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Victim Participation in Criminal Trials under New Criminal Laws in India Doctrinal Comments

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ABSTRACT

The individual most affected by the acknowledgment of wrongdoing is the victim of the crime. In ancient time, the victim played a central role, with a focus on compensation for harm suffered. However, as criminal law evolved into its modern form, the victim's role steadily diminished. The older system of direct compensation was replaced by a state-driven approach to addressing criminal acts. This shift led to the separation of penal consequences from victim compensation, fundamentally transforming the criminal trial into a process where the victim's involvement is limited to serving as a witness. Such relegation of victim to the position of a mere witness has been challenged by the victim rights movement in various countries and sought to be ameliorated with the help of legislative reforms. While India has unfolded similar kind of reforms for enhancing the participation of victim, the results are not consistent and victim satisfaction is still very low. In this context, this paper undertakes a doctrinal investigation of victim participation under India's new criminal laws unveiled in 2023. It analyses the concept of victim participation and its importance for an inclusive justice in a criminal trial. Further, it discusses the reflections of victim participation under the present criminal laws. Lastly, it concludes with recommendations aimed at balancing victims' rights with due process, thereby advancing the adversarial justice and procedural fairness.

Keywords: Victim Participation, Criminal Trial, Procedural Justice, Restorative Justice, Punishment.

I. INTRODUCTION

Criminal law regime apparently focuses on punishment and offender rehabilitation neglecting the needs and concerns of victims during such process. Law officials are trained to work with offenders, not victims, which results in limited efforts to inform victims about developments in trial, restitution awards, payment timelines or the measures being taken to secure victim interest. This oversight can leave victims unaware of their rights and

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dissatisfied with the restitution process (Edwards, 2004).

Despite increasing judicial recognition of victim interest, victims frequently face challenges such as minimal involvement in criminal trial, lesser compensation, lack of information about restitution, and dissatisfaction with the overall experience. This issue was particularly relevant in India, where victim-centric approaches are still evolving and the introduction of Victim Compensation Schemes (VCS) has brought attention to these gaps but has not addressed them fully.

Incorporating victim-centered practices into criminal law in India will not only uphold justice but also empower victims by addressing their concerns effectively and ensuring their active participation in the criminal justice process. One of such policies is Victim Impact Statements ('VIS') which can play a crucial role by documenting the financial, emotional, physical, and psychological effects of crimes on victims. These statements can help the judge better understand the harm caused and integrate victim needs into sentencing and restitution decisions.

II. VISIBILITY OF VICTIM UNDER CRIMINAL JUSTICE SYSTEM

Victim participation refers to the rights afforded to victims of crime to engage meaningfully in the criminal justice process. It includes the right to be informed, present, and heard during proceedings, especially during pre-trial, trial, and sentencing phases. Participation not only empowers the victim but also reinforces public confidence in the justice system. From a jurisprudential perspective, victim participation is grounded in theories of restorative and procedural justice, which seek to rebalance the scales by recognising the harm suffered by the victim as central to the adjudicative process (Edwards, 2004).

India's criminal justice system has historically prioritized the rights of the accused over those of victims, leaving victims with limited recognition and protection. While there are legislative provisions aimed at addressing victims' needs, such as Section 357A of the Code of Criminal Procedure (CrPC) for victim compensation, these measures often fall short in implementation. The Constitution of India, while guaranteeing fundamental rights such as dignity and security, does not explicitly protect victims in the same detailed manner as it safeguards the rights of arrested, detained, and accused persons under Articles 20, 21, and 22. This imbalance reflects a systemic focus on punitive measures against offenders rather than victim-centered justice (Reddi, 2006).

Efforts to enhance victim rights have been sporadic. The Malimath Committee (2003) recommended significant reforms, including the establishment of a victim compensation

fund and legislation dedicated to victims' rights. However, these recommendations have largely remained unimplemented. Similarly, while Section 357A of previous Code of Criminal Procedure introduced compensation schemes administered by State Legal Services Authorities, their effectiveness has been hindered by inadequate funding and inconsistent enforcement across states (Sharma, 2024).

Victim participation in criminal proceedings is minimal. Although victims are allowed to engage private counsel under the direction of public prosecutors, and there is a mandate to inform victims before granting bail to the accused, these provisions do not ensure active involvement or adequate representation for victims throughout the process. Victims are often treated as mere witnesses rather than central stakeholders in justice delivery ((Nagpal & Rawandale, 2024).

The lack of victim-centered policies mirrors challenges seen globally. For instance, South Africa's Victims Charter and its proposed Victims of Crime Bill aimed to establish comprehensive frameworks for victim support but failed due to gaps between policy formulation and implementation. Similarly, India faces difficulties in bridging this gap (Saraiya, 2022).

