

● PROTECTION TO VICTIMS OF CRIME AND WITNESSES IN NEW CRIMINAL LAWS: A COMPARATIVE STUDY



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Abstract

Victim of crime has got significant place in new criminal laws which the Parliament has recently enacted. Not only victim of crime but witnesses are also entitled to get certain safeguards under new criminal laws, which was missing in earlier criminal laws. So, considering the plight of victims and their dependents, Parliament has enacted three important laws namely The Bharatiya Nyaya Sanhita 2023, The Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakhsya Adhiniyam 2023. These new legislations have changed the traditional approach of Indian Criminal Justice System and have given more emphasis on rights of victim of crime and witnesses rather than rights of accused. So, this initiative will definitely be helpful in disposing of cases expeditiously which is a mandate of Article 21 of the Indian Constitution.

Keywords- *Victim, Witness, Criminal Justice System and Plight of victim, etc.*

Introduction

Generally, the victim of crime has never been a concern of the criminal justice system because it was considered that since the state is representing the victim, the state will provide all safety and is responsible for protection of life and limb of its citizen. But due to the rise of crime rate and considering the gravity of the issue, the Indian Supreme Court and Parliament both started focusing on rights of victims of crime and protection to witness. Earlier the criminal justice system was accused centric and the entire focus was on protection of rights of accused who himself has breached the law because of one presumption that is presumption of innocence, so unless his guilt is proved before court of law the accused must be presumed innocent.

But with the passage of time, Victimology got recognition as a separate branch of criminal law and it was felt by victimologists that victim of crime should be placed in focal point of criminal justice system so that victim particularly who are unable to pay court fee and advocate fee on account of poverty. On the other hand, accused is entitled to get free legal aid if he is poor as per mandate of Section 304 of The Code of Criminal Procedure¹.

Considering the plight of victims of crime, recently Indian Parliament has enacted three special legislations namely The Bharatiya Nyaya Sanhita 2023, The Bharatiya Nagarik

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¹The Code of Criminal Procedure, 1973.

Suraksha Sanhita 2023 and Bharatiya Sakhsya Adhiniyam 2023. These three special legislations are dedicated to provide justice to the victim of crime and protection to witnesses.

1. Right to be heard at the time of withdrawal of criminal cases against the accused.

As per Section 360 of the Bharatiya Nagarik Suraksha Sanhita, 2023 victims of crime shall be heard before withdrawal of criminal cases against the accused. This is the most significant provision of this new criminal law which gives an opportunity to victim of crime to file protest petition at the time of withdrawal of criminal cases particularly when victim succeeds in establishing the fact before the court that there was threat call from the accused side and his release would hamper the justice or endanger life or limb of the victim. Earlier victim had no say in criminal justice system at this point of time and government was at liberty to withdraw criminal cases against accused whenever government wanted to do this which actually happened in *Abdul Karim v. State of Karnataka*² (popularly known as the Raj Kumar abduction case). This is a very leading case on withdrawal of criminal cases against the offender and the Supreme Court heard the victim (Father of deceased Sub-Inspector who lost his life when he raided Veerappan and his team). In this case, popular actor of Karnataka, Raj Kumar was abducted by sandal smuggler Veerappan and he put an illegal demand before the State government to release guilty associates of Veerappan who were in jail and pressured the government to withdraw the case against Veerappan. Since actor Raj Kumar was so popular, people of the state went on agitation and started agitating against the government to bring back their popular actor Raj Kumar. Considering the seriousness of the issue, the Chief Minister of Karnataka through his cabinet decided to withdraw all cases against Veerappan and to release all guilty partners from jail. Meanwhile Mr. Abdul Karim, father of deceased son (S.I.) who was killed by Veerappan when he had gone to arrest Veerappan, filed a petition before the Supreme Court stating the entire facts that if Veerappan would be released, his son who had sacrificed his life in apprehending Veerappan and his guilty partners would be futile. Accepting the plea, the Supreme Court intervened into the matter and held that withdrawal of criminal cases in this manner would discourage the police and people will lose their confidence in the government also. The Apex Court directed the state to adopt other method to release the actor Raj Kumar. The point is that victims of crime like Abdul Karim had to file a petition in the Supreme Court just to prohibit the state from withdrawing criminal cases.

