

Victim-Centric Justice in India: An Analysis of Constitutional Jurisprudence and Statutory Reform under the Bharatiya Nagarik Suraksha Sanhita, 2023

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HOW TO CITE:

M. Alima , K.J. Rajan, Akash. J
(2026). Victim-Centric Justice in
India: An Analysis of Constitutional
Jurisprudence and Statutory
Reform under the Bharatiya
Nagarik Suraksha Sanhita, 2023.
International Journal of Special
Education, 41(17s), 227-234

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ABSTRACT:

Indian criminal procedure has been organised around a single relationship: the State and the accused. The victim of crime appeared in this architecture chiefly as a witness, a source of evidence rather than a holder of enforceable rights. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973 and came into force on 1 July 2024, is the first comprehensive procedural code to place victim participation, information, and reparation rights directly on the face of the statute. This article undertakes a doctrinal legal analysis of that reform. It traces the constitutional origin of victim rights in the Supreme Court's interpretation of Article 21, examines the principal victim-facing provisions of the BNSS against the precedent they are said to codify, and benchmarks the Indian framework against the European Union's Victims' Rights Directive, South Africa's Child Justice Act, and the victim-impact-statement practice of the United Kingdom and the United States. Applying Howard Zehr's restorative justice framework, the article argues that the BNSS is best understood as a codification of existing judicial doctrine rather than a structural advance toward restorative justice. It concludes that India needs a standalone Victim Rights Act, built on individual needs assessment, a statutory victim impact statement, a restorative justice gateway, and a national authority to standardise victim compensation.

Keywords: Bharatiya Nagarik Suraksha Sanhita; statutory reform; persuasive commitments.

1. INTRODUCTION

The architecture of Indian criminal procedure was, for nearly a century and a half, built around a single relationship: the State versus the accused. The victim of crime appeared in that architecture chiefly as a witness, a source of evidence rather than a holder of rights in the proceeding. This is not a peculiarly Indian problem; it reflects what

early victimologists described as the marginalisation of the victim in criminal justice systems descended from the common-law adversarial model, where the victim's interest was historically absorbed into the public prosecution and effectively extinguished as an independent legal claim. Justice V.R. Krishna Iyer captured this neglect in 'Rattan Singh v. State of Punjab,

1980 AIR 84¹, observing that it was "a weakness of our jurisprudence" that the victim's distress and the dependants' suffering attracted so little attention from the law. Three developments over the following four decades unsettled this position. First, the Supreme Court, beginning with an expansive reading of Article 21 of the Constitution in cases concerning custodial violence and wrongful detention, built a jurisprudence of State liability and compensation that ran ahead of statutory reform, most visibly in ²Rudal Sah v. State of Bihar, (1983) 4 SCC 141, ³Khatra v. State of Bihar, (1981) 1 SCC 627, and ⁴D.K. Basu v. State of West Bengal, (1997) 1 SCC 416. Second, Parliament inserted Section 357A into the Code of Criminal Procedure, 1973 through the CrPC (Amendment) Act, 2008, following the recommendations of the 154th Law Commission Report (1996) and the Malimath Committee (2003), creating a State-funded compensation scheme independent of conviction. The Supreme Court subsequently converted the discretionary power under Section 357 into something close to a mandatory duty, most clearly in ⁵Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551 and ⁶Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770. Third, the Bharatiya Nagarik Suraksha Sanhita, 2023, which received presidential assent in December 2023 and came into force on 1 July 2024, has for the first time written victim participation, information, and reparation rights directly into the procedural code rather than leaving them to be assembled from scattered judicial directions. The BNSS defines "victim" in Section 2(1)(y), codifying language the courts had already developed, and distributes victim-facing rights across several provisions: the right to information about investigation progress within ninety days (Section 173), the right to engage an advocate to assist the public prosecutor (Section 338), the right to be heard before bail in serious offences (Sections 360 and 397), and reparation under Section 396, which succeeds Section 357A of the

former Code. Read together with Article 21's due-process jurisprudence and India's persuasive commitmentsⁱ

under the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, the BNSS is frequently described in recent commentary as marking a structural turn toward victim-centricity. Whether that description survives closer doctrinal scrutiny, whether the resulting framework meets constitutional equality and dignity standards, satisfies the substantive content of restorative justice theory rather than merely its vocabulary, and compares favourably with the frameworks of other jurisdictions, is the question this article examines.

