New Laws in India – A ray of Hope for Victims of Crime

Professor Beulah Shekhar & Sajith Mohammed Salem

Director Prism Research & Development Tamil Nadu INDIA

India as a country has travelled a long way from the MDGs & now the SDGs





While significant strides have been made in promoting a victim-centric approach in India's criminal justice system,

> challenges remain in translating legal provisions into meaningful action on the ground

Issues such as underreporting of crimes, institutional barriers to access justice

social stigma surrounding victims continue to impede progress towards achieving comprehensive victim rights & support Based on rule of law the CJS was rooted in a blend of colonial legacy & indigenous legal traditions,

the focus of the CJS was primarily on the prosecution & punishment of offenders, with limited attention given to the needs & rights of victims The Indian Penal Code (IPC), enacted in 1860 during British colonial rule, defined various offenses & prescribed corresponding penalties

BACKGROUND The CJS follows the adversarial system. India's legal framework comprises of statutes, regulations, & judicial precedents governing criminal conduct & its outcome

Complementing the IPC were specialized laws addressing specific forms of criminal conduct, such as the Code of Criminal Procedure (CrPC) the Indian Evidence Act, & special legislations & statutes dealing with offenses against women, children, & marginalized communities

The New Criminal Laws in India

India recently implemented a significant overhaul of its CJS with the introduction of three new laws

The new criminal laws have focused more on the victim's rights & is in line with standards set by the UN declaration on Basic Principles of Justice to Victims of Crime & Abuse of Power, 1985

The new laws aim to make the CJS more victim-centric, accountable, & efficient while prioritizing crimes against women, children, & the state

These laws, which will come into effect on July 1, 2024

Three new laws , BNS, BNSS, BSA –

many changes all of us need to do our homework to keep abreast BNS, IPC 511 sections reduced to 358, 21 new provisions 82 penalty, 6 sections community service, terrorism is defined 19 proclaimed perpetrators

<u>New laws</u> Hopefully increase the conviction rates and render victim justice

BNSS CrPc 484 increased to 531, 44 new provisions, 9, laws 39 subsection

POSCO, DV, POSH, PofO, JJ, LSA MV, SC/ST Acts



Accusatorial system

vis-à-vis Inquisitorial System

Accusatorial system vis-à-vis Inquisitorial System

Countrywide distribution of Crime

Crime in top ten countries



Adversarial

The role of public prosecutors may differ depending on the legal tradition adopted in a particular country.

Common law countries use an adversarial system to determine facts in the adjudication process.

The prosecution & defence compete against each other, & the judge serves as a referee to ensure fairness to the accused, & that the legal rules criminal procedure followed.

The AS proof required for conviction is proof is beyond reasonable doubt.

Inquisitorial

The IS is associated with civil law legal systems, & it has existed for many centuries.

It is characterized by extensive pre-trial investigation & interrogations with the objective to avoid bringing an innocent person to trial.

The IS process can be described as an official inquiry to ascertain the truth,

Clear & convincing proof is sufficient for conviction

 The IS emphasis on judicial inquiry promotes a collaborative approach between legal authorities & victims throughout the judicial process.
 Malsch, 2016
 For instance, victims are often granted opportunities to provide testimonies, express their concerns, & seek redress directly from the judge. This participatory framework not only empowers victims by amplifying their voices but also fosters a sense of validation &

Mai et al. 201

The IS's commitment to procedural fairness & truth-seeking aligns seamlessly with the goal of prioritizing victims' interests. It minimizes the SV of victims during trial . Through a more collaborative & transparent approach to fact-finding, IS instills a sense of trust thereby enhancing victims' confidence in seeking recourse for the harm they



igodol

The IS grants more power to the judge who oversees the process

The Criminal Justice System, Not only in India & in USA but the world over has its basis in the Common law system Blackstone's formulation Archaic Legal **English Legal** Maxim System

An Australian Justice Russell Fox who researched the law for 11 years after he retired 'Justice means fairness, fairness means truth, truth means reality,

and the search for truth

gives a legal system its

moral dimension,

otherwise,

the likely winner will be the

one with the most money

& the cleverest lawyers'

And because our system does not try to find the truth, it does not tick any of those Justice Fox's boxes

a Roman doctrine that

states.....

"it was better to let the crime of a guilty person go unpunished than to condemn the innocent."

An English jurist William

Blackstone...

"It is better that ten guilty

persons escape than that

one innocent suffer"

When rephrased....