Definitely, this new Bharatiya Nagarik Suraksha Sanhita, 2023 would be helpful to the victims of crime in raising their voice at the time of withdrawal of criminal cases and no government would be able to take disadvantage of statutory provision.

2. Right to Appeal

Under criminal justice system, one of the precious right available to the accused is to prefer an appeal against order of conviction or more sentence, but Parliament by Criminal Law Amendment Act 2008 inserted specific provision in Section³ 372 that victims of crime can also make an appeal against order of acquittal or lesser sentence

²A.I.R 2001 S.C.116

³The Criminal Procedure Code, Section 372



and this amendment was in tune with recommendation made by Malimath Committee constituted on criminal law reform.

Recently, the Parliament has enacted new criminal law that is the *Bhartiya Nagrik Suraksha Sanhita 2023* and Section⁴ 413 gives liberty to the victim of crime to prefer an appeal against acquittal order or lesser sentence or lesser compensation. It is also obvious that if the victim is not satisfied with compensation which is to be paid to the victim must have the right to challenge the inadequacy of the compensation amount. Further where the accused is acquitted or awarded a lesser sentence, the victim should be at liberty to prefer an appeal to the appellate court.

Undoubtedly this provision will boost the confidence of the victim of crime in the justice delivery system which was missing in previous statute and victims had to knock on the door of the High Court or Supreme Court.

3. Right to compensation

The basic purpose of the criminal justice system is not only to convict the offender but to compensate for irreparable loss which the victim has suffered due to wrong caused by the offender as well as the victim of crime is also rehabilitated. These are the part of justice delivery system restitution, rehabilitation and restoration (Three 'R') so that the victim can be put in that position if he/she would have been if his/her rights would have not been violated. This is well known as *Status Quo Ante*. For the loss or injury suffered by the victim of crime, Section 396 directs every state government to prepare a scheme for compensation in coordination with the central government⁵.

Where a recommendation is made by the court for compensation, the District Legal Services Authority or the State Legal Services Authority as the case may be shall decide the quantum of compensation to be awarded under the scheme whereas section 396(3) says that if the trial court at the conclusion of trial is satisfied that the compensation awarded under section 395 is not adequate for such rehabilitation or where the accused is acquitted or discharged and victim has to be rehabilitated, the trial court can make a recommendation to District Legal Services Authority or State Legal Services Authority. On the other hand, where offender is not traced or identified and where no trial takes place, the victim or its dependents may make an application to the State Legal Services Authority or District Legal Services Authority. For award of compensation on receipt of such application, District Legal Services Authority or State Legal Services Authority as the case may be shall make a due enquiry within two months and award compensation. Here, District Legal Service Authority or State Legal Service Authority as the case may be, after receipt of application made by S.H.O. or area magistrate may provide first aid facility or medical facility free of cost. After making thorough analysis between two provisions of section 357 of the code of criminal procedure, 1973 and section 396 of the *Bharatiya Nagarik Suraksha Sanhita, 2023*, the substantive difference is that, in earlier statute, trial court itself was competent to award compensation irrespective of application or in criminal cases under section 357 of the code of criminal procedure, 1973. Apart from this, the Supreme Court has covered all human rights violation cases under Article 21 of the Indian Constitution.

