
A CONSTITUTIONAL AND STATUTORY ANALYSIS OF CONFLICT BETWEEN ACCUSED AND VICTIM RIGHTS IN INDIAN JUSTICE SYSTEM

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ABSTRACT

Balancing the rights of the accused and victims remain one of the most pressing challenges in India's criminal justice system. Traditional legal principles, such as "innocent until proven guilty" and "let hundreds of guilty be acquitted, but one innocent should not be convicted", demonstrate the strong adherence to the ideals of not letting the people suffer injustice. While these safeguards are essential since they help to avoid wrongful convictions and provide justice to the accused. These safeguards are however at times very discouraging and vulnerable to the victims and occur more so when individuals abuse the system to escape culpability. Simultaneously, the recent attempts to empower the rights of victims such as compensation, participatory rights, and protection from secondary victimization, reflect a beneficial step towards the appreciation of the dignity and the voices of the victims. However, these steps must be thought over. When not practiced in the appropriate way, they may endanger the due process which guarantees fairness to all concerned parties. This study explores the constitution and legislative framework in India governing both accused and victim rights and attempt to balance conflicting interests. In many cases, the safeguarding of one party comes at the cost of the other and demonstrates where the system is not effective at delivering equal justice. Lax implementation deprives the victim of the necessary support and transformation of procedures may undermine the accused rights. This shows the precariousness of this balance. Indian justice system founded on fairness that gives justice to both the victims and the accused. It needs to empower the victims since they are suffering, and their dignity is acknowledged and the presumption of innocence and right to fair trial is preserved. Not only is this a legal necessity but it is also necessary to ensure the preservation of trust in the justice system and the values of a constitutional democracy that characterize the state.

Keywords: Constitution Of India, Accused Rights, Victim Rights, Human Rights, Criminal Law, Justice System.

INTRODUCTION

To achieve justice, reforms should be continuous and dynamic. Dignity, fairness and respect towards law should be applied to both the victims and the accused. The Constitution of India also ensures certain rights to the accused including presumption of innocence, right to counsel, and right against self-incrimination. It also protects the rights of the victims such as the right to justice, protection, and participation in the legal process. In order to serve justice, the criminal justice system must be able to reconcile the rights of the accused to the rights of the victims and ensure that the rights of all involved and are safeguarded ¹. In the administration of justice, there are always clashes between the rights of the accused and the victims. One interest is able to affect the other. To give too much attention to one may damage the other hence equal balance between the two should be ensured ².

The Indian criminal justice system strives to uphold fairness and justice. Nevertheless, it has been struggling continuously between safeguarding the rights of the accused and the adequate involvement and security of the victims. Articles 20 and 21 of the Constitution assure basic rights to accused criminal offenders. These articles safeguard against wrongful conviction and also secure due process ³. Simultaneously, victims tend to be marginalized in the judicial procedures. They tend to receive scanty support, legal assistance, and consideration of their dignity. This causes a situation of complexity whereby interests of one party may inadvertently interfere with the rights of the other party.

The legal system of India is adversarial and contributes to this difficulty. Under this system, the crimes are prosecuted by the State and the victims do not intervene directly in the process of prosecution. This leads to secondary victimization, agency deficit, and poor restorative justice to the victims. In the meantime, accused persons experience delays, suffer during custody and extensive pretrial detention, something that can negatively affect their right to fair treatment. The clash of these conflicting interests causes some serious questions regarding the

¹ Lokanath Maharana, *The Role of Fundamental Rights in India's Criminal Justice System: Challenges and the Path Forward*, 5 Int'l J. Res. Pub. & Rev. 7773 (Nov. 2024). available at www.ijrpr.com (last visited on July 04, 2025)

² Laura Ann Wilson, *The Rights of Victims vs the Rights of the Accused: Striking a Balance between the Rights of Victims and Accused Persons in the International Criminal Justice Setting*, 38 U.W. AUSTL. L. REV. 152 (January 2015). available at <https://heinonline-org-christuniversity.knimbus.com> (last visited on July 11, 2025), at 153.

