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Victim friendly justice system under the Bharatiya Nagarik Suraksha Sanhita, 2023

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Abstract
The Indian criminal justice system (after 1973, as followed by its Code of Criminal Procedure) has mainly focused on victims for over 150 years. It takes a shift and treats the victim of a crime as a witness rather than an individual who has rights or interests of their own. The Code of Criminal Procedure was abolished on July 1, 2024. It is clear that this is a definitive shift toward a criminal justice system that would promote victim support. It is hoped that, besides observing the way victims were overlooked in the ailing CrPC system, it will explore what makes the legal system more responsive and why this is important.The paper then considers the victim-focused policies that have been passed or amended in relation to the BNSS. These would include the 'right to information'; 'the right to be heard before criminal proceedings could end'; the 'right to make a recovery'; 'the right to a hearing by a tribunal or a public hearing board'; 'the right to have representation before prosecution takes place'; and, specifically, the right of the victim to appeal. Moreover, the paper looks at these legislative changes under consideration through reductive judicial findings and contested judgments over decades in the cases in question.An in-depth review is then given to assess the absence of law-enforcement support for victim-friendly justice with regard to the difficulties of implementation and impact. Then we examine findings and propose a reform review. The paper also shows that BNSS consists of both better mechanisms for protecting victim rights than its predecessor because of their powerful legislative scope and not just how serious the victims' rights are but also by considering the lack of institutional capacity, financial and ongoing accountability to the system in practice.

Keywords: Victim rights, BNSS, criminal procedure, victim compensation, zero FIR, witness protection, restorative justice, criminal justice reform

Introduction
The victim's role in traditional criminal law is unusual. Traditionally, criminal proceedings have been seen as a battle between the State and the accused. The victim plays a passive role in supporting the prosecution by providing evidence, and their suffering (whether physical, financial or psychological) is ignored. This lack of focus on victims has led to criticism from experts and judges and has resulted in the development of a victimology movement. There has been a call for a victim-oriented/victim-friendly system. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) replaced the Code of Criminal Procedure, 1973 (CrPC) from July 1, 2024. This law aims to modernise the Indian criminal justice system and provide more for victims. This article will look at how effective the victim-oriented provisions are in the BNSS and what real impact they have had.

A victim-friendly system recognises the importance of the victim in the case. They have a say in how the case is handled and whether it is fair. Victims are entitled to be informed about the investigation and trial process, involved in key stages, protected from further fear or ill-treatment and provided with assistance or redress for their suffering.

Aim
The author examines whether and how the Bharatiya Nagarik Suraksha Sanhita, 2023 would modify the justice system in India towards treating victims more effectively by making victims the focal point for justice, in one in which the rights are given to the victims.

Objectives
- To examine the concept and the role of a victim-friendly justice system.
- To examine the victims' rights and protections.
- To examine the BNSS on victims' participation in criminal proceedings and assess the victim protection and support, compensation, and rehabilitation systems.
- To explore the role of technology and digital processes within the BNSS.
- To get a better understanding of what victims face.
- To suggest institutional and legal modifications to enhance the BNSS's victim-friendly legal framework.

Meaning and Concept of Victim-Friendly Justice
A victim-friendly justice system recognises the importance of victims within the criminal justice system. This ensures that the victim is treated with respect, kept safe, their rights are upheld, and their concerns are recognised. This law ensures that the victim's needs will be met. This includes providing timely support, keeping the victim safe from bullying, providing compensation for any harm caused and allowing the victim to be involved throughout the criminal court process. A victim-friendly approach recognises that the victim has rights and should be provided with information, kept safe and provided with the correct remedies. BNSS, 2023 provides victims with support, including compensation, witness protection and opportunities to be involved, and the right to appeal. It is important that victims are involved within the criminal

justice system so they can have their voice heard. Section 360 of the BNSS provides victims with an opportunity to speak. This makes the justice system more transparent and private.

India's new criminal law, the Bharatiya Nagarik Suraksha Sanhita, 2023, has replaced the previous Code of Criminal Procedure, 1973, from 1 July 2024. This law was created to modernise the criminal justice system and provide better support to victims. This paper analyses how effective the BNSS is at doing this, looking at the victim-friendly provisions and how they can be used in practice.

