VICTIM-CENTRIC CRIMINAL JUSTICE IN INDIA: RE-EXAMINING PARTICIPATION, DISCRETION AND COMPENSATION UNDER THE CRPC/BNSS FRAMEWORK

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ABSTRACT

The Indian criminal justice system, predominantly adversarial and structured around the state as prosecutor, has historically treated the victim as little more than a witness, leaving crucial decisions such as the registration of the FIR, the decision to investigate, charge-framing, plea-bargaining and sentencing almost entirely to police and prosecutorial officers. This paper examines the development of victim-centric law in India, tracing statutory milestones such as the proviso to Section 24(8) and the proviso to Section 372 of the Code of Criminal Procedure (CrPC) now Sections 18(8) and 413 respectively of the Bharatiya Nagarik Suraksha Sanhita (BNSS) the compensation scheme under Section 357A CrPC (now Section 396 BNSS), and the judicial decisions that have granted victims a right of hearing, the right to engage private counsel, and the right to appeal against acquittal or an inadequate sentence. While these reforms are framed as a shift away from a retributive, state-centred model toward a more restorative and participatory one, wide discretion continues to rest with the police, the prosecutor and the judge, which undermines victims' real agency. Drawing on statutory provisions, case law and comparative jurisprudence, the paper proposes reforms to structure discretionary power, standardise prosecutorial guidelines, and strengthen compensation mechanisms, so as to balance victim justice with the guarantee of a fair trial.

Keywords: Victim Participation; Discretionary Justice; Criminal Procedure Code; Bharatiya Nagarik Suraksha Sanhita; Victim Compensation; Prosecutorial Discretion; Restorative Justice; Adversarial System; Fair Trial; Sentencing.

1. INTRODUCTION

For much of its post-independence history, Indian criminal procedure has operated on a strictly bipolar model: the state, represented by the police and the public prosecutor, stands against the accused, while the person who actually suffered the offence is reduced to the status of a witness whose role ends once a statement is recorded. This design reflects the classical theory that a crime is an offence against the state and society at large, not merely against an individual, and it has produced a system in which the victim has no independent voice in whether an FIR is registered, whether an investigation is pursued diligently, what charges are framed, whether a plea bargain is accepted, or what sentence is ultimately imposed. Beginning with the Criminal Procedure Code (Amendment) Act, 2008 and continuing through the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)[1], Parliament has incrementally introduced victim-centric provisions the right to engage an advocate to assist the prosecution, the right to appeal without seeking leave of court, and a statutory victim compensation scheme. Constitutional courts have supplemented these provisions by reading a right of hearing into Article 21 and by insisting on the mandatory registration of an FIR in cognizable cases. Yet, as this paper argues, these reforms remain layered on top of a procedural architecture that still vests the police, the prosecutor and the trial judge with wide, largely unstructured discretion, so that the victim's participation is often permissive rather than enforceable.

2. RESEARCH OBJECTIVES

1. To trace the statutory evolution of victim-centric provisions in Indian criminal procedure, from the 2008 CrPC amendments to the BNSS, 2023.

2. To examine judicial decisions that have expanded victims' participatory rights, including the right to be heard, to engage private counsel, and to appeal.

3. To assess the extent to which police, prosecutorial and judicial discretion continues to limit victims' real agency notwithstanding these reforms.

4. To evaluate the design and implementation of victim compensation schemes under Section 357A CrPC / Section 396 BNSS across states.

[1] The Code of Criminal Procedure (Amendment) Act, 2008 (Act No. 5 of 2009); Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023).

5. To propose reforms — structured discretion, uniform prosecutorial guidelines and strengthened compensation mechanisms — that balance victim justice with the accused's right to a fair trial.

3. RESEARCH QUESTIONS

1. How has the statutory definition and role of the "victim" evolved under the CrPC and, subsequently, the BNSS?

2. To what extent do the rights to assist the prosecution, to appeal, and to compensation translate into effective participation for victims in practice?

3. Does the discretion retained by the police and the prosecutor at the stages of FIR registration, investigation and charge-framing dilute the legislative intent behind these victim-centric reforms?

4. What structural or procedural safeguards can render prosecutorial and judicial discretion more accountable without compromising the fairness of the trial to the accused?