A hundred accused can go free but one innocent man should not be punished A hundred victims can be denied justice but one alleged offender should not be denied justice



An anecdote

A law professor, who was listening to an English lawyer explain

that the English were so enlightened, they believed it was better that ninety-nine guilty men go free than that one innocent man be executed.

The professor thought for a second & asked, "Better for whom?" Blackst one

> It is better that ten guilty persons escape than that one innocent suffer

Offenders going scot free Impunity No deterrence No justice for victims

Precaution

overcaution

Leads to

Jeremy Bentham...

> We must be on guard against those sentimental exaggerations that tend to give crime impunity, under the pretext of ensuring the safety of the innocent

Justice Cardozo Of the US Supreme Court Justice, though due to accused, is due to accuser also

The concept of fairness must not be strained till it is narrowed to a filament

We are to keep the

balance true

The social responsibility of the CJS in not only the length of the prison term to the accused but also the reparation to the VICTIM

Victimology must find fulfillment ... not through barbarity not by giving more pain to the perpetrator but by lessening the loss of the VICTIM



Victim rights vis-à-vis

Offender rights



What is the sequence of events in the criminal justice system?



Victim hold the key- Gate keeper of the CJS- the VIP



If not for the victim the CJS in all its glory will cease to be functional

International Crime Victimization Survey illustrates this & has reported that large no. of crimes go unreported for various reasons

Increase in the DARK FIGURES OF CRIME – not captured in the NCRB or in the crime statistics of the country

HOW & WHY	REALITY	IDEAL
Vision	Punishment for the offender	Reparation for the victim
Definition of crime	Violation of a law	An injury which violates the victims
Definition of justice	Process or the right rules	Victim satisfaction
Outcome	Punishment / Restitution / compensation	All including an Apology
Understanding of the crime	In purely legal terms.	The impact of the victimization (physical, material, psychological, economical)
Role of the offender	Passive & depends on the proxy professionals.	Is minimal, prosecution witness 1
Closure	Acquittal or conviction	Finding the wrong doer
In a nutshell the focus is Justice system	On the past On pain inflicted on the offender On process	On the future On the victim & the community On what the community will gain from this experience
	Retributive system	Restorative justice

Thrown the baby out with the bath water ???!!



Crime victims should behave like good Victorian children seen but not heard. Opinion of Judge Kozinsky, in Kenna v. U.S. District Court (9th Circuit 2008)



Justice Krishna lyer	 Victims Are The Cinderella Of The CJS in India
Justice Malimath, Chair Committee for reforms in the CJS	 The CJS In India Favors The Accused
Haight, Chair of the President's Task Force on Victims of Crime	 The CJS treatment of crime victims in USA was a national disgrace'

1. The right to be <u>REASONABLY</u> protected from the accused.

 The right to <u>REASONABLE</u>, accurate, & timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.

3. The right not to be excluded from any such public court proceeding, unless the court, after receiving <u>CLEAR & CONVINCING</u> evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

4. The right to be <u>REASONABLY</u> heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.

5. The <u>REASONABLE</u> right to confer with the attorney for the Government in the case.

6. The right to full & timely restitution as provided in law.

7. The right to proceedings free from <u>UNREASONABLE</u> delay.

8. The right to be treated with fairness & with respect for the victim's dignity & privacy.

9. The right to enforce the above rights.

Offender has
Absolute
/affirmative
Rights
Miranda
rights

D.K Basu or 11 commandments

should bear accurate, visible & clear identification & name tags with their You have the right designations. to remain silent. shall prepare a memo of arrest which shall be attested by at least one witness, Locked up shall be entitled to have one friend/relative/other person Anything you say known to him The time, place of arrest must be notified e next friend or relative of the can & will be used against you in a The person arrested must be made store of his right to have someone court of law. informed of his arrest or detention as soon as he is put under arrest or is An entry must be made in the diary You have the right to an attorney. should, where he so request examined major & minor injuries should be subjected to medical If you cannot Copies, should be sent to the Magistrate for his record. afford an attorney, one will The arrestee may be permitted to meet his lawyer be appointed for A police control room should be where information regarding the arrest & vou the place of custody of the arrestee

Victims rights

vis-à-vis

enforceable rights 1. The right to be <u>REASONABLY</u> protected from the accused.

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9. The right to enforce the above rights.


The crime victim

the crime victim's lawful representative

the attorney for the Government

Assertion of rights under CVRA by 3 people



Crime victims have rights at intermittent stages of the criminal process. The victim's role is that of 'participant'.

Victims as participants who receive notice, have the opportunity to speak, & defend their interests at various pre-and post- trial phases of the process.