³ Huma Khan et al., *Constitutional Foundation Of Criminal Justice System In India: Approaches And Reformation, Educational Administration: Theory And Practice*, 29 (4), 2545, 2547 (2023) available at <https://kuvey.net> (last visited on July 04, 2025).

quality of the legal system that helps to shield both parties without interfering with the core rights of the parties. The study intends to critically look at the intersection, overlap of the rights of victims and the accused and in some cases, the conflict in the Indian justice system. It investigates the conflicts between the presumption of innocence, the right to a fair trial, and procedural safeguards on the accused and acknowledging, safeguarding, and empowering victims.

This study is guided by a number of research questions: How do the Indian constitutional and legal systems safeguard the rights of the accused and the victims, and how do these rights conflict with each other? What does the right of the accused and the victims have to do with one another? Is the adversarial system of criminal justice in India capable of safeguarding the rights of the accused and at the same time respecting the rights of the victims? What can the judges do to preserve this balance?

In answering these questions, the research has a number of objectives: Assess the current legal frameworks to understand where they are effective, where they fail or are inadvertent contributors to injustice, where they are responsible for conflicting claims of rights; Determine the key areas of tension, including the balancing between the presumption of innocence and credibility of the victim, balancing the disclosure of evidence against privacy, balancing speedy trials and consideration of trauma, and the effects of media coverage; Evaluate how these balances are working in practice, particularly in terms of injustice where legal misuse. In the end, it is expected to describe a model in which justice is done to both sides, developing a criminal justice system that is balanced, equitable, and respectful of human rights.

Legal Tension in Victim safeguards and Accused protection

The Indian constitution ensures that all individuals in the nation have basic rights. It enhances the concept of the rule of law and fairness. It is the basis to all the laws and all laws must be in accordance with it. The criminal justice system is founded on the rights contained in the Constitution and it entails procedures that are fair and it also seeks to avoid wrongful decisions. Both the victims and the accused are guarded by the Constitution. Article 14 is the one that guarantees the Equality before law⁴, but Article 21 is the one that guarantees the Protection of life and personal liberty⁵. The rights of the accused are safeguarded by specific provisions,

⁴ India Const. art. 14.

⁵ India Const. art. 21.

namely, Article 20, which is the protection in respect of conviction of the offences ⁶, and Article 22, which is the protection against the arrest and the detention in relation to some cases ⁷.

The new Indian criminal procedure, the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, which has a substitute of the Criminal Procedure Code, provides a more citizen-oriented perspective. Its provisions support the constitutional provisions that safeguard the rights of the accused and the victims.

The BNSS provisions protect the rights of the accused which include fair trial, legal representation and protection against unreasonable acts. Section 340 provides the right of people to appoint an advocate and provides free legal assistance in case they are not able to afford an attorney ⁸. Section 223 provides the right of heardness by magistrate to the accused when cognizance is taken to an offence, as a result of a complaint ⁹. Section 351 gives the accused the right to comment on the evidence against him or her, and admissions made silently cannot be considered as admissions ¹⁰. Section 359 "protects against false arrest, limits the police ministry to caprice ¹¹.

The BNSS rights of victims bring along a number of reforms to benefit the victims as opposed to the older statutes that prioritize their needs thus enhancing their participation and dignity. Section 2(y) adds the definition of a victim to include guardians and legal heirs and makes the definition broader ¹². Section 18(8) and 338(2) provide the right to appoint an advocate to the victims ¹³. The section 173(2) is designed to facilitate transparency as early as incept of the investigations by giving victims a free copy of the FIR and information about the course of investigation in section 184 ¹⁴. According to Section 176(1)(b), in rape cases the statement of the victim is supposed to be captured at a place of his or her choice ideally captured by a female officer ¹⁵. Thus India's criminal justice system constitutionally grounded in the principles of fairness, equality, and dignity. Articles 14, 20, 21, and 22 of the constitution of India form the

⁶ India Const. art. 20.

⁷ India Const. art. 22.

⁸ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 340 (India).

⁹ Id. §§ 351, 223.

¹⁰ Id. § 351.

¹¹ Id. § 359.