To address these shortcomings, India must adopt a holistic approach that prioritizes victim participation and satisfaction alongside offender punishment. This includes enacting dedicated legislation for victim rights, establishing robust compensation mechanisms, improving victim participation in trials, and ensuring timely access to justice. A shift from retributive justice to restorative justice is essential to balance the scales between protecting the accused and addressing the needs of crime victims effectively.

III. POSITIONING THE VICTIM UNDER CRIMINAL LAW AND RETRIBUTIVE IDEALS

In the theoretical framework of substantive criminal law, particularly within the context of punishment theories, the role of victims varies significantly across different ideologies. Historically, the rehabilitation paradigm around 1960s accorded minimal importance to victims and focused primarily on the offender's criminal pathology as diagnosed by penological experts, with the treatment or punishment being tailored to address the offender's deviance. While victims were not entirely irrelevant, their characteristics or conduct were considered only insofar as they influenced the diagnosis and treatment of the offender's behavior. For instance, a victim's age might inform a diagnosis of pedophilia, or their conduct could help identify specific behavioral triggers for the offender's actions (Dubber, 2004).

In recent years, victim participation has been recognized as a potential contributor to the offender's rehabilitative process. However, the efficacy of rehabilitative efforts has been questioned, with prisons often being criticized for failing to deliver on their promise of reformation. Instead, they have been seen as perpetuating a myth of correction or deteriorating into undifferentiated facilities housing a diverse range of offenders (Davis, Anderson, Howley, Dorris & Whiteman, 2012).

Ultimately, the decision to release prisoners has frequently been determined more by logistical considerations, such as the availability of prison space, rather than the offender's readiness for societal reintegration.

In the Indian context, similar challenges exist. The Indian criminal justice system has traditionally focused on punishment and rehabilitation, with varying degrees of emphasis on victim involvement. Recent legal reforms and judicial pronouncements have highlighted the importance of victim rights and participation in the criminal justice process, reflecting a shift towards more inclusive and restorative justice models. Despite these efforts, challenges persist in ensuring effective rehabilitation and reintegration of offenders, while also addressing the needs and rights of victims (Reddi, 2006).

In the Indian context, retributivism offers a framework where victims are acknowledged primarily through the assessment of harm caused by the defendant's actions. This assessment considers not only the abstract definition of the offense but also the specific harm inflicted in each case, provided the offender demonstrates an attitude that warrants blame. Retributivists have critiqued rehabilitationists for focusing excessively on the offender's characteristics and circumstances, arguing that this approach leads to discretionary and potentially discriminatory punishment practices. Instead, retributivism emphasizes the nature of the offense over the offender's personal traits, aiming to avoid stigmatization by focusing on the wrong committed rather than the individual's deviance (Harris, 1991).

In its abstract form, retributivism views punishment as a vindication of legal norms, such as those against homicide, rather than retribution for specific harm suffered by individual victims. The victim's experience is significant only in establishing the violation of these norms. Once the violation is established, the sentence can reflect the harm inflicted only if the offender was aware of it. However, in practice, retributivism often gives way to vengeance and incapacitation, which are more consequentialist approaches (Dubber, 2004). In India, while retributivism influences legal discourse, the criminal justice system also grapples with balancing retribution with rehabilitation and restorative justice, particularly

in light of recent legal reforms and societal demands for victim-centered justice.

IV. ACCOMMODATING VICTIM PARTICIPATION UNDER ADVERSARIAL SET UP

In the Indian context, the common law gifted adversarial nature of the legal system places primary responsibility for vindicating legal rights on the parties involved in litigation. The Indian criminal justice system, like its American counterpart, vests prosecutorial responsibilities in the state. The Code of Criminal Procedure, 1973, empowers public prosecutors to represent state in criminal proceedings. These prosecutors are tasked with upholding the public interest in justice, rather than representing specific individuals or victims.

The role of prosecutors in India is multifaceted. They must ensure that the guilty are punished while protecting the innocent from unwarranted prosecution. This dual obligation aligns with the concept of prosecutors as 'ministers of justice', a principle recognized in Indian jurisprudence. The Supreme Court of India has emphasized that public prosecutors should maintain impartiality and act in the interest of justice, not merely seek convictions (Nariman, 2018). The Indian Constitution, particularly through Articles 20, 21, and 22, provides robust protections for defendants in criminal proceedings. These rights include protection against "ex-post facto laws", "double jeopardy", "self-incrimination", "right to life and personal liberty" and safeguards in case of "arrest and detention". The Constitution also guarantees the "right to a fair trial", which includes the right to legal representation and the "presumption of innocence until proven guilty" (Reddi, 2006).