But, if God forbid, his rights are denied, then he dives right in, hook, line & sinker - to enforce his/ her rights in the appellate courts & moves from being just a participant in the process to a full-fledged party in an independent civil writ proceeding.

The civil writ proceeding is used to force government officials, including judges, to comply with the CVRA

Why pinch the baby & rock the cradle ?

Why should the victim enforce his rights through these writs ?

Why equate the victim with the offender ?

Habeas corpus & other such writs are for the protection of the offender & he has broken the law

But why should the

Once

again

approach

the courts

once more

for justice

?

This is another form of secondary victimisati on Why cant there be a mechanism by which the state monitors it & enforces it



Informal justice system to private prosecution to public prosecution to victim attorneys

ownership of the harm suffered by the victim taken away from the victim

Victim was swallowed by the private prosecutor Private prosecutor was swallowed by the public prosecutor

Now the public prosecutor is swallowed by the victim lawyer Hapless victim and the happy victim lawyers



Victim assistance

vis-à-vis

crime prevention

NO	TITLE OF THE STUDY	YEA	ΤΥΡΕ	UNIVERSE	SAMPLE
1	Victims of the system	R 201 1	Empirical	Previously victimised Prisoners	194
2	Peer or sibling abuse victimization among adolescents	201 2	Empirical	in PCP 272 Govt schools in T dist. 19 schools	456
<u>3</u>	Crime as the cause of crime	<u>201</u> 2	<u>Theoretic</u> <u>al</u>		
4	Victimization Survey in the Prison - the Victim Turned Offender	201 5	Empirical	Prisoners in PCP	337
<u>5</u>	Victim assistance and crime prevention are two sides of the same coin	<u>201</u> 5	<u>Theoretic</u> <u>al</u>		
6	Victimization as a Cause of Crime	201 5	Empirical	Prisoners in PCP	227
7	Victimization Survey among Adolescents of Three Districts in Tamil Nadu	201 6	Empirical	Govt. schools in 3 southern districts of TN	249 boys 279 girls 528
8	Victimization survey in in eight central Prisons in Tamil Nadu	201 7	Empirical	Prisoners in 8 prisons 12000	2010
9	A comparative study of the victimisation	201	Empirical	JCLs and non JCLs	45 each

E

N YEAR

FINDINGS

- 1 2011 Strong indication that there might be an association between type of crime and type of victimization.
- 2 2012 324 (71%) out of the 456 victimized by peer or siblings. Only 132 (29%) reported no victimization by peer or sibling.
- <u>3</u> 2012 Crime does not happen in a vacuum (Hentig, 1948) Crime is the outcome of a process.Crime is not an action but a reaction to external and environmental stimuli. Some of these stimuli emanate from the victim. (Fattah, 1999)

from the victimisation

4 2015 78.5% said that the previous victimization and related anger and frustration had led them to commit a crime.

82.2% opined that if the previous victimization had not occurred this crime not have been

- <u>5</u> 2013 Delhi rape and the involvement of a juvenile and the troubled histories of the juvenile accused
 - <u>2015</u> Timely victim assistance could have helped in reconciliation and It demolished the myth that young people are either 'hoodies' or goodies' as many clearly have experiences of being both.
- 6 2015 The findings showed that physical abuse in childhood increases the propensity to commit criminal violence later in life. Secondly the degree of victimization is related to the seriousness of the offence.
- 7 2016 469 out of 528 adolescents had experienced victimization at least once in their life time
- 8 2017 There was significant childhood victimization due to the five categories of peer, sexual, witnessing of violence, property or personal crimes among the prisoners in the Tamil Nadu Central Prisons.
- 9 2018 There is a difference between juvenile & non juvenile in conflict with kaw group in their victimization.

There is difference between the groups with regard in witness of violence. There is difference the victimization of the juvenile & non juvenile with regard to physical abuse.