¹² Id. § 2(y).

¹³ Id. §§ 18(8), 338(2).

¹⁴ Id. §§ 173(2), 184.

¹⁵ Id. § 176(1)(b).

foundation for criminal procedure, protecting the accused against arbitrary state action while simultaneously ensuring that victims are not excluded from the justice process.¹⁶

The criminal justice system that is based on the Constitution of India is intended to strike a balance between two significant objectives. On the one hand, it attempts to defend the dignity and the voice of victims. On the other part it guarantees that all the accused parties are given a fair trial. The judiciary has over the years strived to keep both promises attempting to extend protection to both parties where appropriate. This balance is however not always retained. There is usually failure in implementation of the system; victims are seeking justice as soon as possible, the accused has to endure uncertainty, stigma, or procedural difficulty. Although there are a number of laws that are meant to guarantee fair trial provisions, certain provisions developed to favor one party may raise eyebrows towards the other party.

This tension is accentuated through the different kind of crimes. Protection orders, shelter, and financial support are some of the most important remedies under Protection of Women from Domestic Violence Act, 2005 in the case of domestic violence¹⁷. These proceedings give women more power, yet the quality of quasi-criminal proceedings may be confusing on the burden of proof, and an accused may think that fairness is uneven. The POCSO Act, 2012 is correct in the child sexual abuse cases as it aims to safeguard the children with safer testimony settings and acknowledgement of their vulnerability¹⁸. However, the restriction of cross-examination and the creation of significant presumptions against the defendant may provoke the due process issue.¹⁹

Another challenge is that of cyber harassment. IT Act, 2000 grants protection to the anonymity of victims and immediately blocking orders²⁰. Nonetheless, warrantless search and seizure powers may provide an opportunity to infringe upon the suspected person and result in fears of abuse to the accused. The focus of human trafficking laws is on the rehabilitation of the victims²¹; this is very important. However, complicated conspiracy cases usually lead to the

¹⁶ P.N. Bhagwati, Human Rights in the Criminal Justice System, 27 J. Indian L. Inst. 1 (1985), <https://www.jstor.org> (last visited on July 04, 2025), at 2.

¹⁷ Protection of Women from Domestic Violence Act, No. 43 of 2005, §§ 18–22 (India).

¹⁸ Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 29–30 (India).

¹⁹ Joyce George & Kathryn Pascover, A Delicate Balance: The Rights of the Child Victim versus the Accused, 3 OHIO LAW. 8 (March-April 1989), available at <https://heinonline-org-christuniversity.knimbus.com> (last visited on July 05, 2025), at 9-11.

²⁰ Information Technology Act, No. 21 of 2000, §§ 67, 69A (India).

²¹ Trafficking in Persons (Prevention, Care and Rehabilitation) legislative framework (proposed reforms).

accused spending a long period in custody even prior to the determination of guilt. Fast-track procedures in cases involving caste-based violence under the SC/ST (Prevention of Atrocities) Act²² reveal how much historical injustice is needed. Nevertheless, accusations of abuse and concern of greater procedural protection describe how, despite all efforts, fairness is still not guaranteed. In elder abuse cases, the Senior Citizens Act, 2007 provides fast remedy on maintenance matters though where family feuds are involved²³, the act at times restricts the accused to defend himself or herself.

In a different sense, every law is supposed to address actual problems in the society but is prone to reorient the scales differently. Domestic violence protections give the victims power but such protection may be undermined by quasi-criminal procedures. POCSO secures children but can provide a loophole in the process leading to retrials, which is traumatic to all. The laws against cyber harassment will protect the privacy of the victim, but the requirement to consider the rights of the accused against the warrantless search may slow down the investigation process. Trafficking legislation focuses on rehabilitation, which is complicated by the charges and lengthy trials, which postpones justice and compensation. Laws of caste-based violence aim at justice being served quickly and the balance between the two is yet to be established. Laws on elder abuse are immediate, however, this may get complicated in situations where the family is very close and procedural fairness must be guaranteed.

since the laws that protect victims will probably have counterproductive effects on the accused, and since the laws whose purpose is to defend the accused are likely to impose challenges and extra safeguards upon the accused in the form of the high proof standards and rigorous checks on the procedures, the protection of the victim may also be delayed or diluted. The dilemma before the criminal justice system of India does not consist in leaning towards either side but rather seeing to it that both the victims and the accused are treated in equal measures in which dignity, fairness, and justice are meant to govern all the steps.