Concept of Victim-Friendly Justice System

A victim-sensitive system of justice recognises the victim of a crime as a person who has a right to participate in and care about the process. It will typically ensure that the victim has a right to information about the progress of the investigation and trial, have a right to participate in key stages of the process, have protection from further threat or mistreatment and have a right to seek compensation or support to make up for the harm they have suffered.

The study of victimology has largely influenced this concept. Important international documents such as the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) [1] also influence this concept. This document outlines the rights of victims to justice, compensation, support and restitution. A victim-sensitive system does not intend to take away the accused's right to a fair trial, a fundamental part of the criminal justice system. However, it aims to balance the rights of the accused and the victim, who have historically had unequal opportunities to participate.

Historical Neglect of Victims under the CRPC, 1973

The Code of Criminal Procedure, 1973, followed a similar structure to that of the colonial era and had little regard for the role of the victim. The victim would not have the right to make a private complaint or employ their own private lawyer to assist the public prosecutor (Section 302 CrPC). They could not actively participate in the investigation and would not be assured that they would be kept informed of the progress of their case. They would also not have an automatic right to compensation.

It was largely due to court action that there was a gradual recognition of the victim's rights. In Rattan Singh v. In the State of Punjab [2], it was expressed that there had been a neglect of victims of crime within the Indian criminal justice system and that there should be a greater focus on providing proper compensation. In Delhi Domestic Working Women's Forum v. Union of India [3], it was decided that there should be guidelines on how cases of rape should be dealt with. This included the victim having a right to legal aid and interim compensation. In Bodhisattwa Gautam v. The court [4] noted that the criminal courts have the power to award interim compensation to victims. This resulted in Section 357A being inserted into the CrPC (2008 amendment) to create a compensation scheme. Also, a proviso was inserted into Section 372 (2009 amendment), giving victims a legal right of appeal. Although there were some minor amendments, the overall structure of the CrPC was still largely centred around the accused. Therefore, the implementation of victim compensation schemes varied greatly between states. This issue was raised again by the Supreme Court in Ankush Shivaji Gaikwad v. State of Maharashtra [5].

Overview of the Bnss, 2023 and its Victim-Centric Philosophy

The BNSS was developed to provide an efficient, transparent, and tech-driven system to replace outdated criminal procedures from the colonial era. It aims to address longstanding issues such as slow court processes, large backlogs of cases [6], and a lack of forensic use. The BNSS also intentionally incorporates a number of provisions that were previously only judicial guidelines. This provides a firm legal basis for a variety of victim rights.

The Ministry of Home Affairs has stated that the BNSS demonstrates a clear victim-focused approach. They highlighted some of the provisions, such as Zero FIRs, victim information sharing, and ensuring that the victim is heard before prosecution can be discontinued [7].

Key Victim-Friendly Provisions under The Bnss

a. Right to Information and Access (Section 173)

Section 173 of the BNSS provides for the registration of First Information Reports. The victim/informant has a right to receive a free copy of the FIR. Serious crimes must be reported quickly and may be reported electronically. This provides the victim with a legal right, from the beginning of the criminal process, to be informed of the crime and to have written evidence that it has been officially reported. This prevents the crime from being dismissed or the victim from being unaware that any action has been taken.

b. The BNSS provides the concept of Zero FIR

A victim can report a crime to any police station. Once they receive the report, they have to register it and forward it to the police station with jurisdiction. Zero FIRs were recognised through executive orders prior to the implementation of the BNSS; however, putting the concept into law removes any confusion that a victim may have about the right to report a crime at the nearest police station. This is particularly important for victims who may not know about the jurisdiction rules or are unable to go to a police station a long way away after the crime has occurred.

c. Right to be Heard

This is a vital new provision under Section 360 of the BNSS. It ensures that the victim can make a statement prior to the discontinuation of proceedings by a public prosecutor. This will ensure that the victim gets to express their views. The prosecution can be discontinued with the consent of the court under the CrPC [8], but this does not always give the victim the opportunity to be heard. In some cases, the prosecution can be discontinued without properly taking into account the victim's right to continue with the prosecution. Section 360 of the BNSS provides a solution to this problem.