International Perspectives in Victimology, The Press at California State University, Fresno, CA 93740-8024, USA,

The Indian Police Journal October-December, 2015 | Vol. LXII | No. 3

Chapter in book Dimensions of Violations & Victimization, ed. Page-395-406, ISBN No: 978-93-81402-27-6 PAGE 147 Publication Division, Manonmaniam Sundaranar University November 2012 Presentations Stockholm Criminology Symposium at City Conference Centre in Stockholm, Sweden

<u>Three presentations 2012. 2015. 2019</u> Chapter in a Book Criminology & Victimology – Though the looking glass University Publication, Manonmaniam Sundaranar University, Tirunelveli. Tamil Nadu, January, 2019

Project Funded by the ICSSR Indian council of Social Science Research New Delhi India

Chapter in a book- Global perspectives of Victimology & Criminology – Yesterday, Today & Tomorrow by Bloomsbury April 2020 These studies reveal that a large proportion of the prison inmates have experienced **some sort of childhood victimization that has not been reconciled with that might have contributed to their offending behavior**

These victims are <u>'COGNIZABLE_OFFENDERS'</u>, which means that they are potential, perceptible or clearly identifiable offenders

In order to assist these offenders and prevent recidivism, a program that delves into their past and addressees their past victimization help rehabilitate people with this what is called 'OFFENCE DEPENDENCY'

VICTIM TURNED OFFENDER

Hans Von Hentigs "tormentor," was a victim of attack from the target of his abuse

3 case studies illustrate how the victimization experienced by the partner is expressed through the criminal act against the spouse Provoked ... R v Ahluwalia,1993 redefining provocation & diminished responsibility in cases of battered women in the UK.

The Lorena Bobbit case of 1994 demonstrated how intense & continuous physical & emotional abuse drove a woman to the extreme violent act of severing the perpetrator's sex organ

In rural India where the wife resorted to the same violent act subsequent to physical & emotional torture & marital rape by the husband (Express News Service, 2009). Shekhar (2012) proposed a point of view in the aetiology of criminal behaviour, stating that victimization could also be a

cause of crime.



proposed that this be included as one of the factors

influencing the volume & type of crime in the Uniform Crime

Report of the Federal Bureau of Investigations.



Khalil Gibran

On Crime &

Punishment

The guilty is often times the vict And you who would understand just unless you look upon all deeds in t You cannot separate the just from good from the wicl For they stand together before the as the black thread & the white a And when the black thread break look into the whole cloth, & he sha

also.

So, the mantra for crime prevention is ..





Criminal Justice System

vis-à-vis

Victim Justice system





Europe - the council directive deals with compensation to crime victims



Canada - a judge concluded that "the legislature did not intend for the Victims' Bill of Rights to provide rights to the victims of crime. As the rights included in the Bill of Rights did not include an enforcement mechanism & therefore they cannot be considered rights. (Shekhar & Wemmers, 2013)



England & Wales- the system show that inclusion of victim rights is still at its infancy &rather than opening up the whole criminal process for enquiry the interests of victims have been stuck on – a sticking plaster over a system designed for a totally different purpose. (Shekhar & Williams, 2014)



Australia- until recently, no jurisdiction has provided penalties for non-compliance with victim rights by a public officer though there is an administrative charter "a form of quasi-legislation embodying rules which are not directly enforceable in civil or criminal proceedings (Brienen & Hoegen, 2000)



South Africa - many rites protected under section 31(1) of the constitution of South Africa, stipulates that any person belonging to a cultural, religious or linguistic community may not be denied the right, to enjoy their culture, practice their religion thus increasing the vulnerability of hapless victims. (James, 2014)



Hungary -a certificate from the police that is needed to initiate any Victim support or services, which is not issued routinely but only on dem&& there are a majority of lawyers & very few psychologists in all of the twenty offices, thus this service lacks the the most needed humane approach &a human face (Shekhar, B.,2013)



Indonesia -crime victims remain as faceless parties, whose rights are not legally protected &stipulated in the law. (Harkrisnowo, 2008) Review of the victims' situations to date demonstrate a clear need for a mechanism that is not dependent on the decision of courts, but is specifically designed **for &with** victims, &has the backing of the legislative &executive branches. (Indonesias, Obligations to Provide Reparation 2011)



Japan - though a new law includes services for victims, restitution information & a right to participation. (Dussich 2000) Nevertheless, a recent study shows that societal response & the sigma of the victims of sex crimes are still a challenge leading to non reporting. The victim may not file a report with the police but visit a medical facility, hence medical staff play a vital role in helping the victim's recovery by carefully responding to the victim's needs (Ogasawara, 2011



USA - Rights enforceable rights crime Victims Acts



Justice isn't

served until

till crime

victims are

John Scarr...

'is this a Criminal <u>Justice</u> System or

A <u>Criminal</u> Justice System' Reiman, 1979





....or whether the Pyrrhic defeat theory (like the pyrrhic victory) maybe used

.....to explain the persistence of the failing CJS

 -since those who have power to change the system, actually benefit from the way it operates !