ACCUSED CENTRIC LAWS AND THEIR EFFECT ON VICTIM PROTECTION

The tension between defending the rights of the accused and delivering justice to the victims has been exceedingly obvious in India due to such case examples as the 2019 Hyderabad gang rape and murder and the 2024 Pune Porsche crash. These cases caused a lot of emotions among

²² Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989 (India).

²³ Maintenance and Welfare of Parents and Senior Citizens Act, No. 56 of 2007 (India).

people and public demand for immediate punitive action. Nevertheless, they were also able to demonstrate the ease with which such pressure can run counter to the constitutional pledge of due process. The cardinal problem is simple, when the exigence of safeguarding victims prevails over the legal rights of those who are being accused, then the justice system may face procedural challenges, or resort to the expedient responses that raise concerns regarding extrajudicial measures.

The Indian law is designed to protect both accused and victim, but at times of national outrage, maintaining this balance becomes challenging. After the Hyderabad incident, the voice of people to ensure justice significantly increased with some advocating for immediate and sever punishment.²⁴ When the police fired the four alleged suspects in what they termed as an encounter, section of public perceived it as instant justice. However, human rights activists concerned that this would undermine the concept of the rule of law. A subsequent legal investigation findings highlighted inconsistencies and indicated essential procedural safeguards that the fundamental rights including the right to know about charges or to have a lawyer, were not followed. When due process safeguards are weakened or bypassed, it becomes difficult to ascertain the truth, ensure accountability, and uphold the principles of the constitutional democracy.²⁵

Significantly, the idea of safeguarding the rights of the accused is not only about protecting individual liberty, but it is also the sole mechanism for exposing investigative irregularities, corruption, and procedural lapses that eventually harm against victims' access to justice. This concern highlighted in the Pune Porsche crash ²⁶. The initial bail request, involving a juvenile accused, was asked to write an essay raised nationwide criticism. subsequent investigation raised allegation of procedural irregularities, including suspected evidence tampering, blame shifting and preferential treatment. This shows that such measures as adequate investigation, chain of custody, and judicial supervision are not a deterrent; they are essential beyond reasonable doubt in real justice given to the victims. Courts have, in several instances, intervened to prevent misuse of criminal law and thereby ensuring criminal law is not used as

²⁴ Hindustan Times, All 4 accused in raped-murder of Telangana vet killed while trying to flee: cops, Hindustan Times available at <https://www.hindustantimes.com> (last visited on Aug 24, 2025).

²⁵ Supra note 3, at 2547.

²⁶ Purnima sah and Shoumojit Banerjee, Pune Porsche Accident: A speeding car, two deaths, and a cover-up, *The Hindu* (June. 01, 2024), <http://www.thehindu.com/news/national/pune-porsche-car-crash-a-speeding> (last visited on Aug 22, 2025).

a tool in personal vengeance. By ensuring that the accused is not wrongly or maliciously charged against crimes, the justice system indirectly strengthens the victims of the crime.

But in cases where bail is perceived as excessively lenient or when violations of bail conditions are inadequately addressed, survivors may perceive inadequate protection and are not listened to. This undermines the confidence of the people in the law enforcement and prosecutorial mechanisms. When a justice system fails to ensure the security of the victims may create perceptions imbalance. Such unbelief can discourage victims from reporting crime. Witnesses of the process may be deterred by fear of intimidation or social pressured by accused or their associates, can believe that it is risky to pursue justice²⁷. This contributes to underreporting of crime particularly in cases involving gender-based, negatively impacts the capacity of the state to address violence in an effective manner.