d. The Victim Compensation Scheme under Section 396

Section 396 of the BNSS has been amended and reintroduced. It was originally introduced under Section

357A of the CrPC. This section requires every State Government, in cooperation with the Central Government, to establish a scheme that provides financial assistance to victims or dependents who have suffered loss or injury as a result of a crime and require assistance. This provision also allows courts to recommend compensation where appropriate. If the wrongdoer cannot be identified or found, then the amount of compensation required can be decided by the District or State Legal Services Authority.

e. Statutory Witness Protection Scheme (Section 398)

The BNSS has provided a legal framework for a witness protection scheme under Section 398. Now, each State Government must draw up and disclose plans to protect witnesses. Previously, there was no witness protection scheme other than a model scheme drawn up in accordance with the Supreme Court's guidelines in Mahender Chawla v. The Union of India [9]. The Supreme Court approved the Witness Protection Scheme, 2018, and told all the States and Union Territories to follow it. Section 398 provides that this judicially required framework is now a legally binding law to increase the enforceability of this scheme and improve uniformity between states. This will be very important for victims and witnesses in cases related to organised crime, sexual offences, and crimes committed by those in positions of power.

f. Special Protections for Women and Child Victim

The BNSS provides and improves certain special provisions for women and child victims. They include providing that, where possible, the victim of a sexual offence must be interviewed by a female police officer or magistrate, and the use of an audio-video recording to reduce the distress caused to the victim by having to recount the incident more than once and ensure the accuracy and reliability of the evidence. The BNSS also ensures that victims of sexual offences are examined by a medical professional quickly and that offences against women and children are investigated within a set time frame. This is due to concerns over delays in justice being delivered.

g. Victim's Right to Appeal (Section 413)

Section 413 of the BNSS allows for an extension to the victim's statutory right to appeal. This was first introduced in the 2009 amendment to the CrPC. It allows victims to appeal against an order of acquittal, conviction on a lesser charge, and/or an unsatisfactory sentence. They will not require leave of the appellate court as they would if they were a complainant. This is still an important part of the process, as it ensures that the old way of not allowing victims to be involved in the appeal process is corrected. It allows the victim to be heard freely at the highest levels of the case.

Judicial Contribution to Victim-Centric Jurisprudence

It is important to note that many of the rules regarding victims in the BNSS were originally suggested by the courts. The decisions in Rattan Singh, Delhi Domestic Working Women's Forum, Bodhisattwa Gautam, Ankush Shivaji Gaikwad, and Mahender Chawla, as stated above, created a theoretical foundation for victim compensation and witness protection long before any action was taken by Parliament. Further, in Nipun Saxena v. The Supreme Court of India [10], victim protection has been increased by ensuring that rules are strictly followed to ensure that the identities of sexual offence victims remain confidential. This has been reflected in the confidentiality rules of the Bharatiya Nyaya Sanhita, 2023. Previously, in Nilabati Behera v. The State of Orissa [11], the right to compensation for the infringement of fundamental rights were recognised. This then provided a constitutional foundation for the systematic victim compensation system in Section 396 of the Bihar National Security Act. To a large extent, the BNSS can be seen as a law that has confirmed and brought together several judicial decisions over many years that have slowly developed to provide victim protection.

Comparative International Perspective

The victim-sensitive reforms included in the BNSS can be effectively compared to similar victim compensation frameworks in other common law countries, which have been tackling similar issues. The UK has an official compensation scheme run by the Criminal Injuries Compensation Authority, known as the Criminal Injuries Compensation Scheme. This is a centrally funded scheme where victims of violent crimes receive fixed compensation. This provides victims with consistent compensation, something that India's state-based compensation scheme has struggled to achieve. The United States introduced the Crime Victims Fund through the Victims of Crime Act 1984 [12]. This is largely funded through fines and penalties that are paid by federal offenders. It also requires victim impact statements to be taken into account when sentencing. This provides victims with a much greater opportunity to be heard than the limited right to be heard that they currently have under Section 360 of the BNSS. Comparative literature consistently shows that victims have more consistent outcomes from centrally funded compensation schemes with standardised criteria. The fact that India has different victim compensation schemes under Section 396 of the BNSS, set up by each State Government, shows there is a fundamental issue with its current policy. Studies looking at the UK and the US show that this issue could be better addressed by having a more centralised framework.