2. OBJECTIVES OF THE STUDY

This study is organised around three specific objectives:

1. To trace the constitutional and jurisprudential evolution of victim rights in India, from the Supreme Court's interpretation of Article 21 in the custodial-rights cases of the 1980s through the Section 357/357A compensation line, to the enactment of the BNSS, 2023.
2. To critically examine the principal victim-facing provisions of the BNSS, 2023 against the Supreme Court precedent they are said to codify, and to compare the resulting Indian framework with the victim-rights regimes of the European Union, South Africa, the United Kingdom, and the United States.
3. To evaluate whether the BNSS framework satisfies the substantive criteria of restorative justice theory, as distinct from procedural victim-attentiveness, and to propose a legal framework that addresses the gaps identified.

3. RESEARCH METHODOLOGY

¹ 1980 AIR 84.

². (1983) 4 SCC 141

³. (1981) 1 SCC 627

⁴. (1997) 1 SCC 416

⁵. (1988) 4 SCC 551

⁶. (2013) 6 SCC 770.

This is a doctrinal legal research article. It relies on primary legal sources — the Constitution of India, the Code of Criminal Procedure, 1973, the Bharatiya Nagarik Suraksha Sanhita, 2023, Supreme Court judgments, Law Commission of India reports, and comparative statutes — read alongside secondary academic commentary published principally between 2019 and 2026. The method is analytical and comparative rather than empirical: it does not measure implementation outcomes but examines the text of the BNSS against (i) the judicial doctrine it claims to codify,

(ii) comparable statutory frameworks in other jurisdictions, and (iii) the theoretical criteria for restorative justice developed by Howard Zehr and Harry Mika. Case law and statutory provisions were located through Indian Kanoon, the official BNSS text published by PRS Legislative Research, and the primary texts of the comparator statutes. Because the BNSS came into force only in July 2024, BNSS-specific judicial authority remains sparse at the time of writing; the analysis therefore proceeds substantially from statutory text read against the pre-existing Supreme Court jurisprudence the BNSS is understood to have codified. This is a limitation acknowledged in Section 9 below, and it is the reason the article adopts a doctrinal rather than an empirical method.

4. THE CONSTITUTIONAL FOUNDATION: ARTICLE 21 AND THE ORIGIN OF VICTIM RIGHTS

The modern Indian doctrine of victim rights did not begin in Parliament; it began in the Supreme Court's progressive reading of Article 21, a provision that on its face protects the person of the accused but which the Court, across a series of cases in the 1980s, reconceived as also imposing affirmative obligations on the State toward victims of official and private wrongdoing. The decisive step came in *Rudal Sah v. State of Bihar*, where the Court awarded monetary compensation to a petitioner unlawfully detained for fourteen years after his acquittal. The significance of *Rudal Sah* for victim jurisprudence lies not in its facts but in the

constitutional architecture it built: that Article 21, read with Articles 32 and 141, empowers the Court to require the State to pay compensation for violations of fundamental rights, and that such payment is an enforceable public-law remedy rather than an act of grace.⁷ *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770. *Khatri v. State of Bihar* had already established the State's duty to provide legal aid to an accused person, confirming the Court's willingness to treat Article 21 as generating positive obligations rather than merely restraining State power; the same reasoning, applied to the victim's side of a criminal proceeding, supports the further proposition that where the occurrence of a crime is attributable in part to State failure, compensation to the victim rests on a constitutional footing. The link between Article 21 and victim rights specifically was made explicit, and extended from State wrongdoing to private wrongdoing, in *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490. The Court held that rape, though committed by a private individual, violates the victim's fundamental right to live with dignity under Article 21, and that this constitutional foundation empowers courts to award interim compensation while criminal proceedings remain pending, before any conviction. This detached the victim's entitlement to compensation from the outcome of the criminal trial, a doctrinal move of considerable practical importance. The same principle was later applied specifically to child victims of sexual offences in *Nipun Saxena v. Union of India*, (2019) 2 SCC 703, where the Court directed that the NALSA Compensation Scheme operate as an interim guideline pending dedicated rules under the Protection of Children from Sexual Offences Act, 2012. What Article 21 jurisprudence produced was a judicial remedy of considerable constitutional prestige but structural fragility. Each award depended on fresh litigation; the amount depended on the sympathy and awareness of the particular bench; and there was no institutional mechanism for victims unable to approach the Supreme Court under Article 32. The 154th Law Commission Report (1996), the first official Indian legal document to devote sustained attention to victimology as an

