

A Comparative Study of Victim Access to Justice Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 and the International Criminal Justice System

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Abstract

Traditional common-law adversarial systems have historically relegated the victim of a crime to the margins of the trial, conceptualizing crime primarily as an offense against the sovereign state. In contrast, modern international criminal justice—most notably codified in the Rome Statute of the International Criminal Court (ICC)—recognizes victims as autonomous procedural actors with substantive participatory, protective, and reparative rights.

With the enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, India replaced the colonial-era Code of Criminal Procedure (CrPC), 1973, introducing statutory shifts intended to center the victim within domestic procedural law. This paper provides a comparative legal analysis of victim access to justice under the BNSS and the International Criminal Justice System, benchmarked against the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and UN Sustainable Development Goal 16 (Peace, Justice, and Strong Institutions). Evaluating five core thematic dimensions—procedural locus standi, information accessibility, witness and victim protection, reparative schemes, and appellate recourse—this study demonstrates that while the BNSS meaningfully enhances informational access and checks prosecutorial withdrawal, it maintains an auxiliary, state-dominated framework. Conversely, the international paradigm grants independent standing through specialized legal representation and proactive trust-fund mechanisms, offering a normative blueprint for domestic procedural reform.

Keywords: Bharatiya Nagarik Suraksha Sanhita (BNSS), Rome Statute, International Criminal Court (ICC), Victimology, Restorative Justice, Procedural Standing, Trust Fund for Victims, SDG 16.

1. Introduction: From Retributive Hegemony to Restorative Recognition

For centuries, adversarial criminal jurisprudence operated upon a strict binary: The State versus the Accused. The victim, whose physical, economic, or psychological integrity was directly breached, was treated largely as evidentiary material—a reporting party or an ordinary prosecution witness. Pioneered by criminologists such as Benjamin Mendelsohn and Hans von Hentig[See generally Benjamin Mendelsohn, *The Origin of the Doctrine of Victimology*, 3 *Excerpta Criminologica* 239 (1963); Hans von Hentig, *The Criminal and His Victim: Studies in the Sociobiology of Crime* 383–85 (1948) (establishing the theoretical foundations of victimology and challenging offender-centric penology)], modern victimology initiated a normative recalibration toward acknowledging the victim as an independent stakeholder in the administration of justice[Nils Christie, *Conflicts as Property*, 17 *Brit. J. Criminology* 1, 3–4 (1977)].

At the international level, this transformation crystallized through the United Nations General Assembly Resolution 40/34 (1985)—the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power—and reached institutional maturity with the adoption of the Rome Statute of the International Criminal Court (1998). These international instruments dismantled the prosecutor's exclusive monopoly, formalizing direct victim intervention at the pre-trial, trial, and sentencing stages. Domestically, India's criminal process resisted this transition for decades. Although incremental judicial activism (e.g., *Nilabati Behera v. State of Orissa*, *Ankush Shivaji*

Gaikwad v. State of Maharashtra) and the Code of Criminal Procedure (Amendment) Act, 2008, inserted piecemeal protections such as Section 357A (Victim Compensation Scheme) and the Section 372 proviso (Victim's Right to Appeal), structural barriers persisted. The codification of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, represents an intentional legislative initiative to modernize criminal procedure and embed victim safeguards into the statutory architecture. A comparative evaluation between the BNSS and the international framework reveals fundamental divergence in institutional philosophies: an auxiliary-protective model under domestic Indian law versus an autonomous-participatory model under international criminal law.

India's procedural law long remained tethered to the colonial architecture of the Code of Criminal Procedure (CrPC), where victim welfare was treated as an afterthought of judicial discretion. While landmark rulings and piecemeal amendments incrementally carved out rights to compensation and limited appellate recourse, the statutory framework remained heavily retributive and state-centric. The enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, marks a deliberate legislative pivot toward integrating victim-centric jurisprudence into domestic procedural law. By mandating investigation updates, establishing witness protection frameworks, and imposing statutory checks on prosecutorial withdrawal, the BNSS signals a transition toward restorative accommodation. Situating the BNSS alongside the International Criminal Court reveals the contours of this ongoing legal evolution—tracking the shift from retributive hegemony to restorative recognition, and evaluating how closely domestic codification approaches international standards of autonomous victim justice.

