but does not provide for active participation or meaningful reform, which are necessary for a more inclusive criminal justice system.

The BNSS also provides a mandatory opportunity for the victim to be heard at the stage of withdrawal of prosecution, which, in reality, is another challenge to address. The significance of this inclusion depends primarily on factors such as timely notice to the victim, access to representation, and the willingness of the Courts to strictly and effectively take it into account in adjudicating the matter. Traditionally, the Court has placed greater emphasis on the Prosecution's assessment than on the victims' objections, and this needs to change.

32 Harendra Rai v. State of Bihar & Ors., (2023) 13 SCC 563.

33 Law Commission of India, *supra* note 8, vol. I.

34 Bharatiya Nagarik Suraksha Sanhita, 2023, § 18(8) proviso, No. 46, Acts of Parliament, 2023 (India).

35 Rekha Murarka, (2020) 2 SCC 474.

36 Law Commission of India, *supra* note 8, vol. II.

Judicial Management of Victim Participation

At the early stage of criminal proceedings, the police and the prosecution act as the primary institutional actors, whereas the Judiciary provides the means for victim participation through these expanded roles of institutional bodies. All the participatory rights can be significantly shaped by the Judicial management of courtroom processes and by the judges' active role in recognizing these rights in practice. The Indian criminal Justice system operates under an adversarial[37] framework, which historically prioritizes the control of the prosecution and the defense over criminal proceedings. This will lead the Judiciary to balance two aspects: upholding the victim's voice in participation and ensuring a fair and expeditious trial. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 provides that "5. Judicial and administrative mechanisms should be established and, where necessary, strengthened to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive, and accessible. Victims should be informed of their rights in seeking redress through such mechanisms."[38]

The most significant challenge before the Courts is the impact of the victim's participation on the procedural timeline. Criminal trials in India face significant challenges, including delays in proceedings, repeated adjournments, heavy backlogs, and limited institutional resources. So, the victim's participatory rights can be effectively implemented only through major reforms in the institution's resources and capacity. The courts should participate in the trial and take an active role throughout to make the Indian criminal justice system more inclusive and transparent for victims. At the same time, the Judicial mechanism should also ensure a balance between the constitutional and statutory obligations and provide for fair and expeditious proceedings.

The more understandable feature of the victims' participation under the BNSS is the degree of discretion provided to the trial courts. The scope within which the trial courts may interpret these provisions will also directly affect the effective implementation of these rights. This discretion will also allow the trial court to ensure participation based on the nature and seriousness of the offence, the conduct of the parties in the proceeding, and other relevant factors.

37 Ram Chander v. State of Haryana, (1981) 3 SCC 191.

38 G.A. Res. 48/34, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, ¶ 5, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

Beyond the court's interpretation of the legal provisions, another factor that can hinder the implementation of participatory rights is the inclusion of victims within the existing courtroom structure. The infrastructural constraints, limited courtroom space, lack of facilities, and overburdened caseload can also pose challenges that may take a long time to improve.

The judiciary can be considered the most important institution for the implementation of victims' participatory rights under the BNSS. While the BNSS recognizes such rights, their meaning and effectiveness significantly depend on the Courts, as to how they interpret and implement them in practice. The Courts might face difficulty balancing the rights of the victim to be heard, ensuring procedural fairness, and avoiding delay in adjudication to ensure the effective functioning of the criminal justice system.

V. Bridging the Implementation Deficit: Policy Implications and Global Practices

The previous sections have examined both the statutory framework for victim participation and the institutional mechanisms for implementing it, as well as the challenges they may face under the BNSS. When combined, these findings show that the expansion of participatory rights reflects a fundamental normative change in Indian criminal procedure. However, the alignment between institutional capability and legal design determines how effective these rights are in practice. Trial courts, police officers, and prosecutors work in systems that are already overburdened by a large caseload, inadequate infrastructure, and lengthy processing times. In an environment like this, adding more participatory responsibilities, such as keeping victims updated on developments, hearing their submissions at crucial points, and making documents accessible, may put additional strain on organisations that aren't structurally prepared to perform these tasks regularly. As a result, statutory recognition of participation does not automatically translate into meaningful implementation.