⁴The *BharatiyaNagarik Suraksha Sanhita, 2023*, Section 413

⁵*Id*, Section 396

The Apex Court in *Rudal Shah v. State of Bihar*⁶ held that where accused was to be released in 1968 but he had to remain in jail for more than fourteen years and was released in 1982, he must be provided compensation for his rehabilitation and the Apex Court considered it violation of his fundamental right guaranteed under Article 21 of the Constitution. Again, in a leading case *Nilabati Behera v. State of Orissa*⁷, the Supreme Court held that in case of custodial death, victims of crime (dependent of deceased) must be compensated by the state government because ultimately it's the state responsibility to protect life and limb of its citizens. So, it can be said that the apex court in India had already opened the door for the victims of crime in 1982 and since then the Supreme Court has been in favor of giving more access to victims under the criminal justice system. In addition to this, Indian Supreme Court has made a landmark judgment in *Vishakha v. State of Rajasthan*⁸. In this case, where the apex court provided not only protection to the victim of gang rape but also issued various guidelines for protection of women from sexual offences at workplace which played important role in making special legislation for women i.e. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

4. Treatment of Victims

There is another significant provision in the new Bharatiya Nagarik Suraksha Sanhita, 2023 that is Section 397 which talks about treatment of victims in hospitals. By this provision, liability has been imposed upon all the government as well as private hospitals to provide medical treatment free of cost to the victims of any offence covered under section 66, section 65, section 66, section 67 of the Bhartiya Nyaya Sanhita, 2023 and child victims under POCSO Act, 2012 and they (hospitals) shall immediately inform the police about such incident. It has been observed that many hospitals whether they are government or private refused to provide medical treatment without completing medico-legal formalities in this regard the Supreme Court itself has observed in *Parmanand Katara v. Union of India*⁹ that right to medical aid is a fundamental right and is an essential component of Article 21 of the Constitution and in the welfare state, the state is under obligation to preserve and protect life of its citizens and people cannot be allowed to die in the absence of medico-legal formalities. So, this judicial pronouncement is in the background of this provision.

4.1 Right to be examined by Medical Practitioner

This new BNSS, 2023 has imposed an obligation on registered medical practitioner to submit medical report of victim of rape within seven days. This obligatory provision will speed up the process of Criminal Justice System because there will be less possibility of fabricating the document. In addition to this disclosure of name of victim of rape is an offence. No person is allowed to disclose the name of victim of crime. This provision would be helpful in maintaining dignity of victim and prevent mental trauma. Along with these safeguards to victim of crime it is also mandatory for Trial Court to conduct in camera proceedings as per section 366 of BNSS 2023 for victim of rape or an offence

⁶A.I.R 1982 S.C. 79

⁷A.I.R 1993 S.C. 82

⁸A.I.R 1997 S.C. 85

⁹A.I.R 1989 S.C 2039



under Protection of Children from Sexual Offences Act (POCSO). By inserting these provisions, Parliament has made an attempt to provide speedy justice and also privacy of victim of crime.

4.2 Legal aid to accused, not to victim of crime, at state expenses in certain cases

In a leading case, *M. H. Hoskot v. State of Maharashtra*¹⁰, the Supreme Court for the first time held that where a poor person is unable to engage his advocate on account of poverty and is deprived from justice, it would be violation of his fundamental right provided under Article 21 i.e., right to life or personal liberty. This precious right would be meaningless for those poor people who do not have sufficient means to engage their counsel in Court of Law. It is constitutional obligation of state to provide free legal aid to its poor people. Hence right to free legal aid is essential component of Article 21 of Indian Constitution. On the other hand in civil cases free legal aid is available to poor litigants under Order 33¹¹ and in criminal cases free legal aid is available to an accused under Section 341 of the BNSS 2023.

Contrary to this where victim is not satisfied with the proceedings of Prosecution and willing to file either protest petition against closure report submitted by investigating officer or willing to make an appeal against inadequate sentence or acquittal order and victim is poor unable to engage his/her advocate in the court, then this new BNSS 2023 is silent on this point. So therefore, it is suggested that Parliament by slight modification may insert a clause under Section 341 of BNSS 2023 that victim who are poor and unable to engage an advocate in court and also not satisfied with the order of court, he or she would be entitled to get free legal aid from the state.

This amendment would also be helpful to provide justice to victim of crime where he/she has requested to the Supreme Court u/s 446¹² to transfer a criminal case from one High Court to another High Court for fair trial and to ensure fair justice which can be seen in *Madhumita Shukla Murder case*¹³ wherein deceased's sister had filed a case in Supreme Court requesting that accused was MLA and would influence the trial. Accepting the plea matter was transferred from U.P. to Uttarakhand and ultimately trial court in Uttarakhand held him guilty which was upheld by the High Court. In such cases Supreme Court has played significant role so if slight modification is made for poor victim of crime, it would be a great help for them to attain justice.

