
ASSESSMENT OF VICTIM EMPOWERMENT IN THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

Ayush Chandra Satyam & Shivansh Deo, B.A. LL.B. (Hons.),
NALSAR University of Law, Hyderabad.

ABSTRACT

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a significant shift in India's criminal justice system, moving its focus from the accused to the victim. This paper examines three key provisions that drive this change: the right to access and information under Section 173, the right to be heard under Sections 360 and 18(8), and the mechanisms for reparation and witness protection under Sections 396 and 398. For each provision, the paper first explains what the law now says in plain terms, then honestly assesses the barriers that stand in the way of its implementation. These barriers include digital illiteracy among marginalised communities, overburdened courts, bureaucratic delays in compensation, and a police culture shaped by decades of colonial habit. The paper argues that while the BNSS provides a strong legislative engine for victim-centric justice, it will stall without equal investment in infrastructure, legal aid, and institutional training. The success of this reform will not be measured by the text of the statute, but by whether the ordinary victim, who Justice Krishna Iyer in 1979 called the "vanishing point" of Indian criminal law, finally feels heard, protected, and compensated.

Introduction

“It is a weakness of our jurisprudence that the victims of crime... do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law”

- Justice V.R. Krishna Iyer (1979)

Writing in 1979,¹ Justice Iyer’s observation was a tight slap on a legal system that viewed crime solely as a conflict between the state and the accused. For decades, India’s criminal justice system remained trapped in this colonial framework, where the state’s main objective was to punish the offender, leaving the victim as a mere bystander, often becoming an exhibit in their own tragedy after their testimony was recorded. However, after 40 years of dormancy, the enactment of BNSS marks a decisive break from this colonial legacy. Replacing the erstwhile CrPC, the new law represents a philosophical paradigm shift, a transition from a system designed to command and punish to one designed to serve and heal.²

This shift is achieved by repositioning victimology³ at the centre of criminal procedure, a reform long urged by the Law Commission⁴ and the Malimath Committee.⁵ Critically, the BNSS formally defines “victim” under Section 2(y)⁶ to include any person who has suffered loss or injury due to the act or omission of the accused a definition the CrPC conspicuously lacked. While this is a meaningful step, the definition’s scope will determine the outer limit of every empowerment provision that follows: a narrow judicial reading risks excluding indirect victims, such as dependents of a deceased, from the statute’s protective ambit. Under the old CrPC, the law was satisfied if the state successfully confined the criminal. But for the victim, seeing an offender jailed often did not equate to justice if they were left traumatised and unheard. The BNSS acknowledges that true justice requires holding the perpetrator accountable while empowering the victim, moving the complainant from a mere witness to their own tragedy to an active participant in the legal process.

¹ *Rattan Singh v. State of Punjab*, (1979) 4 SCC 719, 722.

² Bharatiya Nagarik Suraksha (Second) Sanhita Bill 2023, Statement of Objects and Reasons ¶ 2, <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023> (last visited Dec. 20, 2025).

³ Matti Joutsen, *The Role of the Victim of Crime in European Criminal Justice Systems*, HEUNI PUBLICATION SERIES No. 11, 14–18 (1987).

⁴ Law Commission of India, *THE CODE OF CRIMINAL PROCEDURE*, 1973, Law Comm’n of India Rep. No. 154 (1996).

⁵ Comm. on Reforms of Criminal Justice Sys., *REPORT* vol. 1 (Ministry of Home Affairs 2003).

⁶ Bharatiya Nagarik Suraksha Sanhita, 2023, § 2(y), No. 46, Acts of Parliament, 2023 (India).

Yet a law is only as good as the machinery that enforces it. This paper contends that while the BNSS provides a new, powerful engine for victim justice, the vehicle of our criminal justice system is still running on the outdated wheels of crumbling infrastructure, low legal awareness, bureaucratic hurdles and systemic apathy. Unless these infrastructural bottlenecks are addressed, the law's journey from enactment to empowerment will remain stalled.

The Right to Information & Access

- **The Provision: Section 173**

This provision⁷ deals with the police officer's power to investigate cognizable cases, whereby clause (a) of sub-section (1) mandates the recording of information at the place of residence or at a convenient place of such person's choice by the police when such person is temporarily or permanently mentally or physically disabled, and an offence under certain sections of BNSS are alleged to be committed or attempted against them. It removes the physical and emotional barriers that might stop a vulnerable victim from reporting the offence. It also strengthens access to justice and highlights how the new law prioritises the dignity and rights of the vulnerable victims.