This constitutional framework, much like the American Bill of Rights, primarily focuses on protecting defendants from potential abuses of state power. It does not explicitly address the role of third parties, such as victims, in criminal proceedings. This structure reflects the adversarial system's emphasis on the state-defendant dynamic, with limited scope for direct victim participation in the trial process. However, it is important to note that India has made efforts to incorporate elements of victim participation in recent years. The Criminal Procedure Code was amended in 2009 to allow victims to engage an advocate to assist the prosecution. Despite this, the fundamental adversarial nature of the system remains intact, with the primary contest being between the state and the defendant.

Thus, while the Indian legal system has evolved to include some provisions for victim participation, it fundamentally adheres to the adversarial model. This system, by design, limits the direct involvement of third parties in criminal proceedings, focusing instead on the state's role in prosecuting offenses and the defendant's constitutional protections against

potential abuses of state power.

The Indian criminal justice system, rooted in the adversarial tradition inherited from British colonial rule, prioritizes procedural fairness and party autonomy, often at the expense of achieving a perfectly accurate outcome. This approach, while ensuring the accused's rights and maintaining judicial impartiality, raises concerns in cases where errors can lead to severe consequences—such as wrongful convictions or acquittals of guilty individuals, thereby undermining societal safety and leaving victims' grievances unaddressed (Blondel, 2008).

V. REFLECTIONS OF VICTIM PARTICIPATION UNDER CRIMINAL LAW

There is a fundamental reliance of the criminal law on the victim in terms of reporting crimes and providing testimony when necessary. To ensure the efficient functioning of this system, it is imperative to prevent the alienation of victims. Reform initiatives aimed at enhancing victim participation in the resolution of criminal cases are designed to mitigate such alienation. These measures operate under the assumption that increasing the influence of victims in judicial outcomes will lead to greater victim satisfaction, which, in turn, will enhance the overall effectiveness of the criminal justice system (Mishra, 2020).

In the Indian context, the role of victims in initiating criminal proceedings and shaping the legal process differs from some other jurisdictions. The Indian Criminal Procedure provides for both police and private complaint mechanisms, with varying degrees of victim involvement.

Victims can file complaints directly with the police or magistrate. For cognizable offenses, the police are obligated to register a First Information Report (FIR) upon receiving information about the crime. In cases where the police refuse to file an FIR, victims can approach the Superintendent of Police or file a complaint directly with the magistrate under Section 156(3) of the CrPC (Mangoli & Devarmani, 2014).

- **Pre-Trial Stage:** Victims must be informed about the developments in the investigation and they can request updates from the police. In certain cases, victims may engage a pleader to assist the prosecution, subject to the court's permission.
- **Trial Stage:** Victims have limited participation rights during the trial, primarily serving as witnesses.
- Recent amendments to the CrPC have expanded victims' rights, including the right to appeal against acquittals or inadequate sentences under Section 372.

- Sentencing and Compensation: Victims can influence sentencing through victim impact statements, although this practice is not uniformly implemented across India.

The CrPC provides for victim compensation schemes under Section 357A, allowing victims to seek compensation from the state. Despite these provisions, the Indian criminal justice system remains predominantly state-centric, with limited scope for direct victim participation in prosecution decisions or trial proceedings. The system does not mandate prosecutor consultation with victims before making charging decisions or dismissing charges, unlike some other jurisdictions (Naqvi, 2016).

Committee reports, particularly the Malimath Committee Report (2003), highlight systemic deficiencies in the Indian criminal justice system with respect to victim rights. The Law Commission's 2008 report emphasised the importance of participation during sentencing and bail hearings.

The initiation of criminal proceedings in India typically begins with the filing of a First Information Report (FIR) at a police station under Section 154 of the Criminal Procedure Code (CrPC) or a complaint lodged directly with a Magistrate under Section 200. In case of cognizable offence, police may proceed with the investigation directly and collect the evidences. Subsequently, a charge sheet is filed, and the case is brought before a competent court. For prima facie non-cognizable offenses, police investigations require a court order. If complaint was filed before magistrate then it may either conduct the preliminary inquiry or it may direct police investigation. Upon conviction, the accused is sentenced to imprisonment, a penalty, or both. Although this concludes the trial, appeals can be made to higher courts against lower court decisions (Mangoli & Devarmani, 2014).