5. Witness Protection Scheme

Witness Protection Scheme is another significant provision of new criminal laws which was missing in earlier statutes and the necessity of Witness Protection Scheme cannot be ignored for fair trial under the criminal justice system. From *Zahira Sheikh Case*¹⁴ to *Aarushi murder case*¹⁵ either the trial court had to acquit the accused or the investigating agency had to file a closure report in the court of law. Considering the

¹⁰AIR 1978 S.C. 198

¹¹The Code of Civil Procedure, 1908 (Act no. 5 of 1908)

¹²The Bhartiya Nyaya Sanhita, 2023 (Act No. 45 of 2023)

¹³State through C.B.I. v. Amaramani Tripathi, AIR 2005 S.C. 538

¹⁴Zahira Sheikh v. State of Gujarat (2004) 4 SCC 158

¹⁵Dr. Mrs. Nupur Talwar v. State of Uttar Pradesh & Anr. 2012 (11) SCC 465.

seriousness of the issue, the Parliament has inserted a specific provision under section 397 of the BNSS, 2023 for the protection of witnesses. Apart from this, Section 195A of the IPC, 1860 (Amendment) 2006 had made a threat to witness a cognizable offence and is punishable with 7 years of imprisonment.

Though before the enactment of this new Sanhita, the Ministry of Home Affairs, Government of India prepared a scheme for protection of witness i.e. Witness Protection Scheme 2018. This scheme is more effective in that sense because it has segregated offenses on the ground of its severity and a threat report shall be prepared by Deputy Commissioner of Police/Assistant Commissioner of Police in order to provide protection to the witness. There are some salient features of this scheme which needs to be discussed in brief:

- There are three categories of threat firstly, which are related to life. Secondly, where the threat extends to safety, reputation or property of the witness or his family members during investigation/ trial or thereafter and thirdly, where the threat is moderate and extends to harassment to the victim or his family members.
- The report shall be prepared by competent authority within 5 days from the date of receipt of application.
- All the hearings on witness protection application shall be held in-camera by the competent authority.
- Government shall make provision for the Witness Protection Fund.
- Competent authority will ensure that witness and accused do not come face to face during investigation or trial.
- Monitoring of mail or telephone calls.
- Installation of CCTV camera or security devices fencing etc.
- Concealment of identity of witness.
- Regular patrolling of police around the witness's house.

6. Power of Supreme Court to transfer criminal case from one state to another state

There was a provision in the Code of Criminal Procedure, 1973, that on the basis of an application made by a victim of crime, the Supreme Court shall have the power to transfer a criminal case from one state to another state. The intended purpose behind incorporating this provision in the code was to ensure impartial and fair justice. Acting under the purview of this invested power, the Supreme Court had transferred a criminal case from the state of Uttar Pradesh to Uttarakhand to ensure impartial justice in a leading case *State through CBI v. Amarmani Tripathi*. This case is popularly known as Madhumita Shukla murder case, wherein the sister of the deceased, Nidhi Shukla, had filed an application to transfer the case from the state of Uttar Pradesh to Uttarakhand for the conduct of fair trial because the accused was a political leader and had influence over the matter. So, she raised this objection before the court because in the same case, police had filed a closure report stating that the accused was not involved in the incident. When Matter was reopened by CBI, on the basis of the postmortem report and DNA report of the victim, Nidhi Shukla had an apprehension that the accused being MLA could have influence over the trial, so the matter was transferred from UP to Uttarakhand and their trial Court convicted the accused and his wife for committing murder of deceased Madhumita Shukla and in appeal, Uttarakhand High Court repealed the judgement of trial court.