...to determine how a CJS that

neither protects society

nor achieves justice is still functioning

.....and lastly,

• who is benefiting from the failure ?

 Are the offenders & their associates the beneficiaries of the current system ? Is it the underlying principle of the system ?

Or our interpretation of these systems ?

So, where lies the challenge ?

inability to prioritize ?

Lack of readiness to dispense holistic justice to the victim TEN Guiding principles of Parallel Justice. (Herman, 2010) or Victim Justice System

Justice requires helping victims of crime rebuild their lives

All victims deserve justice

All victims should be presumed credible unless there is reason to believe otherwise

Victims' safety should be a top priority

Victims should experience no further harm

Victims' rights should be implemented & enforced

Victims should have opportunities to talk about their experiences & their needs.

Victims should be told that what happened to them was wrong, & that every effort will be made to help them rebuild their lives

Victims' needs should be addressed through a comprehensive, coordinated communal response

Decisions about how to address victims' needs should be based on sound information & research

The NGO Human Rights Watch (HRW) -A CJS based on human rights standards can safeguard the rights of both the victim & the offender





- Access to Justice
- Fair treatment
- Restitution
- Compensation
- Assistance



- System **Criminal Justice**
- Continues to get his rights
 but not at the cost of the victim rights....





Our Indian Constitution has few provisions which when interpreted pave way for victim protection, their rights & recognises the principle of victim compensation

Article 14 & Article 21, which contain important fundamental rights

to be read with directive principles of state polices contained in Articles 39A, 41, 46, & 51C

Article 21 ensures life with dignity, right to legal aid

fair trial, as a part of inalienable right to life & personal liberty
Role of the Apex court & Pubic spirited organizations

It <u>was</u> refreshing to note that despite the fact that no laws specifically for victims of crime have been enacted in India, victim justice has been rendered through the proactive action of the apex court & ensuing judgments (Shekhar & Wemmers, 2012).

It came as a surprise to many when the first official estimate showed - that there was a CSO/NPO/NGO for every 400 people in India

PUBLIC INTEREST LITIGATION - 1981 when the apex court open the issue of locus standi in PIL in favour of the citizen allowed a stranger to a cause, be he a journalist, social worker, advocate or an association of such persons initiate action before this court

Increasing their access to justice provide victim assistance in India in the absence of their interests or legislations that could ensure their rights.

One such significant milestone was the enactment of the Criminal Law (Amendment) Act, 2013, in response to the widespread public outcry following the heinous gang rape & murder of a young woman in Delhi in December 2012

introduced several provisions aimed at strengthening the protection & support for victims of sexual offenses, including expanded definitions of sexual offenses

enhanced penalties for perpetrators, & measures to expedite trials & improve victim assistance services

mandated the establishment of special courts & designated public prosecutors to handle cases of sexual violence, with a focus on expeditious & sensitive adjudication



Objectives

evaluates the efficacy & implications of these reforms in critically empowering victims, ensuring their access to justice, & addressing the systemic challenges inherent in the criminal justice process

contends that significant strides have been made towards a victimcentric CJS in India & calls for sustained efforts from lawmakers, legal practitioners, & civil society stakeholders to ensure the effective implementation of victim-centric laws & the realization of justice for all

the impact of the three new laws on victim's rights & well-being by addressing the improved access to justice & support services &

• empowerment through Legal Reforms



1.Compassion & respect

Define Victim appears in the statues

Anonymity -Two year imprisonment for revealing the identity of the sexual assault victims

Access to Justice -EFIR/Zero FIR, registration in a time bound manner

In absentia trial -for victim justice if the accused does not appear 90 days

Information - about case FIR, Charge sheet

Use Forensics & Technology –videography , to ensure a fair trail & avoid missing documents

Compassion – Trauma is avoided by recording the statement in the comfort of the victims home

POCSO 2012 Right to Privacy & Dignity (s. 23 & 24)

Justice delayed is justice denied timeline for FIR Police officers, Magistrate , Medical officer

Timeline even for the appeal for pardon President 60 days & the Governor 30 days & no extension

Automatic bail if served half your maximum sentence

Victims of property crimes also get some solace , power to confiscate / seize property of abscondiong perpetrators

Encourage assistance to victims of MV 10 years for Hit & Run 10 years

Enhanced punishment 10 years for rape 20 years for minor & death penalty for gang rape, mob lynching

2.Right to information

Transition from being a mere PW1 PW2 to a real person in the statute

Information about the stage of the investigation

Copy of the FIR, charge sheet

Information when prisoners are out bail or parole to safeguard victims

Fine for wrongful arrest is a mere 1000 rupees which needs relooking into

Delay in the prosecution sanction, rejection or permission 120 days the public servant will be prosecuted