4. VICTIM PARTICIPATION IN THE INDIAN CRIMINAL JUSTICE SYSTEM: A HISTORICAL OVERVIEW

The idea that a crime victim might hold rights independent of the state's prosecutorial machinery is a relatively recent development in Indian law. The Code of Criminal Procedure, 1973, as originally enacted, contained only fragmentary references to victims, chiefly through Section 357, which permitted a court to order compensation out of a fine imposed on the accused. It was the 154th Report of the Law Commission of India[2] that first recommended a more structured framework for victim participation and compensation, recommendations that fed into the CrPC (Amendment) Act, 2008[3]. That amendment inserted, among other provisions, the definition of "victim" under Section 2(wa) CrPC, the proviso to Section 24(8) permitting victims to engage an advocate to assist the prosecution, the proviso to Section 372 granting victims a right of appeal, and Section 357A mandating state victim compensation schemes.

[2] Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996).
[3] Code of Criminal Procedure (Amendment) Act, 2008 (Act No. 5 of 2009), inserting, inter alia, s. 2(wa), the proviso to s. 24(8), the proviso to s. 372 and s. 357A of the Code of Criminal Procedure, 1973.

4.1 FROM VICTIM AS WITNESS TO VICTIM AS STAKEHOLDER

The 2008 amendments marked a conceptual shift from treating the victim purely as a source of evidence to recognising the victim as a stakeholder with a limited but real procedural interest in the outcome of the case. The Justice J.S. Verma Committee Report, 2013[4], constituted in the aftermath of the 2012 Delhi gang-rape case, reinforced this trajectory by recommending stronger victim protections in cases of sexual offences, several of which were incorporated into subsequent amendments and, later, into the BNSS. The BNSS, 2023, which came into force on 1 July 2024, retains and, in some respects, consolidates this architecture: for instance, Section 193 BNSS[5] imposes an obligation to keep the informant or victim updated on the progress of the investigation, a duty that had no direct counterpart under the CrPC.

5. STATUTORY RECOGNITION OF VICTIM RIGHTS UNDER THE CRPC/BNSS

5.1 RIGHT TO ASSIST THE PROSECUTION — SECTION 24(8) CRPC / SECTION 18(8) BNSS

The proviso to Section 24(8) CrPC, carried forward as the proviso to Section 18(8) BNSS, permits a court to allow the victim to engage an advocate of their choice to assist the public prosecutor. The Supreme Court, in Rekha Murarka v. State of West Bengal, (2020) 2 SCC 474[6], clarified that this right is assistive rather than substitutive: the victim's advocate may make written submissions and, with the court's leave, oral arguments, but cannot displace the public prosecutor's statutory responsibility for conducting the prosecution. In practice, this right remains difficult to exercise for victims who cannot afford private counsel, since the BNSS does not guarantee free legal representation for this specific participatory function.

5.2 RIGHT TO APPEAL — PROVISO TO SECTION 372 CRPC / SECTION 413 BNSS

Prior to 2008, a victim had no independent right to challenge an acquittal, an inadequate sentence, or a conviction for a lesser offence; only the state, through Section 378 CrPC, could do so, and only after obtaining leave of the High Court. The proviso to Section 372 CrPC, now

[4] Ministry of Home Affairs, Government of India, Report of the Committee on Amendments to Criminal Law (Justice J.S. Verma Committee Report, 2013).
[5] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 193.
[6] Rekha Murarka v. State of West Bengal, (2020) 2 SCC 474.

mirrored in Section 413 BNSS, gives the victim an unconditional right to appeal in these three situations without seeking leave. The Supreme Court has repeatedly affirmed the independent and unconditional character of this right, including in Satya Pal Singh v. State of M.P., (2015) 15 SCC 613 and Mallikarjun Kodagali v. State of Karnataka, (2019) 2 SCC 752[7], and High Courts continue to apply this settled position; the Delhi High Court, for instance, upheld the constitutional validity of the proviso and reaffirmed its unconditional character in a ruling delivered in September 2026[8].

5.3 RIGHT TO COMPENSATION — SECTION 357A CRPC / SECTION 396 BNSS

Section 357A CrPC, inserted in 2009 and now reproduced as Section 396 BNSS, obliges every state government, in coordination with the Centre, to frame a victim compensation scheme funded through a dedicated victim compensation fund. Compensation may be awarded on conviction, on acquittal or discharge where the accused cannot be held liable, or where the offender is never traced, and is administered through the District or State Legal Services Authority. In Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770[9], the Supreme Court held that courts have a duty to apply their mind to the question of compensation in every criminal case, whether or not an application is made. Despite this, empirical studies point to considerable disparity in the amounts and speed of disbursal across states, prompting the Supreme Court, as recently as 2025, to direct trial courts to ensure the timely processing of compensation orders[10].