Now under this new BNSS section 446, the transfer of the criminal case from one state to another can be made by the Supreme Court when an application is made by the Attorney General of India or the victim of crime and it appears to the Supreme Court that such an order is expedient for the ends of justice. The significance of section 406 of the code of criminal procedure can also be seen in the best bakery case, where an unruly mob hit and looted the 'World best bakery' shop, which was being run by the father of Jahira Shaikh. As a result of that, her father was killed and a few workers were also killed in the incident. She was an eye witness in that incident and lodged FIR against offenders. Her statement was also recorded by the investigating officer as a prosecution witness but the trial Court released all the offenders involved in the incident due to lack of evidence. Again, in this case, the National Human Rights Commission intervened in the issue and the matter was transferred from the Gujarat High Court to the Bombay High Court and a fresh trial was conducted in Maharashtra. Under New BNSS, a criminal case may also be transferred by the High Court from one district to another district to ensure fair and impartial justice in criminal cases.

7. Role of Malimath Committee in shaping new criminal laws

These new criminal laws have been enacted by the Parliament in the light of recommendations made by Malimath Committee¹⁶ constituted by the Government of India on Criminal Law Reforms. This committee has made significant recommendations particularly for victims of crime, which are as follows:

- The Victim, if she or he is dead, her or his legal representative, shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years of imprisonment or more.
- The Victim has a right to be represented by an advocate free of cost if she or he is unable to engage counsel.
- The Victim's right to participate in criminal proceedings shall include the right to produce evidence, to ask questions from witnesses, to be informed of the status of investigation and to move to the court to issue directions for further investigation.
- The Victim shall have the right to file a protest petition at the time of withdrawal of prosecution and grant of bail.
- The Right to prefer an appeal against order of acquittal or lessor sentence or inadequate sentence or grant of inadequate sentence.
- Victims should be provided medical help, psychiatric help, and interim compensation.
- Victim compensation is a state's obligation in all serious crimes. This should be legislated by the parliament.
- Victim compensation fund should be regulated by the Legal Services Authority Act, 1987.

8. Right against closure report

According to Section 169 of the Code of Criminal Procedure 1973 investigating officer was empowered to file closure report where evidence was not found sufficient against accused. Knowingly or unknowingly instigating officer can close the investigation.

¹⁶(29/09/24) https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf

Similar provision has been incorporated in section 189 of the BNSS which empowers the investigating officer to close the report if evidences are not sufficient but closure report does not affect the rights of victim of crime. Victim crime shall have right to file a protest petition in that very court where closure report is filed by investigating officer. In *State of UP v. Dr. Rajesh Talwar* and others, this case is popularly known as Aarushi murder case where in closer report was filed by UP Police but when protest petition was filed then Matter was referred to CBI and CBI filed Charge sheet in this case. This is an effective remedy in the hands of victim of crime being dissatisfied from the investigation he or she can file with protest petition. under section 482 of the CrPC 1973 High Court has inherent jurisdiction in criminal cases had power to knock the Door high court under section 482 of the CrPC 1973 in new BNSS 2023 inherent power of High Court in criminal cases is provided under section 528 according to this section High Court shall have power to take any appropriate step in order to do justice with the case. So victim can seek remedy under section 528 of this BNSS either for reinvestigation or to rectify faulty charge sheet.

9. Protection of rights of Victim of Crime through Plea Bargaining

The concept of plea bargaining was adopted in India after the recommendation of Malimath Committee report 2003 on Criminal law reform. The basic purpose of plea bargaining is to decide criminal cases expeditiously and reduce pendency of cases before Trial Court. Though this method is very effective for accused because he may request the court for bargaining of sentence if court is satisfied then accused may be awarded one fourth sentence of the offence which accused has committed but plea bargaining is also beneficial for the victim of crime in that sense because this method also empowers to the victim either to raise objection before trial court at the time of hearing of plea bargaining or he or she can give his/her consent that accused may be allowed by court for plea bargaining. Victim's right is protected by this method either by providing compensation to the victim or awarding one fourth sentence prescribed for the said offence. This method is efficacious because it provides speedy justice to the victim otherwise victim has to wait for final order of the court and it takes time to decide a criminal case by the court which is evident from data of pendency of criminal cases before the Indian Court.