In this process, victims are relegated to the role of witnesses for the prosecution, lacking any formal rights during criminal proceedings. In some instances, the police may refuse to file an FIR, although legal remedies exist to address such refusals. This initial disregard highlights the systemic lack of recognition and support for victims from both legal and law enforcement agencies. Furthermore, neither the Indian legislature nor the judiciary has established clear guidelines for sentencing. Offenders receive punishments as outlined under Section 53 of the Indian Penal Code (IPC), which includes the death penalty, imprisonment, forfeiture of property, and fines. While the IPC stipulates maximum punishments for offenses, actual sentencing is determined on a case-by-case basis, allowing for significant judicial discretion. Consequently, different offenders convicted of the same crime may receive disparate sentences. Even though sentencing must be substantiated by the reasons

as per section 354(1) and (3) of the Code of Criminal Procedure, judiciary still possesses wide discretionary powers in the process. Unfortunately, victims have no consistent and formal role in this process (Mishra, 2020).

In the case of *State of Karnataka vs. Krishnappa* (2000 (4) SCC 75), the Supreme Court noted that socio-economic background, gender, caste, and religion of the victim are not relevant in sentencing policies. This approach may produce a gap for victim-sensitive approach while sentencing the accused underscoring the need for reforms that better integrate victim perspectives and rights into the justice process.

New Criminal Law: Recent reforms in India's criminal justice system have marked a significant shift toward prioritizing victim rights and welfare. The enactment of new laws such as the *Bharatiya Nyaya Sanhita*, *Bharatiya Nagarik Suraksha Sanhita*, and *Bharatiya Sakshya Adhiniyam* in 2023 reflects a concerted effort to modernize and make the system more victim-centric (PRS Legislative Research). The BNS, 2023, is the central statutory text under scrutiny. Key provisions relevant to victim participation include the right to information (Chapter XXVIII), right to legal assistance, and appellate rights. These are interpreted in light of pre-existing laws and judicial interpretations.

It introduces several provisions that imply enhanced victim participation. It acknowledges the victim's right to be informed of the progress of investigations, to seek legal representation, and to appeal against acquittals and inadequate sentences. These are significant shifts from the earlier framework. However, the legislation falls short of incorporating mechanisms like Victim Impact Statements (VIS), which have become essential tools in modern sentencing jurisprudence in other jurisdictions. The law lacks detailed procedural rules, leaving victim rights vague and inconsistently enforced.

These reforms aim to address the historical neglect of victims' interests in the criminal justice process, where the state traditionally represented victims without adequately considering their needs or perspectives and provide following rights (Singh & Kashyap, 2024).

- **Right to be Heard**: The new laws provide victims with the right to be heard during critical stages of criminal proceedings, such as the withdrawal of cases against the accused. This is a significant departure from the past, where victims had little say in such decisions. For instance, Section 360 of the *Bharatiya Nagarik Suraksha Sanhita*, 2023, empowers victims to file protest petitions if they believe the withdrawal of charges would endanger them or impede justice.

- **Legal Representation and Support:** Victims are now entitled to legal representation free of cost if they cannot afford it. This provision ensures that victims have a voice in court and are not disadvantaged due to financial constraints. The Malimath Committee's recommendations, which influenced these reforms, emphasize the importance of victim representation throughout the legal process.
- **Participation in Proceedings:** Victims have the right to participate actively in criminal proceedings, including presenting evidence, questioning witnesses, and receiving updates on the investigation. This participatory approach aims to empower victims and ensure their concerns are addressed during the justice process.
- **Compensation and Support:** The new laws mandate victim compensation for serious crimes, recognizing the state's obligation to provide financial assistance to those affected by crime. This provision is crucial for helping victims recover from the financial and emotional impacts of criminal acts.

Restorative Justice and Victim-Centric Approach: The new criminal laws also introduce restorative justice practices, which focus on healing and reconciliation rather than solely on punishment. This approach involves victims in the justice process, allowing them to confront offenders and seek reparations or apologies. Restorative justice aims to reduce recidivism by addressing the root causes of crime and promoting empathy between victims and offenders (Sharma, 2024).

Despite these advancements, challenges remain in implementing victim-centric reforms effectively. There is a need for stronger legal backing and institutional support to ensure that victims' rights are consistently respected and enforced. Additionally, raising awareness among victims about their rights and providing them with access to necessary resources will be crucial in making these reforms impactful. The new criminal laws in India represent a significant step toward recognizing and addressing the needs of victims. By prioritizing victim rights and incorporating restorative justice practices, these reforms aim to create a more balanced and equitable criminal justice system. However, ongoing efforts are necessary to ensure that these legal protections translate into meaningful support and justice for victims.

While India has made strides in recognizing victims' rights, the level of victim involvement in the criminal justice process remains limited compared to some other legal systems. Ongoing legal reforms and judicial interpretations continue to shape the evolving role of victims in Indian criminal proceedings.