organising concept, observed that crime causes "substantial harm to people and not merely symbolic harm to society" and recommended a State-funded, conviction-independent compensation scheme. That recommendation was not implemented for a further thirteen years. The gap between constitutional recognition and institutional delivery is the first structural problem this article identifies, and one that the BNSS only partially closes.

5. FROM SECTION 357 TO SECTION 396: THE COMPENSATION TRAJECTORY

Section 357 of the Code of Criminal Procedure, 1973 empowered courts to direct payment of compensation out of fines imposed on conviction, but Justice Krishna Iyer's observation in *Rattan Singh* that courts rarely invoked the power proved durable for decades.¹⁰ *Hari Singh v. Sukhbir Singh* was the first sustained judicial effort to correct this: the Court described Section 357 as "an² important provision but courts have seldom invoked it" and directed that the power be exercised liberally. Compliance nonetheless remained uneven, because the provision's permissive wording³

⁴ⁱⁱallowed judges without training in victim-centred reasoning to treat it as optional. *Ankush Shivaji⁵ Gaikwad v. State of Maharashtra* supplied the decisive reinterpretation. The Court held that although the grant of compensation remains discretionary, "there exists a mandatory duty on the Court to apply its mind to the question in every criminal case" and to record reasons for granting or refusing it. That the Court found it necessary to say this in 2013, forty years after the Code's enactment, is itself a measure of how completely the statutory scheme had failed to take victim interests seriously in practice. ¹¹*Suresh v. State of Haryana*, (2015) 2 SCC 227 added the dimension of quantum, describing victim compensation as "a measure of social justice" calling for awards calibrated to

rehabilitative need rather than merely to the convict's capacity to pay. The insertion of Section 357A in 2009 shifted the compensation question from the law of punishment, a transaction between the State and the offender, to the law of public welfare, an obligation owed by the State to the citizen-victim, since compensation under the new scheme was available even where the accused was acquitted, unidentified, or absconding. Section 396 of the BNSS succeeds Section 357A, retaining the State-scheme architecture while embedding it in a statute that, for the first time, also defines a victim in Section 2(1)(y). A close reading of Section 396 shows that it does not resolve three problems that have attended victim compensation since *Hari Singh*: wide variation in compensation quantum between States for comparable offences; the administrative delay associated with District and State Legal Services Authority processing; and the continued absence of any statutory Victim Impact Statement mechanism that would give the victim a direct voice in the determination of quantum, rather than leaving that determination entirely to judicial or administrative discretion. The BNSS, in this respect, converts judge-made rights into statutory text without altering their underlying character: the reform is best described as codificatory rather than transformative.

6. VICTIM-FACING PROVISIONS OF THE BNSS: A CRITICAL READING

The statutory definition of "victim" in Section 2(1)(y) is a genuine advance, giving courts a textual reference point and extending coverage to guardians and legal heirs. Its principal weakness is that the definition remains tied to the existence of an identified accused; victims of unidentified perpetrators, a significant category in trafficking and organised crime, occupy a definitional gap that Section 396 addresses only partially, at the administrative rather than the definitional level. Section 173 requires that the progress of an investigation be reported to the victim within

⁸ (1996) 1 SCC 490.