Information about assistance available AWPS/ OSC social worker, legal aid, medical assistance financial assistance

3.Present their views to the court

Victim's advocate, submit written argents to the court after evidence is presented Victim impact statement

Judge can call for the comments of Amicus curae

POCSO Victim participation in terms of bail

Vulnerable victim/witness deposition center 2 in every HC jurisdiction

Admissibility of electronic or digital records /chips as will have the same legal effect as paper evidence

Oral evidence statements made by witnesses & victims before the courts to the fact under enquiry . Any evidence given electronically to be considered as oral evidence

Secondary evidence will include Oral & written admissions testimony of a person who has examined the document & is skilled in the examination of documents

FS court accept their reports , judge can ask for Signature & handwriting, finger prints & voice analyses a not only persons in custody anybody the magistrate wants reasons recorded

Challenge only genuineness of document or the expert onion , no longer open to the court, unless it is challenged by one of the parties .

Plea Bargaining ensures the victims the right to participate y in the bargaining process either alone or through the Advocate

4.Free legal aid / advice

Automatic bail after serving half the sentence

Legal aid at the state expense One stop centers

Views about impact of victimization from the Amicus curiae

Victim advocate to aid the public prosecutor

Victims of crime & victims abuse of power through wrongful arrest

5. Protection of privacy & physical safety

All Women Police Station offering the assistance required, social worker, lawyer Counselor, doctor, CSR funds made available

Mobile police units that register FIR in remote villages

Witness protection in sensitive case

Trials in electronic mode trails, inquiry & proceedings

the establishment of at least two vulnerable witness deposition centres under every HC 's jurisdiction

Bail tightened To avoid intimidation prisoners sentence to death Pending enquiry, more than one offence or multiple offences . shall not n released on bail

Information from prison authorities to victims about release on parole, bail to ensure their safety

Separate waiting areas in courts, separate entrances, cameras in victims house, monitoring their phones to avoid threats

6.Informal dispute resolution

Restorative justice where the focus is not on the pain caused to the perpetrator like the retributive justice system but the gain to the victim

Need based resolution, punishment ? Conviction ? Apology ? Why ?

In India, ADR is emerging as a alternative & a type of dispute resolution with a legal basis

- Arbitration
- Negotiation
- Mediation
- Conciliation
- Lok Adalat

Community service for petty crime like theft

7. Social & medical assistance

Child Protection units Child Care Institutions

Mahila Police Stations – volunteers

One STOP Centres under Nirabhaya Fund

For women below poverty line provisions Ujjawala Scheme More order less law Probation of Offender Act 1958 Right to compensatory redress to victims of crime

Legal Services Authority Act 1987 Right to free legal aid for specific victims

The Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act 1989 Mandatory right to compensation

Motor Vehicle Act 1988 Right to Compensation of accidents victims

Juvenile Justice (Care & Protection of Children) Act 2015 to assistance

POCSO 2012 Right to receive just & reasonable medical expenses & rehabilitation by the victims of penetrative assault) Right to Privacy & Dignity Victim Participation in matters of Bail

POWDV Act 2005 Right to obtain a protection order or an order of monetary relief, custody order, residence order, compensation order

<u>8.Restitution</u> (by the perpetrator)

Fines that would cover the medical expenses of the victims

Speedy disbursal of this fine is underway

Judges , even district judges have limitless power to order the perpetrator to compensate

DLSA /SLSA mechanism to asses & recommend fine that goes to the victim Compensation for victims of crime

After disposition of the case the court shall award compensation DLSA/SLSA in place

NALSA's Compensation Scheme for Women Victims/ Survivors of Sexual Assault/other Crimes 2018

Central Victim Compensation Fund Scheme 2015

Nirbhaya Fund 2013

Protection of Children from Sexual Offences Act 2012

Right to receive just & reasonable medical expenses & rehabilitation by the victims of penetrative assault

10. Capacity building & cooperation

Witness protection scheme in sensitive case

Training of the Criminal Justice Professionals & the paraprofessionals

The SC in 2017, ordered for the immediate establishment of at least two vulnerable witness deposition centres under every HC's jurisdiction.