Despite legislative gaps, the Indian judiciary has, at times, played a proactive role in strengthening victim rights. In *Satya Pal Singh v. State of Madhya Pradesh* (2015), the Supreme Court held that a father of a deceased victim had locus standi to file an appeal against acquittal. Similarly, in *Mallikarjun Kodagali v. State of Karnataka* (2018), the Court expanded the scope of appeal rights under Section 372 of CrPC. These cases, along with *Reena Hazarika v. State of Assam* (2019), illustrate the judiciary's acknowledgment of the victim as a stakeholder. Yet, these recognitions are not grounded in a consistent statutory mandate, leaving much to judicial discretion.

In India, while appellate rights under CrPC were amended, procedural implementation remains dependent on judicial interpretations. No express statutory mechanism supports participatory tools like VIS, and the absence of court-mandated protocols for victim inclusion during sentencing phases continues to inhibit doctrinal fulfilment of victim rights.

VI. IS THE PARTICIPATION EFFECTIVE?

It is essential to recognize that the concept of considering the victim's interests is inherently normative. It does not entail framing the trial as a form of psychological therapy or providing emotional support to the victim. Instead, it involves the formal acknowledgment of the victim's rights through the criminal verdict. While this recognition may incidentally offer consolation to the individual victim, its justification extends beyond addressing personal emotional needs. The assertion of victim rights serves broader normative purposes, emphasizing the importance of justice and accountability rather than focusing solely on individual psychological outcomes (Poama, 2018).

While the BNS reflects a formal recognition of victim rights, it lacks operational clarity. The absence of statutory guidelines on Victim Impact Statements results in a normative vacuum during sentencing. Procedural rights such as the ability to address the court at sentencing, challenge bail decisions, or seek restitution are either unclear or completely absent.

Furthermore, the law does not provide for victim support services such as court-appointed liaison officers or psychological counsellors. Without these support systems, participation remains a theoretical possibility rather than a practical reality. This creates unequal access to justice, especially for vulnerable victims of gender-based and socio-economically motivated crimes (Doak, 2005).

Another loophole lies in the non-mandatory nature of victim notification during crucial phases like plea bargaining or case transfers. The legislation should have adopted structured timelines and reporting mechanisms to ensure accountability.

The law also misses an opportunity to define the role of public prosecutors in facilitating victim participation. Without clear responsibilities, victims are often left to navigate the legal system independently. The lack of procedural protocols leads to inconsistent practices across jurisdictions, thereby undermining the doctrine of equality before law (Doak, 2005).

VII. CONCLUSION

Victim participation is not merely a question of procedural fairness but a reflection of the moral legitimacy of the criminal justice system. Bharatiya Nyaya Sanhita (BNS), 2023 while a step in the right direction, requires doctrinal strengthening through clear legislative provisions and institutional reforms. Without robust implementation, the promise of victim-centric justice will remain elusive. Future legal developments must be informed by comparative legal practices and guided by the principles of access to justice, procedural equity, and human dignity (O'Hear, 2006).

The adversarial criminal justice system, adopted in India from the British legal tradition, has long prioritized the rights of the accused, often at the expense of the victim. In this framework, the state is the principal party to the prosecution, while the victim remains an observer. This marginalization of the victim has led to widespread dissatisfaction and calls for reform. With the introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, India has an opportunity to revisit the place of the victim in the criminal process and examine whether the new legislative changes fulfill the promise of a victim-centric justice system.

While victims and restitution hold significant roles within the justice process, their interaction is not entirely seamless. Although victims may find reassurance in the issuance of restitution orders, these orders are often poorly enforced, with offenders frequently failing to pay and victims remaining inadequately informed about collection efforts. Consequently, the promise of restitution often surpasses its practical reality for victims. In fact, offering victims a false promise of restitution may be more detrimental than not making such promises at all. It must be noted that providing rights without remedies can lead to adverse consequences, such as feelings of helplessness, loss of control, and further victimization (Davis, 1992).

Lastly, in order to make victim participation substantive rather than symbolic, India must adopt the following reforms:

- I. Introduction of a statutory mechanism for Victim Impact Statements with set conditions.

- II. Opportunity to victim to be heard during bail, plea bargaining, and sentencing.
- III. Mandate victim liaison officers in courts to assist victims with navigation of the legal process.
- IV. Victim sensitive training of judges and prosecutors.
- V. Development of uniform guidelines on victim notification, participation, and consultation.
- VI. Pilot schemes for victim participatory frameworks in special courts (e.g., POCSO, domestic violence cases).

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