⁹. (2019) 2 SCC 703

¹⁰. Section 357

¹¹. (2015) 2 SCC 227

ninety days, placing in statutory form a right several High Courts had previously recognised only by construction. The provision parallels Article 4 of the European Union's Victims' Rights Directive 2012/29/EU, which requires Member States to keep victims informed on request. Whether under-resourced police stations can operationalise a ninety-day reporting obligation across the volume of registered complaints is a genuine implementation concern that the statute does not itself resolve. The right of victims to be heard before bail in serious offences, under Sections 360 and 397, is the most substantial participatory innovation in the BNSS; no equivalent right existed on the face of the former Code. It engages directly with the victim's dignity interest under Article 21, since unexpected contact with a released accused is a documented source of re-traumatisation, particularly in domestic violence and sexual offence cases. Its limitation is that it creates a right to be heard without specifying the weight that hearing must carry in the court's decision; no structured framework comparable to the Victim Personal Statement scheme, which has operated in England and Wales for more than two decades, exists to translate the hearing into consistent judicial consideration. Section 338(2) allows a victim to appoint an advocate who may assist the public prosecutor and make written submissions after the evidence has been led. This, too, is new on the face of the statute, though some High Courts had recognised a similar practice by construction. Its structural tension, that a divergence between the victim's advocate and the public prosecutor over the reading of the evidence could complicate cross-examination, is not resolved by the provision as drafted. The European Union's Directive addresses a comparable tension through a carefully articulated model of subsidiary participation that distinguishes the victim's right to legal assistance from the State's prosecutorial monopoly, a distinction the BNSS provision reproduces only in part.

7. COMPARATIVE FRAMEWORKS

The European Union's Victims' Rights Directive, binding across twenty-seven Member States, establishes minimum standards including the right to information from first contact with a competent authority, the right to be heard in proceedings, access to victim support services, and, under Article 22, an obligation on authorities to conduct an individual assessment of each victim's specific protection needs. The Directive treats victim rights as a multi-stage entitlement running from first contact through to decisions on early release; the BNSS, by contrast, concentrates its victim-facing provisions at the investigation stage and at discrete decision points such as bail and sentencing. There is no equivalent in Indian law to the Article 22 individual-needs assessment. South Africa's Child Justice Act 75 of 2008 goes further still: it structurally integrates restorative justice into criminal procedure, providing for diversion through family group conferences, victim-offender mediation, and restorative sentencing, with victim impact statements built into the sentencing process. The BNSS has no structural equivalent to any of these mechanisms; it treats the victim's financial rehabilitation as the outer limit of its restorative ambition. The Victim Personal Statement scheme, operating in England and Wales since 2001, allows victims to describe in their own words the physical, emotional, and financial impact of a crime, with that statement placed before the sentencing court. India has no equivalent statutory scheme, notwithstanding the Justice Verma Committee's 2013 recommendation for a formal victim impact statement in sexual violence cases. In the United States, all fifty States permit some form of victim impact statement at sentencing, a practice the Supreme Court of the United States upheld in *Payne v. Tennessee*, 501 U.S. 808 (1991). The American experience has attracted criticism for the risk that sentence severity may respond to a victim's emotional presentation rather than to objective sentencing criteria, a concern any Indian scheme would need to address through appropriate judicial safeguards, but the underlying proposition, that a victim has a right to communicate the harm suffered to the

sentencing court, is no longer contested in comparable common-law systems.

8. IS THE BNSS RESTORATIVE? APPLYING ZEHR'S FRAMEWORK

Howard Zehr and Harry Mika's account of restorative justice rests on three organising questions: who has been harmed, what are their needs, and whose obligation is it to meet those needs. A restorative process, on this account, is one that maximises the participation of victim, offender, and community in a search for repair rather than one that merely grants the victim a formal right to be informed or heard. John Braithwaite's related formulation describes restorative justice as a process in which all those affected by a wrong have the opportunity to discuss its effects and to decide together what should be done to repair the harm. What separates restorative justice from a merely victim-attentive procedure, on either account, is the existence of a process capable of producing an actual encounter between the parties, not simply a statutory entitlement to information or a hearing. A systematic review by Nascimento, Andrade, and de Castro Rodrigues, published in *Trauma, Violence, & Abuse* in 2022, examined the psychological impact of restorative justice practices on crime victims and found that restorative encounters, such as mediation and conferencing, produced higher victim satisfaction and reduced secondary victimisation compared with conventional proceedings, but that these benefits depended on the existence of an actual encounter process rather than on a statutory right to be heard or a financial award alone. That finding is directly relevant to the BNSS: it suggests that the psychological benefits the statute implicitly seeks through its victim-facing provisions are, on the existing evidence, contingent on mechanisms the BNSS does not itself create. Measured against Zehr's three questions, the BNSS produces a mixed result. It answers the first question, who has been harmed, reasonably well: Section 2(1)(y) identifies the victim, Section 173 requires that the victim be informed, and Sections 360 and 397 require that the victim be heard before certain bail decisions. It answers the second question, what the victim