Prosecution, police & the victim need to work in unison to strengthen the case like we have partners in crime, three need to be partners in their quest for justice if they need a conviction



Bharatiya Nyaya Sanhita the BNS replaces the Indian Penal Code (IPC), a code dating back to British colonial rule. The BNS is expected to modernize criminal offenses & penalties. The key features of the BNS are as under:

Introduces 20 new offences like organized crime, terrorist act, mob lynching, & publishing fake news

Removes the offence of sedition but adds a new on acts endangering sovereignty, unity, & integrity of India

Increases punishment for 33 offences & enhances fines for 83 offences

Introduces community service as punishment for petty offences like theft under ₹5,000

Adds new chapters on offences against women/children & inchoate offences (attempt, abetment, conspiracy)

Widens definitions of child, gender, movable property, & document to include digital/electronic forms

Bharatiya Nagarik Suraksha Sanhita the BNSS replaces the Code of Criminal Procedure (CrPC), which outlines legal procedures for investigations, arrests, trials, & detention. The BNSS is expected to streamline procedures & potentially expedite the justice process.The key features of BNSS are as under:

Mandates registration of FIR within 3 days for lesser offences & 14 days for graver crimes

Victims must be informed about case progress within 90 days & fortnightly during trial

Victim's consent mandatory before withdrawing a case

Provision for victim compensation

Accused must be produced before court within 24 hours of arrest

The new laws prioritize crimes against women & children, a departure from the previous laws that emphasized offenses like treason & treasury offenses. Some notable victim-centric features include:

Mandatory registration of FIR within 3 days for lesser offenses & 14 days for graver crimes. Victims have the right to obtain a free copy of the FIR

Compulsory audio-video recording of victim statements in sexual assault cases

Victims must be informed about case progress within 90 days & fortnightly updates during trial via SMS/electronic modes

Victim's consent is mandatory before withdrawing a case

Provision for compensation to victims for damages

The BNSS might empower victims by

<u>Speedy Justice</u>: Streamlined procedures under the BNSS could lead to faster case resolutions. This could reduce the emotional & financial burden on victims who often face lengthy delays in the current system.

<u>Witness Protection</u>: The BNSS introduce stronger witness protection measures. This could encourage victims to come forward & testify without fear of intimidation, empowering them to seek justice.

<u>Streamlined Procedures</u>: The BNSS's aim to expedite the justice process could significantly benefit victims. Faster resolution of cases could reduce the emotional & financial strain often associated with prolonged legal battles.

The new laws & forensic evidences

BNSS's goals is the application of technology & forensic sciences to the CJS The primary laws pertaining to the use of forensic evidence

A new requirement for the investigation process is outlined as the gathering of forensic evidence from crime sites by a forensic expert. It broadens the range of forensic samples that can be obtained from any individual with a magistrate's order. BNSS maintains the exemption for specific government scientific experts from testifying in court, in accordance with A new proviso on when formal evidence of documents is not necessary is added to This clause prohibits bringing any experts before the court unless the parties contest the veracity of their report.

This focus on forensic evidence will lead to lessening of delays in submission of forensic reports, thereby reducing the pendency & quicker disposals by courts, directly helping the victims reach justice.

Bhartiya Sakshya Adhiniyam The BSA replaces the Indian Evidence Act, which governs the admissibility of evidence in court. The BSA may introduce new rules regarding digital & scientific evidence. The key features of BSA are as under:

Mandates audio-video recording of victim statements in sexual assault cases

Allows virtual court appearances for witnesses, victims, & experts

Requires medical reports in sexual assault cases within 7 days

Mandates judgments within 45 days of trial conclusion in criminal cases

The BSA could empower victims by:

<u>Strengthening Witness Testimony</u>: New rules regarding the admissibility of certain types of evidence, such as electronic communication or forensic analysis, could strengthen victim testimonies & make prosecutions more successful. This could empower victims to feel their voices are heard & hold perpetrators accountable

Improved Evidence Admissibility: The BSA's potential introduction of new rules for digital & scientific evidence could benefit victims by allowing for a wider range of evidence to be presented in court. This could be crucial in cases where traditional forms of evidence, such as eyewitness testimony, are unavailable

Victim Compensation & Support

Provision for compensating victims for damages & injuries suffered

Allows for engagement of victim support persons to aid during investigation & trial

The new laws & a strong move towards Therapeutic Jurisprudence

By empowering victims, ensuring fair process, & considering their well-being, the system aims to promote healing & restoration for all parties involved

Therapeutic Jurisprudence examines how legal rules, procedures, & roles can be reshaped to enhance their therapeutic potential while upholding due process principles.