Moreover, sub-section (2) of the provision mandates that a free copy of the FIR shall be given to the informant or the victim. This will ensure transparency as the victim can now know what has been recorded by the police. This will also strengthen the victim's sense of control over the legal process in which they are involved. In addition to these, sub-section (4) provides the victim a clear remedy to write directly to the Superintendent of Police if a police station refuses to record information referred to in sub-section (1). To see what this means on the ground: consider a woman with a mobility disability in a rural district who has allegedly been assaulted. Under the old CrPC, she would have had to physically travel to the nearest police station, often kilometres away, to file a complaint. Under Section 173 BNSS, the officer must come to her. This single change removes a barrier that once stopped countless victims from ever entering the legal system at all.

- **Challenges**

The move towards electronic systems in Section 173 BNSS inadvertently creates a digital

⁷ Bharatiya Nagarik Suraksha Sanhita, 2023, § 173, No. 46, Acts of Parliament, 2023 (India).

divide by potentially excluding those with limited digital access.⁸ Several barriers exist that discourage victims from registering FIRs. These may stem from cultural norms, fear of police intimidation, or even a distrust in the process.⁹ The addition of e-FIRs and other tech-driven procedures in the new act might make the process even more daunting for the victims.

To address these challenges, the government will have to actively engage in digital literacy and awareness campaigns to effectively reduce hesitation rooted in misinformation and social norms. The government must also ensure that these digital reforms are introduced gradually with proper testing and feedback from ground-level stakeholders. Inclusivity must remain the guiding principle in the procedural reform. Without these steps, the digital shift risks repeating an old problem in a new form: a system that works well for the few and quietly fails the many.

The Right to be Heard

- **The Provisions: Section 360 and Section 18(8)**

Section 360¹⁰ deals with the withdrawal from prosecution. It allows public prosecutors to drop charges with court consent before judgment, leading to acquittal (or discharge if before framing of charge). The provision mirrors the previous Section 321¹¹ of CrPC, with an additional proviso that the victim must be heard before a withdrawal is allowed. This recognises the victim as a key stakeholder in a criminal trial. Section 321 of the CrPC only required the consent of the court, but did not explicitly mandate hearing the victim. The key addition of the right to be heard for the victim in the BNSS addresses this void, thus recognising their right to participate in the decision-making process when the prosecution seeks to drop charges. This moves the justice system towards a more victim-centric approach by ensuring that victims' concerns are also taken into account. Another section advancing victim empowerment is Section 18(8)¹², which allows the Central or the State government to appoint Special Public Prosecutors for specific cases, with a crucial addition: the court can permit victims to engage an advocate of their own choice to help the prosecution. This will enhance victim participation by ensuring

⁸ Rakshita Goyal, Access, Procedure, and the e-FIR, (Vidhi Centre for Legal Policy, Nov. 25, 2024), <https://vidhilegalpolicy.in/blog/access-procedure-and-the-e-fir/> (last visited Dec. 20, 2025).

⁹ Aditya Malaviya, Smart FIRs: Leveraging AI to Improve Efficiency and Trust in India's Police System, (Takshashila Institution, Nov. 3, 2025), <https://takshashila.org.in/content/publications/20251103-LEPF-Policy-Brief-AI-Assisted-FIR-Registration.html> (last visited Dec. 20, 2025).

¹⁰ Bharatiya Nagarik Suraksha Sanhita, 2023, § 360, No. 46, Acts of Parliament, 2023 (India).

¹¹ Code of Criminal Procedure, § 321, No. 2, Acts of Parliament, 1974 (India).

¹² Bharatiya Nagarik Suraksha Sanhita, 2023, § 18(8), No. 46, Acts of Parliament, 2023 (India).

specialised legal representation in sensitive cases. To see why this matters: imagine a survivor of sexual assault whose case is handled by a distracted Public Prosecutor who fails to cross-examine a key witness. Under Section 18(8), the victim's own advocate can now step in, flag the gap to the court, and ensure it is addressed. The victim is no longer a silent bystander. She now has someone in the room fighting specifically for her.

- **Challenges**

The BNSS constructs a “veto illusion” where procedural rights cloak substantive powerlessness. By limiting the victim's counsel to a subordinate role under Section 18(8) and retaining the State's monopoly on prosecution withdrawal under Section 360, the statute exemplifies Sherry Arnstein's warning that “participation without redistribution of power is an empty and frustrating process.”¹³ This design reinforces the structural asymmetry identified by Marc Galanter¹⁴: the State remains the dominant “Repeat Player,” ensuring the victim a “One-Shotter” possesses a voice but no veto, leaving the “Haves” to essentially determine the outcome despite statutory promises.