Since we have adopted the concept of sentence bargaining not charge bargaining knowing the fact that this method could have been misused by the accused. Though this method is adopted in those criminal cases which are punishable with less than seven years imprisonment and plea bargaining is also not applicable to offences against women and children even though this method is very efficacious in providing justice to the victims of crime.

In BNSS 2023 provision regarding plea bargaining is provided under section 290 and guidelines for mutually satisfactory disposition of cases is provided in section 291 of the BNSS. Definitely this method would be very effective in protecting the rights of victim of crime.

10. Right to File Complaint

The most significant right which a victim of crime can file a complaint against the offender. Under section 154 of the CrPC 1973 provides that information regarding cognizable offence can be given to the officer in charge of the police station and police officer shall register the case against the offender. The word



'shall' used in that section imposes obligation upon authority to register the case. The similar provision is given in new BNSS 2023 under section 173 and victim can also file complaint to the magistrate without going to police station under section 200 of the CrPC 1973. So victim has both the option either he/she can lodge F.I.R or can file complaint to the magistrate. On the other hand, remedy is also provided under section 154 of the Cr.PC that if F.I.R is not lodged then being aggrieved informant can send that information to Superintendent of Police. If he is also not entertaining that issues, then victim of crime has right to take shelter of section 156(3) of the Code of Criminal Procedure and this same procedure is provided in section 175 of the BNSS.

Another significant provision of new BNSS is about 'Zero F.I.R' and electronic F.I.R which can be lodged by the victim under section 173(1) and section 173 (4), where information discloses sexual offence that shall be recorded by a women police officer.

By providing e F.I.R under this BNSS would enable victim to register this information without going to police station. It will not only save time but also inexpensive and speedy provision and definitely 'Zero F.I.R' would be helpful for those victim who are unable to go to police station either due to financial constraints or social constraint. Earlier Police used to refuse from registering F.I.R due to Jurisdictional error now this lacuna has been removed by this BNSS.

Though section 154 was very clear about mandatory registration of F.I.R but ultimately the Supreme Court has cleared that doubt in *Lalit Kumari & others v. State of U.P* held that once information disclose cognizable offence police officers are bound to register that case as F.I.R and may further proceeds for investigation.

In addition to this victim has right to ask the magistrate for recording of statement under section 183 of the BNSS. This statement is recorded by magistrate after complying all set procedure that is why it is considered as substance piece of evidence in Court of Law.

11. Conclusion and suggestion

After making thorough analysis of these new criminal laws it can be seen that the victim's right to file an appeal against the accused was inserted in the year 2008 under Section 372 of the Code of Criminal Procedure. Victim's right to file a protest petition at the time of withdrawal of prosecution has got recognition in the BNSS, 2023 meaning to say that most of the recommendations have been accepted by the government and have got statutory recognition. But in spite of all these merits inherent in new criminal laws there are certain issues which must be addressed by the Parliament in order to make these laws more victim centric. To strengthen these new criminal laws following suggestions would enhance public confidence in justice delivery system which are as follows:

- By making slight modification in BNSS victim should be given liberty to ask question and produce relevant evidence in trial court.
- Victim should be empowered to get information about day to day investigation so that he/she may become aware about status of case.
- Victim should have right to request the court to transfer his/her case where victim reside instead of trial case at place of crime to avoid any kind of inconvenience to the victim.

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- To protect witnesses in criminal cases there should be provision for recording of their statement through videoconferencing from his/her residence, it shall also reduce unnecessary expenses of the witness and court.
 - Soon after commission of crime victim must be provided security and other necessary protection by the concerned police station.
 - There must be a designated police officer at every police station which shall maintain record of victim of crime and witness and keep supervision on them.
 - Every District should have District victim and witness protection officer (DVWPO) who shall supervise victim and witnesses as well as his police officer who has been designated at police station for protection of victims and witness.
 - If above mentioned suggestions are incorporated in new Criminal law definitely it would be very useful in protection of rights of victims of crime and witness.