The unequal access to participatory rights of the victim is another major concern. The majority of the provisions discussed above strengthen victim participation under the BNSS only when victims have the means of legal representation and the institutional knowledge required to invoke procedural rights. The victims who are socially and financially able to engage private counsel are in a better position to

represent themselves in court and participate in the proceedings.[39] On the other hand, victims from poor and marginalized sections of society may not have the means or knowledge to invoke such rights, or may not have been aware of them. Their lack of financial resources or awareness makes it difficult for them to participate in criminal proceedings compared to others. Although the legal aid institution serves as a bridge to address this gap across the system, its reach and response vary from one jurisdiction to another, making it less effective for the section of society that needs it most.

Another problem is the quality and seriousness of the counsel these institutions provide. In many cases, legal aid counsel is overly burdened[40] and unable to devote sufficient time and attention to individual matters. This results in a perfunctory representation that fails to address the victim's specific concern and expectation. The structural conditions also lay the groundwork for creating a symbolic compliance. The legislative requirements for formal compliance with provisions under the BNSS, such as the right to be informed or the right to be heard, do not translate into effective participation of victims.[41] It remains a mere symbolic participation in major situations, such as hearing a victim in brief or disclosing information at a time when victims cannot effectively respond. Such practices may appear to comply with legislative requirements, but they do not ensure that victims fully participate in the criminal justice system. The more functional way to integrate the victim into the criminal justice system is to upgrade the existing institutional facilities and adopt a more victim-centric approach.

To truly make these provisions work, we need to look beyond just the laws and consider the policies that will be implemented effectively. Participatory rights work well when there is a mechanism that integrates victims with criminal justice institutions and creates a system that allows victims to have a say in the process. This means having someone in the police department who deals with victims and ensuring that the people who prosecute crimes and the people who provide legal help work together. Apart from the police department, the courts also need to prioritise mechanisms that ensure the victim's participation in the criminal justice system. It is also very important that the people who work in these institutions receive the training they need so they understand that listening to victims is part of

39 Mrinal Satish & Aparna Chandra, *Of Maternal State and Minimalist Courts: The Indian Supreme Court's Approach to Victim Rights*, 14 INT'L J. CONST. L. 344, 344 (2017).

40 Abhinav Sekhri, *The Right to Legal Aid: Meaning, Scope and Limitations*, 7 NUJS L. REV. 1, 1 (2015).

41 Committee on Reforms of Criminal Justice System, *supra* note 9, ch. VI (Justice to Victims).

ensuring fair justice. This will ensure the proper mechanism is implemented, as the BNSS aimed for.

The Indian criminal justice institutions can derive important structural insights from global jurisdictions that have successfully institutionalized restorative justice paradigms[42] to bridge the gap between statutory recognition and practical reality under the BNSS. These international models illustrate that the shift from symbolic compliance to substantive victim participation requires a shift from textual mandates to dedicated administrative architecture.[43]

One of the most distinctive examples of overcoming institutional inertia comes from New Zealand, where the restorative framework operationalised under the Oranga Tamariki Act[44] has been extended to adult sentencing.[45] Their 'Family Group Conference' (FGC) model centres the victim and community stakeholders in dispute resolution, directly affecting restitution and accountability.[46] Chapter XXIII of the BNSS seeks to replicate this collaborative ethos through expanded plea bargaining and compensatory schemes,[47] but the burden of enforcement in India rests entirely on an already depleted and traditional judicial apparatus. New Zealand avoids this implementation gap by using localized, community-led infrastructure that is not subject to the usual court timelines, thereby avoiding clogging up the judicial machinery.

Likewise, the United Kingdom is a useful case study for incorporating restorative interventions into a legacy of an Anglo-American adversarial system closely resembling India's legal structure. The Crime and Courts Act 2013 explicitly provides for pre-sentence restorative justice, where victims can participate in structured, facilitated mediations to communicate the impact of the offence.[48]

Crucially, the UK model avoids the risk of 'secondary victimization' by relying on certified, independent restorative practitioners rather than first-line police.[49] This

42 JOHN BRAITHWAITE, CRIME, SHAME AND REINTEGRATION 54-68 (Cambridge Univ. Press 1989).

43 Nils Christie, *Conflicts as Property*, 17 BRIT. J. CRIMINOLOGY 1 (1977).

44 Oranga Tamariki Act 1989, s 208 (N.Z.).

45 Sentencing Act 2002, s 9A (N.Z.)

46 ALLISON MORRIS & GABRIELLE MAXWELL, RESTORATIVE JUSTICE FOR JUVENILES: CONFERENCING, MEDIATION AND CIRCLES 22-35 ((Hart Publishing 2001).