Public responses to criminal proceedings can sometimes diminish the seriousness of judicial process such as those in the Haveri gang rape case,²⁸ where celebration on release of accused persons on bail may create perceptions among survivors that there is not adequately recognised and social connections, political interests, or cultural relationships may affect the public attitudes toward justice. In such situations, perceptions of justice may appear compromised and celebratory responses to bail orders may undermine respect for judicial proceedings and the rule of law.

Misuse or perceived misuse of bail poses serious challenges to the integrity of justice system. This may weaken public confidence, undermine reporting, contribute to misinformation, and sanction impunity. A justice system that fails to adequately protects victims risks losing public legitimacy and its effectiveness in preventing crime, both are fundamental pillars of criminal justice administration.

VICTIM CENTRIC LAWS AND THEIR EFFECT ON ACCUSED RIGHTS

The recent developments in empowering the victims in India with reforms such as the Criminal Law (Amendment) Act, 2008, and the Bharatiya Nyaya Sanhita (BNS), 2023 represent

²⁷ Sophie Rigney, *Fairness, the Rights of the Accused and the Protection of Witnesses*, in *Fairness and Rights in International Criminal Procedure* 168 (Sophie Rigney ed., Edinburgh Univ. Press 2022), <https://www.jstor.org/stable> (last visited on July 12, 2025), at 182

²⁸ *The Hindu*, Karnataka: Haveri gang-rape accused released on bail get grand welcome; FIR registered for unlawful assembly and rash driving, *The Hindu* (June 6, 2025), <https://www.thehindu.com>

significant progress in the criminal justice system. Shift from a system that traditionally focused more on safeguarding the procedural rights of the accused towards acknowledging the suffering, dignity and rights of the victims. This change is necessary and long anticipated, it has introduced complex constitutional and procedural challenges. The system may create challenges in balancing victim empowerment with due process of the accused.

Indian criminal law has been based on the British adversarial model and had been accused oriented over decades. Mechanisms such as the presumption of innocence, right to a fair trial, right to be represented by an attorney and protection against the arbitrary arrest were supposed to provide protection against the overwhelming power of the state. The recent movement to empower the victims is an attempt to make the system balanced but it has created a challenging question and that is, how do we empower the victims without compromising the rights of all citizens, including the accused, against being wrongly punished? The initial site where this conflict is seen is the due process²⁹. The speedy trials assist in avoiding the prolonged delays and reduce re-traumatization to the victims, but when the process is haste, the accused may lack time and a chance to defend himself/herself. This brings out the delicate balance between ensuring justice for victims and preserving the fairness of legal procedure.

The growth of the rights of the victims has also transformed the victims from passive witnesses into active participants. They are now able to engage legal counsel, submit and even appeal against acquittals or undesirable sentences. To the survivors, this is a recognition of their suffering and the right to be heard. However, as it may seem to the accused, it may seem like being tried twice, by the state and by the victim. This development challenges the old view of crimes being offenses to the society and not individuals. This is even more complicated in a society where the media coverage may influence the opinion of the people. Such incidents as the Aarushi Talwar case³⁰ demonstrate to us how the media-driven narrative may influence the masses, and intensify societal pressure, which in turn may cause pressure and jeopardize the right of the accused to a fair trial. Judges, then, have to maintain a balance between two opposing demands, namely one that victims should be heard and at the same time the accused should not be subjected to trial by the public opinion or media influence.

²⁹ Andre Klip, *On Victim's Rights and Its Impact on the Rights of the Accused*, 23 EUR. J. CRIME CRIM. L. & CRIM. JUST. 177 (July 2015). available at <https://heinonline-org-christuniversity.knimbus.com/HOL/License> (last visited on July 05, 2025), at 186

³⁰ *Dr. Rajesh Talwar v. State of Uttar Pradesh & Anr.*, Criminal Appeal No. 294 of 2014 (All. H.C. Oct. 12, 2017).

Even the discussion of Victim Impact Statements (VISs), which India has not formally adopted, highlights the complexities. According to supporters, VISs have the ability to humanize sentencing by recognising the emotional and psychological harm suffered by victims. The opponents, though, fear that they can result in sentencing that is more emotional than based on the law and may raise concerns regarding sentencing consistency across cases. This may undermine the right of the accused to fair hearing under due process principles.