needs, only in financial terms, through Section 396; there is no individual needs assessment and no acknowledgement of the victim's non-financial needs, such as psychological support, acknowledgement, and safety. It answers the third question, whose obligation it is, by placing the burden exclusively on the State, through the Legal Services Authorities, and on the convicted offender, through the fine or compensation route; there is no community obligation and no mechanism for victim-offender encounter. The conclusion this suggests is not that the BNSS is indifferent to victims, since it is plainly more attentive to victims than the Code it replaced, but that its victim-centricity operates within a retributive-compensatory paradigm rather than a genuinely restorative one.

9. LIMITATIONS

This article is a doctrinal legal analysis rather than an empirical study; it does not measure how many victims actually receive compensation under Section 396, in what amounts, or with what delay, since no nationally aggregated dataset on this question is publicly available. Because the BNSS came into force only in July 2024, BNSS-specific judicial interpretation remains limited at the time of writing, and courts have so far relied substantially on Code of Criminal Procedure precedent where the provisions are analogous; the analysis here concerns the statute's text and its likely doctrinal trajectory rather than a developed body of BNSS case law. The comparative discussion is confined to the European Union, South Africa, the United Kingdom, and the United States; other instructive jurisdictions, including Australia and Canada, are noted as a direction for future research rather than examined in depth here.

10. FINDINGS AND SUGGESTIONS

The analysis supports three principal findings, corresponding to the three objectives set out in Section 2. First, Article 21 remains the constitutional source of victim rights in India, and judicial construction under that provision continues to operate as a residual source of protection wherever the BNSS's own list of rights proves incomplete or its administration falters.

Second, the BNSS codifies the substance of four decades of Supreme Court victim-rights doctrine into statutory text, a genuine and useful achievement, but it does not extend that doctrine to match the individual-needs assessment found in the European Union's framework or the victim impact statement practice found in the United Kingdom and the United States. Third, measured against Zehr and Mika's restorative justice criteria, the BNSS remains within a retributive-compensatory model; it does not provide any mechanism, comparable to South Africa's Child Justice Act, for victim-offender encounter or restorative diversion. On this basis, the article suggests four specific reforms. The first is a standalone Victim Rights Act that would give legislative force to rights currently scattered across constitutional doctrine and statutory provision, including a statutory individual needs assessment modelled on Article 22 of the European Union's Directive. The second is a statutory Victim Impact Statement, placed on record at sentencing for offences carrying a substantial custodial term, drawing on the operational experience of the Victim Personal Statement scheme in England and Wales. The third is a restorative justice gateway permitting courts to refer suitable cases, with the victim's fully voluntary and revocable consent, to mediation or conferencing administered through the existing Legal Services Authority structure, following the structural model of South Africa's Child Justice Act. The fourth is a National Victim Rights Authority, operating under the aegis of the National Legal Services Authority, empowered to set a uniform national compensation schedule and to reduce the delay currently associated with

State-level administration of victim compensation.

11. CONCLUSION

The Bharatiya Nagarik Suraksha Sanhita, 2023 is the most significant reconfiguration of Indian criminal procedure since 1973, and in the specific domain of victim rights it performs a task that is simultaneously important and incomplete. It converts four decades of Supreme Court-constructed victim doctrine into statutory text, making those rights more accessible and more resistant to erosion through judicial inattention, and in that sense fulfils, in statutory form, a promise Article 21 has long contained but that the earlier Code never fully honoured. Yet the achievement is not, on the analysis presented here, an adequate one. The right to be heard before bail, the ninety-day investigation update, the statutory definition of victim, and the codified compensation scheme are genuine advances, but they do not amount to a framework in which a crime victim can expect an individual assessment of need, a structured opportunity to communicate the impact of the offence to the sentencing court, an optional pathway toward encounter and repair with the offender, or financial relief delivered on a uniform and timely basis across the country. India's next legislative step, on the argument developed in this article, is a dedicated Victim Rights Act built on individual needs assessment, a statutory victim impact statement, a restorative justice gateway, and a national authority capable of converting the entitlements the BNSS has created into a consistently lived reality for victims of crime.

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