To bridge this gap, the law should mandate that courts record the reasons for overruling a victim's objection, and private advocates be empowered to actively intervene not merely assist whenever the Public Prosecutor is negligent. Simultaneously, to ensure inclusive access, the State must establish “**phygital**” support desks at Legal Aid Clinics so that technology assists rather than excludes the marginalised. These measures collectively ensure the victim's voice is not only heard but also heeded.

Reparation and Protection

- **The Provision: Section 396 and Section 398**

Section 396¹⁵ of the BNSS represents a structural departure from the CrPC's approach to victim reparation. It mandates every state government, in coordination with the central government, to operate a compensation scheme for victims or their dependants who have suffered loss or injury and require rehabilitation — with quantum determined by the District or State Legal

¹³ Sherry R. Arnstein, A Ladder of Citizen Participation, 35 J. AM. INST. PLANNERS 216, 216 (1969).

¹⁴ Marc Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, 9 LAW & SOC'Y REV. 95, 95 (1974).

¹⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, § 396, No. 46, Acts of Parliament, 2023 (India).

Services Authority. Crucially, Section 396(5) permits a victim to apply for compensation even where the offender is unidentified or untried, breaking the colonial-era link between conviction and reparation. Section 396(7) further recognises that a criminal fine, even where awarded, does not exhaust the State's obligation to the victim — compensation runs concurrently rather than in lieu of punitive measures. What the provision does not resolve, however, is the definitional gap left by Section 2(y): since “victim” is defined by reference to the accused's act or omission, victims of unidentified perpetrators technically occupy an ambiguous position, and the statute relies on administrative discretion to fill the gap rather than providing an explicit right.

Section 398¹⁶, on the other hand, addresses witness protection by mandating every state government to prepare and notify a scheme ensuring witnesses' safety. Under the CrPC, witness protection depended entirely on ad hoc judicial directions; the Supreme Court's 2018 Witness Protection Scheme, though a landmark step, functioned as guidelines rather than a binding legislative mandate. The BNSS converts that soft framework into a statutory obligation. The significance of this shift cannot be understated: without protected witnesses, the evidentiary foundation of victim-centric prosecutions collapses at trial. A victim empowered by Sections 173 and 360 who watches their witness retract under threat is left with procedural rights but no substantive outcome. Section 398 closes that loop, making witness protection an enforceable state duty rather than a discretionary judicial remedy.

- **Challenges**

The biggest challenge facing the victim compensation scheme is its proper implementation.¹⁷ The gap between legislative promise and lived reality in victim compensation is well-documented. Studies on compensation schemes in comparative jurisdictions show that administrative bottlenecks — delayed forms, under-resourced Legal Services Authorities, and poor inter-agency coordination — routinely convert statutory entitlements into paper rights. India's experience with the pre-BNSS Motor Accident Claims Tribunal framework is instructive: even with mandatory timelines, delays of two to three years were common for vulnerable claimants. Section 396's silence on processing deadlines replicates this structural flaw. The deeper issue is one of institutional design: vesting discretion over quantum in Legal

¹⁶ Bharatiya Nagarik Suraksha Sanhita, 2023, § 398, No. 46, Acts of Parliament, 2023 (India).

¹⁷ Isha Johnson & Sanjay Satyanarayan Bang, Victim Compensation in the Criminal Judicial System in India, 10 IJNRD a566, a569 (2025).

Services Authorities without clear criteria or appellate mechanisms creates the same asymmetry that Galanter identified in litigation generally — the State and repeat institutional actors navigate the scheme efficiently while first-time, low-resource victims bear its costs. What is needed is a combination of statutory timelines, public reporting obligations on LSA compensation data, and legal aid support at the application stage itself — so that the right to compensation does not become another provision that looks empowering on paper but demands capacity its beneficiaries do not have.

Conclusion

The enactment of the BNSS, 2023, answers Justice Krishna Iyer’s 1979 lament, finally shifting the victim from the “vanishing point” to the centre of criminal law. By institutionalising the right to information under Section 173, the right to be heard under Section 360, and the binding obligation of witness protection under Section 398, the legislature has built a normative architecture that the CrPC simply never attempted.

However, a powerful engine is useless without functional wheels. The law’s noble intent is currently stalled by crumbling infrastructure, judicial overburden, and the digital divide. If rights remain theoretical, these reforms are mere statutory symbolism. To truly move from “Old Wine in a New Bottle” to a fresh vintage of justice, three things must happen: every police station must have a trained Victim Support Officer who speaks to survivors in plain language; the compensation process under Section 396 must be made time-bound and digitally trackable; and legal aid clinics must go to victims, not wait for victims to find them. The BNSS has planted the seed. Now, the State must water it with real investment, real training, and real accountability, so that the victim finally reaches not just the “vantage point” of the justice system, but its very heart.