On the same note, protective measures that are to be taken to ensure the victims and witnesses are not compromised may become inconsistent with the right of the accused to have a decent defence. Witness anonymity or limited disclosure may be necessary under witness protection but this may make cross-examination difficult.³¹ As useful as restorative justice mechanisms are sometimes require acknowledgement of certain facts prior to mediation that may undermine the defences of the accused or coerce him/her into making partial confessions.

It is undeniable that victim rights have seen the Indian justice become more humane. Survivors nowadays are more visible and heard. However, it has contributed to the old conflict as well: the rights of the victims and the rights of the accused often draw the system towards conflicting directions. Lawmakers, courts, and society must therefore strive to establish a principled balance between the two sets of rights in order to be able to co-exist.

As a matter of fact, most of the protections accorded to the accused benefit victims as well. Presumption of innocence guarantees the conviction based on evidence which increases the public confidence in results. The fair trial right increases the validity of verdict. Speed trials not only ensure that the victim does not endure a long trauma but it also ensures that the accused is not languishing in perpetual limbo.³² Confidentiality, particularly in sex offences, upholds the self-respect of both parties. The prohibition of forced confessions upholds justice to everyone as the truth is the basis of guilt rather than force.

At the end of the day, the aim is not to put the rights of the accused and the victim against each other. Instead, it is to create a criminal justice system in which justice can be delivered fairly

³¹ Akshay Kumar, *The Dynamics of Evidence in Rape Trials: Balancing Victim Protection and Fair Trial in India*, 33 *MSW Mgmt.* 702 (2023). available at <https://mswmanagementj.com> (last visited on July 11, 2025), at 704

³² Fawzia Cassim, *The Rights of Child Witnesses Versus the Accused's Right to Confrontation: A Comparative Perspective*, 36 *Comp. & Int'l L.J. S. Afr.* 65 (2003). Available at <https://www.jstor.org/stable> (last visited at July 12, 2025), at 79

to all, victims are honored and given a chance to be heard, and accused persons are not punished without any rhyme. Such balance is not the legal requirement only; it is the foundation of the just and democratic society.

ROLE OF THE JUDICIARY TOWARDS TRUST BUILDING

The judicial position is crucial in ensuring justice within the criminal justice system, particularly in balancing the competing constitutional and human rights of the accused and the victim. This renders the judiciary as a major guardian of judicial fairness in a criminal trial. This is not necessarily the rule in constitutional democracies, as in India, but must be properly judged particularly in the hard cases where the rights of the accused, including liberty and due process, conflict with the rights of the victim, including safety, dignity and meaningful participation. Criminal adjudication goes beyond establishing guilt and it is a mechanism of establishing fairness, equality and protection of human rights to all individuals.³³ Hence intervention by judiciary is important to ensure justice especially in cases that seem complex and the interests of both the accused and victim conflict with each other.

Some of the adjudicatory decisions that the judiciary considers to exercise its balancing role including granting bail, establishing of evidence admissibility and compensation to victims. Bail determinations demonstrate how individual liberty and interest of society and victims are close to each other. The courts have a constitutional duty to respect the presumption of innocence, a key principle of criminal jurisprudence, and at the same time address the safety of the victim. Evidentiary rules are meant to eliminate wrongful convictions because they provide reliability and procedural fairness. However, rigorous or digital compliance with technical evidentiary rules can make or keep vulnerable victims away. As a result, the evidentiary provisions are clearly interpreted to ensure fairness and avoidance of miscarriage of justice by the court. Each judicial decisions in such matters not only decides the outcome of particular case but also influences public confidence in the criminal justice system.

The judiciary have to balance conflicting social interests all the time. And in what case should strict compliance with legal safeguards prevail, or should greater weight be given to ensuring justice and protection for the victims? Another example is that following rules of evidence literally might also save the accused person a wrongful conviction but it might also gag a

³³ Supra note 16, at 4

frightened victim. On the contrary, giving precedence to victims without the necessary precautions would jeopardize the principle of presumption of innocence and right to due process of the accused.³⁴ Therefore, the role of a judiciary is not to take one side but strike a reasonable compromise that would contribute to the interests of justice and social good. An objective criterion, such as reasons, fairness, and community values should be relied upon instead of personal prejudices by the courts so that justice is equitable and not influenced by emotions.