It recognizes the law's impact on emotional & psychological well-being. They advocate for a more holistic, problem-solving approach to justice that considers the emotional & relational aspects of conflicts & crimes, rather than solely punitive measures (Shekhar et al, 2022)

The focus of the new laws on healing of the victims, their participation, due restitution, proper compensation, the consideration of their well-being aiming at rehabilitation & restoration, the fairness of the process itself, fostering trust & sense of being heard for victims & at last, the empowerment of victims resulting in feeling of some control over their experience are all based on the principles of therapeutic jurisprudence.

To aligns with therapeutic jurisprudence's focus on victim empowerment & contributes to their healing process. Compensation helps victims recover from financial losses & medical expenses, reducing their burden & promoting a sense of restoration. This also aligns with therapeutic jurisprudence's principle of considering the victim's well-being

There is still much work to be done to ensure that victims receive the support & assistance they need. Continued efforts to strengthen victim rights, improve access to justice, & promote therapeutic jurisprudence principles are essential for building a more fair & compassionate CJS in India

Expedited Justice Delivery To ensure speedy justice, the new laws mandate:

Medical reports in sexual assault cases within 7 days

Judgments within 45 days of trial conclusion in criminal cases

Videography during search & seizure operations in the presence of neutral witnesses

Accused must be produced before court within 24 hours of arrest

Enhanced Accountability mandating transparency, accountability, & aligning with international norms, the new laws aim to prevent abuse of power & uphold civil liberties.

BNSS mandates registration of FIR within 3 days for lesser offenses & 14 days for graver crimes

BNSS requires police to maintain public registers of detentions & arrests

Under BNSS, the accused must be produced before a court within 24 hours of arrest. This safeguards against illegal detention

BNSS mandates videography of search & seizure operations in the presence of neutral witnesses

BNS introduces the offense of dishonest misappropriation of property to check misuse

BNS has a new provision to punish public servants for misconduct & abuse of power

BSA requires courts to take judicial notice of international treaties & conventions ratified by India to ensure global human rights standards.

BSA prohibits courts from requiring production of communications between Ministers & the President, protecting confidentiality

BSA expands the grounds for invalidating confessions by the accused to include "coercion," preventing forced admissions

Impact on Victims' Rights & Well-being

The new criminal laws have the potential to significantly impact victims' rights & well-being

The improved access to justice & support services as well as empowering the victims through legal reforms are two main mandates of the new criminal laws Improved Access to Justice & Support Services The new laws might indirectly improve access to justice & support services for victims through

Increased Focus on Victims

: The very enactment of these laws signifies a shift in focus towards victim-centric justice.

This could lead to increased government allocation of resources for victim support services, such as counselling, legal aid, & financial assistance

<u>Efficient System</u>: A more streamlined system under the BNSS could free up resources within the legal system

This could allow for better case management & potentially lead to more efficient victim support programs

Empowerment Through Legal Reforms The BNS could potentially empower victims by:

<u>Expanding Victim Definitions</u>: The BNS might broaden the legal definition of "victim" to encompass not just those directly harmed but also those who suffer secondary consequences (e.g., families of murder victims). This could extend rights & support services to a wider range of individuals.

<u>Victim Participation</u>: The BNS may introduce provisions for victim participation in the legal process. This could involve allowing victims to submit statements, request specific investigations, or even be consulted during plea negotiations.

<u>Modernized Offenses & Penalties</u>: The BNS's focus on updating criminal offenses could potentially include provisions that specifically address harm to victims. This could include creating new categories of crimes or harsher penalties for offenses that cause significant physical or psychological trauma



Way forward - if we want to make this a reality & not a mere rhetoric, for the victims of crime in India dire need to work with the world society of victimology

Review the implementations periodically, laws in line within the basic articles law of committee

To keep a tab on the efficiency of the CJS & not let the thirst for speedy justice become a mockery of justice

Infrastructure needs to be strengthened, manpower needs to be recruited

Task forces to asses the hiccups & suggests changes

Tune our new laws with the underlying law of the land , the constitution its principles

Tweak the laws if needed to fall in line with articles like 14,19,20, 21 of the constitution

Manpower recruitment to ensure the justice delivery

Training of all the CJS professionals, FSL staff, NFSU has already started the excursive para professionals , judges lawyers in the newances of the laws for

Checks & balances with powers to arrest used with discretion & a distinction needs to made between the power to arrest & the need to arrest

Amendments in the lapses pointed out already, like clarity about the 15 days police custody clause

Strengthening the network connectivity so all can avail of the efiling facilities to make this a reality

Comprehensive victim legislation with provisions to ensure enforceable rights to victims