Empirical Assessment: Implementation Challenges In Practice

Recent legal commentary has focused on the practical application of victim compensation and victim participation in India. This has provided insight into how changes to the BNSS could be implemented. In their critical analysis of victim compensation schemes in India [13], Asha and Rajesh Kumar comment on the disparity between compensation amounts awarded in different states, the low usage of funds, and the lack of support for rehabilitation. This reduces the actual impact of the scheme despite its progressive legal framework. Similarly, a comparative study of the differences between compensation for victims in different states of India found that the disparity in application between states is in direct conflict with the constitutional principle of equality under Article 21. This suggests that there should be national guidelines for fair compensation [14].

In one of the first reviews of the victim focus within the BNSS, Satyam and Deo discuss the provisions for victims to have access to information (Section 173), be heard (Sections 360 and 18 [8]), and receive reparations and witness protection (Sections 396 and 398) [15]. They found that, whilst the BNSS provides a much more progressive legislative framework for victims than the CrPC, the success of the scheme will depend on investment in infrastructure, legal aid, and training. This is especially important because many marginalised victims will be digitally illiterate, and the investigation processes are still using outdated colonial methods. This is consistent with previous writings on Section 357A of the CrPC. As such, it is likely that these issues will continue to occur under the new law unless steps are taken to address them.The primary barrier to an effective victim-focused justice system in India is the lack of alignment between statutory and administrative processes.

Critical Analysis: Gaps between Law and Implementation

While the BNSS does provide victims with improved legal aid, there are some significant issues with effectively creating a victim-friendly system. Firstly, the victim compensation scheme (Section 396) is very similar to the previous scheme (Section 357A of the CrPC). This means that the amount of compensation given and how quickly it is given to victims will depend on the amount of money that the State Governments have available and how efficiently they operate. Therefore, compensation will vary a lot between different states across the country.

Secondly, the effectiveness of the right to be heard (Section 360) and the extent to which victims are involved in the process will depend heavily on victims having good legal aid and understanding their rights. Many victims, especially those from poorer or rural backgrounds, will not have enough knowledge of their rights. Furthermore, digital illiteracy presents an issue for victims wishing to take advantage of the e-FIR services and online case-tracking systems provided under the BNSS.

Thirdly, while the legal witness protection scheme (Section 398) is a positive step towards following the Mahender Chawla guidelines, it will require a substantial amount of money and effort to be properly implemented. This will include improvements to police facilities, safe havens for witnesses, and ensuring smooth cooperation between different states. This is particularly important because accused individuals may have a lot of power.

Lastly, courts and investigating agencies will require constant training and awareness sessions to properly implement the new law and ensure that victims have full rights to be involved. Otherwise, the new rules may not be properly implemented in practice.

The formal structure of the BNSS does not include civil society organisations and non-governmental victim support groups. These have traditionally been used to fill gaps in the State machinery, particularly in providing psychological counselling, shelter, and legal aid to victims of sexual and domestic violence. A better system would be in place if the BNSS framework recognised these organisations and worked together with them. Rather than leaving victim support to informal or random agreements between the State Legal Services Authorities and civil society groups (depending on what each individual district office decides to do), there should be a more structured approach.

Findings

Overall, it can be understood that the BNSS does more to bring together existing provisions than to introduce new ones. Most victim-focused provisions, such as the right to information, compensation, witness protection, and the right of appeal, were already in place in some form but had never been fully implemented through amendments, executive orders, or judicial directions. The BNSS sets out these provisions in a clear statutory manner. Many rights have now been brought into a statutory framework. The statute has been amended to include the right to a free copy of an FIR (Section 173), Zero FIR, the right to be heard before discontinuing the prosecution (Section 360), compensation (Section 396), witness protection (Section 398), and the right of appeal (Section 413). The right to be heard (Section 360) tackles an actual issue that was not covered by Section 321 of the CrPC. The judiciary played a key role in this. Key principles and ideas were set out in decisions made in Rattan Singh, Delhi Domestic Working Women's Forum, Bodhisattwa Gautam, Ankush Shivaji Gaikwad, Mahender Chawla, and Nilabati Behera. Overall, the BNSS is responsible for the ratification of case law.