The legislation provides judges with resources to manage this conflict. Gag orders and shield laws uphold the rights of privacy and dignity of the victims, however, the process should not undermine the constitutional entitlement to a fair trial. The participation of victims in the proceedings promotes inclusivity and cannot override due process rights including equality of arms, presumption of innocence, and trial delay defence. In the meantime, the judicial response, such as awarding compensation, indicates that courts acknowledge that victims should receive restorative justice, even in the absence of a criminal conviction. The judiciary recognizes that the state has a role to play in ensuring the protection of both the accused and the victim by treating compensation as a right rather than charity in a rights-based approach.³⁵

In addition to the adjudication, judges play important role in shaping the trial environment. Judges are duty-bound to maintain neutrality since they are supposed to pursue the truth by recalling or questioning witnesses whenever it is essential. It is vital that the judges establish a courtroom environment that takes into consideration trauma. The victims often experience fear, stigma and psychological distress, whereas the accused have to face social disapproval. It should be a respectful approach that is non-shaming and non-stereotypical to make sure that both parties are treated with dignity.³⁶ This enhances legitimacy of trial process and prevents additional victimization as well as safeguarding the accused against biased judgment.

Judicial balancing does not involve biasing one or being passive neutrality. It is acknowledging the fact that the two sides possess constitutional privileges and weaknesses. The dilemma is how to protect the accused on one hand against unfair punishment and to protect the victims

³⁴ Supra note 27, at 174.

³⁵ Salvatore Zappala, *The Rights of Victims v. the Rights of the Accused*, 8 J. INT'L CRIM. JUST. 137 (March 2010). available at <https://heinonline-org-christuniversity.knimbus.com/HOL/License> (last visited on July 11, 2025), at 142

³⁶ Nbu B. Vu, *The Necessity of Maintaining Protective Measures in Balancing the Rights of Victims and the Accused*, 4 EYES oN tHE ICC 23 (2007). available at <https://heinonline-org-christuniversity.knimbus.com/HOL/License> (last visited on July 05, 2025)

against re-traumatization, silence and marginalization by the legal formalities. This way, the judges are not merely the law enforcers but they are also the custodians of public trust in the justice system.

THE EXTENT OF RIGHTS NEEDED TO ENSURE FAIRNESS

This is a delicate task of any criminal justice system as it has to balance between the rights of the accused and the rights of victims. This balance is particularly imperative in India as this is connected with what our Constitution promises us the fact that the justice must be just, humane and affordable to everyone concerned. The law seeks to protect both the accused and the victim. An accused confronts the huge authority of the State, whereas a victim is frequently burdened with trauma, fear and need to come to terms. The ability to identify and respond to the needs of the two provides the justice system with the required moral power.³⁷

Historically, the Indian criminal law, similar to most of the systems across the globe, traditionally emphasised safeguarding the procedural rights of the accused. The foundational principles such as innocence of presumption, right to a fair trial, and the idea of it is better that ten guilty persons escape rather than one innocent persons lose their lives, were all created to ensure that no one can abuse the state power and that people are not wrongly convicted. These ideals will be considered critical as once a wrong individual is proven guilty, he/she cannot be brought back to life. But this attention usually relegated the victims. Victims were being a mere spectators of their own miseries, they had to pass through long procedures, cruel interrogations and years of uncertainty with less control over the process.