47 Bharatiya Nagarik Suraksha Sanhita, 2023, ch. XXIII, No. 46, Acts of Parliament, 2023 (India).

48 Crime and Courts Act 2013, c. 22, § 30, sch. 16, pt. 2 (U.K.).

49 Joanna Shapland et al., *Restorative Justice: The Views of Victims and Offenders*, MINISTRY OF JUSTICE RESEARCH SERIES 9/07 (Ministry of Justice, Research Series 9/07, 2007).

institutional divide is very relevant in the Indian context. The reliance on police officers as the primary gatekeepers of victim information (such as the 90-day progress updates under Section 193(3)(ii)) under the BNSS[50] runs the risk of perfunctory or adversarial treatment due to overwork and lack of specialization.[51]

Ultimately, this comparative perspective shows that the gaps identified in the implementation of the BNSS in the policing, prosecutorial and judicial organs are not insurmountable. But, as the experiences of New Zealand and the UK show, successful victim-centric reform cannot rely on overburdened agencies smoothly taking on added participatory responsibilities. It needs the establishment of independent, specialist support mechanisms, for example, victim liaison systems, to safeguard these new statutory rights against systemic institutional failure.

VI. Conclusion & Suggestions

The evolving mechanism of victim representation in the Indian criminal justice system is intended to be achieved through the provisions of the BNSS. The new procedural law recognises victims as the key participants in the criminal justice mechanism. However, their functionality depends on the institutional readiness. The major problem in implementation is not the law's wording, but the outdated and insufficient institutional structures.

In my considered view, the victim's participation under the BNSS continues to be guided by prosecutorial dominance, administrative constraint, and unequal access to legal aid. In this context, the active role of victims is contingent on various discretionary factors rather than on what has been guaranteed by law. The challenge, therefore, is not recognition but translation that ensures the participatory rights extend beyond formal inclusion to substantive engagement.

A more practical path is to enhance the institutional frameworks governing these rights. This includes integrating investigative and prosecutorial agencies to work together, making the system easier and more confidential by ensuring the quality and availability of legal aid, and creating uniform rules across all agencies to facilitate victim participation. A gradual change in the practical functioning of the institutional framework is essential. The participation of the victims should be seen

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

51 Ctr. for the Study of Developing Societies (CSDS) & Common Cause, *Status of Policing in India Report 2019: Policy Performance and Civil Liberties* 45-58 (2019).

as an integral step towards justice, and not as an extra step in the process. Therefore, the BNSS should not be seen as the end of victim-centered reforms, but as a path through which effective participation can be ensured. Whether it brings about a change in the criminal justice system will depend on how long institutions are willing to work to minimize the gap between the law as it is written and the law as it is practiced in reality.

Therefore, bringing together the international paradigms, the successful victim-centered transitions are fundamentally dependent on structural decoupling. The way New Zealand and the United Kingdom operate shows that if you want legacy adversarial bodies to act as restorative guardians without administrative insulation, you are bound to get perfunctory compliance. If the Indian machinery continues to pump out new participatory rights through the same unmodified, overloaded channels, then the institutional friction identified in the policing and prosecuting machinery would continue to go unaddressed. This means that translating BNSS from a textual milestone to a functional reality becomes difficult. The state must therefore go beyond procedural tinkering and proactively create independent, specialised frameworks that may shield the victim's statutory rights from systemic institutional failure.

To bridge the gap between statutory recognition and practical implementation, a well-structured, victim-centric framework must be put in place. This might involve setting up special victim liaison units within police departments and ensuring their meaningful participation. The establishment of dedicated victim representation cells, thereby strengthening the existing legal aid facilities for victims who were unable to afford them. Also, there must be an institutional accountability mechanism that regularly checks and balances compliance with these rights. Regular training programs for police officers, prosecutors, and judicial officers must be conducted to sensitize them towards victim-centric justice. Such reforms can operationalize the intent of the BNSS into a procedural reality.



VIPS
योगः कर्मसु कौशलम्
IN PURSUIT OF PERFECTION

NAAC Accredited A++ Grade 3.58/4

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES-TC (VIPS-TC)

AU Block (Outer Ring Road), Pitampura, Delhi-110034
Nearest Metro Station – Pitampura (2 KM) & Haiderpur (0.5 KM)
Website : www.vips.edu, www.dsb.edu.in
Tel.: +91 11 27343401 / 02 / 03, Fax : +91 11 27343404
E-mail : vslls.clrd@vips.edu