The main issue is implementation. Reviewing existing literature shows that the main issue with creating a victim-focused justice system is that laws are not implemented. Compensation differs between states. Each state creates its own plan under Section 396, so there is no set national standard. However, the UK and the US have shown that central funding and clear rules on who qualifies will create more consistent outcomes. Awareness, legal aid, and digital access are not sufficient. Victims need to be aware of their rights and have legal aid and digital access in order to exercise the right to be heard, use e-FIR services, and access online tracking. This is not sufficient, particularly for those in vulnerable situations and those in rural areas. More support is needed for witness protection and improvements in how organisations and institutions operate. Section 398 requires police infrastructure, safe accommodation, and inter-state cooperation. Continuous training for the police, prosecution, and courts is required to move away from an accused-focused culture. Civil society organisations do not have an official role. Groups providing counselling, safe spaces, and legal aid are not included within the BNSS, meaning that support for victims is random.

Suggestions and Recommendations

- State Governments should be required to develop and publicly disclose strategies to assist victims and protect witnesses (Sections 396 and 398) within a set timeframe. The Central Government should ensure that these strategies are appropriately implemented to reduce discrepancies between states.
- Legal aid centres and support desks for victims should be established at each police station and court.This will ensure that victims, particularly those from disadvantaged backgrounds, are aware of their rights under the BNSS.

- All police officers, prosecutors, and judges should be required to complete uniform training on victim-focused processes.This will ensure that the laws are properly implemented.
- Digital complaint forms and case-tracking systems should be provided in local languages, along with user-friendly kiosks.This will assist those who are not technologically savvy.
- An independent audit should be conducted regularly to assess how effectively the victim compensation and witness protection programmes are being implemented. The findings from the audits should be provided to the State Legislatures and Parliament.

Research Methodology

The methodology used in this study is a doctrinal and analytical approach to legal research. This is supported by a literature review of recent empirical and doctrinal sources relating to victim compensation and victim participation in India. The primary sources used in this research are the text of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Code of Criminal Procedure, 1973, the Constitution of India, and significant case law from the Supreme Court of India relating to victims' rights, victim compensation, and witness protection. Secondary sources include official handbooks and circulars from the Ministry of Home Affairs and the Bureau of Police Research and Development, international instruments such as the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, and comparative legislation such as the Victims of Crime Act, 1984, from the United States. Additionally, recent peer-reviewed and student-written journal articles have been used to analyse the practical application of victim compensation in India.

The analysis of victims' rights under the CrPC and the BNSS, compared with those in the UK and the US, has been conducted using a qualitative descriptive analysis. This is due to the study's focus on rules and principles. The paper references issues with the application of victim compensation, such as differing compensation amounts between states and a lack of awareness among victims. However, this study does not use any original data from the author. Therefore, some limitations can be identified. As the study uses secondary and legal sources, it does not contain primary data such as victim surveys, compensation data from different states, or interviews with police and prosecution officers. This could be used for further research on this topic.

Conclusion

The Bharatiya Nagarik Suraksha Sanhita, 2023, is a well-conceived and welcomed piece of legislation that provides victims with a more prominent role within the criminal justice system of India. The BNSS makes explicit the pre-existing rights, which had previously only been provided for in individual amendments or case law, providing victims with a more robust, clear, and concise set of rights. These include the right to information, participation, protection, and compensation. However, this paper illustrates that although well-intentioned, legislative reform is only the beginning of creating a truly victim-friendly criminal justice system. How successfully the BNSS can achieve this goal depends on how uniformly, sensitively, and efficiently Sections 173, 360, 396, 398, and 413 can be implemented by police officers, prosecutors, legal aid providers, and courts. Consistent institutional investment, victim awareness, and administrative responsibility remain crucial in achieving the aim of a victim-centric criminal justice system.

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