The society has over the years realized that the victims should be accorded more than passive roles. They are to be respected, involved, and safeguarded. The current laws and reforms aim at making the victims the core of the justice process with the help of the compensation programs, victim impact statements, legal assistance and the witness protection measures. These reforms are focused on making sure that the victim is not re-traumatized by the system which is supposed to help him/her. This transition, however, as it is necessary, has brought about some new difficulties. In cases where the law empowers the protection of the victims such as curtailing some form of cross-examination, concealing their identity or the right to

³⁷ Aditya Trehan & Kaveri Sharma, *The Dichotomy of Rights: An Analytical Study on Victim and Accused Privileges in the Indian Criminal Justice System Post Criminal Law (Amendment) Act, 2008*, 30 *Educ. Admin.: Theory & Prac.* 3349, 3352-3353 (2024), available at <https://doi.org/> (last visited on July 07, 2025).

testify behind screens, the question arises regarding whether or not the rights of the accused are being trampled upon.

Due to this, courts tend to face challenges. The concern raised about: Does the protective action need to be taken? Does it go too far? In other situations involving children, like in the case of a child, courts at times even allow a testimony by video connection so that the child would not be subjected to the psychological harm of confronting the suspect. The courts, however, also make sure that the defense is still allowed to cross-examine the witness since the right of challenging evidence is imperative to a just trial. Such problems have been experienced by international courts such as ICC and ICTY. Criminal cases like Tadic indicate that even though preserving witnesses is important, such measures as anonymity should not be a regular practice and must be employed sparingly.³⁸

The battle of balance still rages on despite reforms. There are delays, lack of support, and fear of retaliation by the victims and the process of interrogating that rely on excessive confidentiality measures or restrictive procedural practices can unintentionally make it harder for the accused to present proper defence raising concern about fairness. This may be complicated by media coverage as people form judgment in public even before the court makes its decision and this may be detrimental to both the victims and the accused. There is a possibility of the accused being judged prematurely and the victims may meet sensationalism which aggravates their trauma.

After all, justice cannot be an either-or choice. The empowerment of the rights of the victims must not prejudice to the accused but protect the accused ought not to come at the expense of the victims. They both are seek justice, recognition, and fairness within the same legal framework. The challenge lies in developing principled framework that treats fairness as an intermediary and not an obstacle. The justice system function effectively only when victims are recognized and secured, while the accused receive a fair process based on constitutional values. In a democratic society, maintaining balanced rights is essential to preserving public trust in the administration of justice.

³⁸ Amanda Beltz, Prosecuting Rape in International Criminal Tribunals: The Need to Balance Victim's Rights with the Due Process Rights of the Accused, 23 ST. JOHN'S J. LEGAL COMMENT. 167 (Spring 2008). available at <https://heinonline-org-christuniversity.knimbus.com> (last visited on July 05, 2025), at 191

CONCLUSION AND SUGGESTION

Conventionally, the Indian criminal law used to be protectionist in nature, whereby the accused was entitled to fair trial rights, defence and protection against wrongful conviction. Victims, on the contrary, frequently ended up at the periphery, with less involvement during legal process. The 2008 reforms such as the Criminal Law (Amendment) Act, 2008, and the changes of 2013 sought to correct this disequilibrium by increasing the rights of the victims. They contained clauses on compensation, expedited trials, prevention of subsequent victimization and greater representation in the proceedings. However, challenges persist. The issues such as slow trials, lack of victim support system, and witness protection still undermine the effectiveness of reforms. In the meantime, the trials in the media and social discrimination may discriminate against the accused person, which is a threat to the impartiality of the justice system. The justice system is therefore in a critical point. The rights of the victims are more apparent than ever, yet they are applied unequally. In the meantime, these rights of the accused, although strongly enshrined, are at times sacrificed in the quest to have victim-oriented justice.

Reform should be both practical and policy-oriented to make justice just to both the victims and the accused. To begin with, support services to victims, including compensation, counseling, and efficient witness protection, are to be reinforced. The trials should also be made quicker to alleviate the burden of long trials. Second, judges, lawyers, and police must undergo continuous training to be sensitive in cases, and not to be biased or influenced by the media. There must be clear sentencing guidelines of consistency and fairness. Finally, care should be taken regarding protective measures of vulnerable victims such as children and sexual assault survivors to ensure that they do not compromise the fundamental rights of the accused particularly the presumption of innocence and a fair trial. A justice system that ensures that neither does too much nor too little to the victims, but is also mindful of the accused and their due process, is capable of enforcing dignity and due process.