6. JUDICIAL EXPANSION OF VICTIM RIGHTS

Beyond statute, constitutional courts have used Article 21 to read participatory guarantees into the trial process. In Lalita Kumari v. Government of U.P., (2014) 2 SCC 1[11], the Supreme Court held that registration of an FIR is mandatory once information discloses a cognizable offence,

[7] Satya Pal Singh v. State of M.P., (2015) 15 SCC 613; Mallikarjun Kodagali (Dead) v. State of Karnataka, (2019) 2 SCC 752.
[8] Shivdhar Upadhyay v. Union of India, 2026:DHC:7414-DB (Del HC, 2 September 2026), dismissing a challenge to the constitutional validity of the proviso to s. 372 CrPC and s. 413 BNSS and affirming the victim's independent and unconditional right of appeal against acquittal.
[9] Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770.
[10] Jyoti Praveen Khandpasole v. Union of India, W.P. (C) No. 989/2025 (SC, order dated 6 November 2025) (directing Special and Sessions Courts to pass explicit orders for victim compensation under s. 357A CrPC/s. 396 BNSS to ensure timely disbursal through the State/District Legal Services Authorities).
[11] Lalita Kumari v. Government of U.P., (2014) 2 SCC 1.

removing a significant part of the discretion that police officers had historically exercised at the very first stage of the criminal process, when a complainant's grievance is often lost. Courts have similarly recognised a victim's right to be heard at the stage of bail and at the stage of withdrawal of prosecution under Section 321 CrPC, treating meaningful notice to the victim as an incident of fair procedure rather than a matter of prosecutorial grace.

7. THE PERSISTENCE OF DISCRETIONARY POWER

7.1 DISCRETION AT THE FIR AND INVESTIGATION STAGE

Even after Lalita Kumari, police officers retain considerable discretion in how a complaint is recorded, whether a preliminary enquiry is conducted before registration in ambiguous cases, and how vigorously an investigation is pursued once an FIR exists. Victims have no direct statutory mechanism to compel a more diligent investigation beyond approaching the magistrate or the High Court, which is often practically inaccessible to economically disadvantaged complainants.

7.2 PROSECUTORIAL AND SENTENCING DISCRETION

Public prosecutors continue to exercise wide discretion in charge-framing, in decisions to seek withdrawal of prosecution, and in plea-bargaining under Chapter XXI-A CrPC (Chapter XXV BNSS)[12], where victim consent is required only in specified circumstances. Sentencing, too, remains substantially a matter of judicial discretion guided by broad statutory ranges rather than binding guidelines, so that a victim's interest in an adequate sentence is protected only indirectly, through the appellate right under Section 413 BNSS, after the fact rather than at the point the sentence is imposed. The cumulative effect is that the participatory rights created since 2008 operate as procedural entitlements to be heard rather than as substantive checks on how the state's discretion is actually exercised.

CONCLUSION AND SUGGESTIONS

The trajectory of Indian criminal procedure since 2008, culminating in the BNSS, 2023, demonstrates a genuine, if incremental, legislative and judicial commitment to victim participation. The victim is no longer merely a witness: she may engage counsel to assist the

[12] Code of Criminal Procedure, 1973, Chapter XXI-A; Bharatiya Nagarik Suraksha Sanhita, 2023, Chapter XXV.

prosecution, appeal an acquittal or an inadequate sentence without leave, and claim compensation as of statutory right. Yet these gains sit uneasily alongside the wide discretion still vested in the police, the prosecutor and the trial court, which limits the victim's ability to influence outcomes at the stages that matter most — investigation, charge-framing and sentencing. On the basis of the foregoing analysis, this paper offers the following suggestions:

1. Structured guidelines, rather than unfettered discretion, should govern police decisions on preliminary enquiry and the pace of investigation, with a time-bound grievance mechanism available to victims before a magistrate.

2. The Directorate of Prosecution in each state should issue uniform, published guidelines for charge-framing, withdrawal of prosecution and plea-bargaining, so that prosecutorial discretion is exercised within an accountable and reviewable framework.

3. Legal aid authorities should extend free legal representation to indigent victims specifically for the purpose of engaging an advocate under Section 18(8) BNSS, rather than leaving this right dependent on private means.

4. Victim compensation schemes under Section 396 BNSS should be harmonised across states through minimum central standards on quantum and disbursal timelines, with mandatory judicial consideration of compensation in every case as required by Ankush Shivaji Gaikwad.

5. Sentencing guidelines that build in a structured opportunity for victim impact statements would allow the victim's interest in an adequate sentence to be addressed at first instance, reducing dependence on the appellate remedy alone.

Taken together, these measures would move the Indian criminal justice system closer to the restorative and participatory model that the BNSS reforms aspire to, without displacing the fundamental guarantee of a fair trial to the accused.

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