2. Normative Foundations and Statutory Definitions

2.1 The Domestic Dimension: BNSS, 2023

The statutory definition of a victim under Section 2(1)(y) of the BNSS provides:

"victim" means a person who has suffered any loss or injury caused by reason of the act or omission of the accused person, and includes the guardian or legal heir of such victim[The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).].

This definition, inherited from Section 2(wa) of the CrPC, retains an expansive scope by including legal heirs and guardians without conditioning recognition on the identification, apprehension, or conviction of the perpetrator. The BNSS embeds victim rights through discrete interventions across the procedural timeline: the right to receive investigation updates (Section 193(3)(ii)), notice prior to prosecutorial withdrawal (Section 360 Proviso), state-backed compensation (Section 396), immediate medical assistance (Section 397), and statutory witness protection schemes (Section 398).

2.2 The International Dimension: The Rome Statute and ICC Framework

Under Rule 85 of the ICC Rules of Procedure and Evidence (RPE), victims are defined as:

1. Natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;
2. Organizations or institutions that have sustained direct harm to any of their property that is dedicated to religion, education, art, science, charitable purposes, or historic monuments.

The international framework introduces two key structural advancements:

- **Legal entities as victims:** Recognizing institutional harm, particularly regarding cultural property and mass atrocities.
- **Separation of interests:** The Rome Statute recognizes that the Prosecutor represents the international community and the enforcement of the rule of law, while the victim's personal interests may diverge, requiring independent legal standing (Article 68(3))[Rome Statute of the International Criminal Court arts. 68(3), 75, 79, July 17, 1998, 2187 U.N.T.S. 90].

3. Thematic Comparative Analysis

3.1. Pillar I: Procedural Locus Standi and the Right to Be Heard

BNSS Framework: Under Section 338(2) of the BNSS, a victim may engage private legal counsel, but that advocate acts in subordination to the Public Prosecutor. Counsel may submit written arguments only after the evidence has concluded and with the court's explicit leave.

The primary statutory intervention introduced by the BNSS is the Proviso to Section 360(1), which mandates that the Public Prosecutor may not withdraw from prosecution without affording the victim an opportunity to be heard. This codifies a key procedural check against executive caprice, yet the victim remains essentially an adjunct to the trial rather than an independent party.

International Framework: Under Article 68(3) of the Rome Statute, where the personal interests of the victims are affected, the Court permits their views and concerns to be presented and considered at stages determined appropriate by the Chambers. Victims participate through legal representatives, with assistance from the Office of Public Counsel for the Victims (OPCV). They can question witnesses, tender evidence regarding personal harm, challenge jurisdictional findings, and make opening and closing statements independently of the Office of the Prosecutor (OTP)[John Braithwaite, Restorative Justice & Responsive Regulation 11–14 (2002)].

3.2 Pillar II: Informational Rights and Transparency

BNSS Framework: Section 193(3)(ii) imposes an affirmative obligation on the investigating officer to inform the victim or informant of the progress of the investigation within 90 days, including via digital or electronic means. Furthermore, Section 173(2) mandates the free supply of the First Information Report (FIR), and Section 230 obligates the Magistrate to provide copies of the police report, statements recorded under Section 180 and Section 183, and other relevant documents without cost to the victim. This reduces the information asymmetry that characterized the CrPC era.

International Framework: Rule 92 of the ICC RPE institutionalizes a comprehensive notification infrastructure. The Victims Participation and Reparations Section (VPRS) maintains outreach networks in affected territories. Victims receive direct notices regarding decisions to open an investigation, confirmation of charges hearings, interlocutory appeals, and sentencing outcomes, translated into localized languages and accessible mediums.

3.3 Pillar III: Witness and Victim Protection

BNSS Framework: Section 398 of the BNSS obligates every State Government to prepare and notify a Witness Protection Scheme. This formally codifies the Supreme Court's directions in *Mahender Chawla v. Union of India* (2019). Additionally, provisions such as in-camera proceedings for sexual offenses (Section 366) and recording statements of sexual assault victims via audio-video electronic means or at their residence by women police personnel (Section 176(1)) mitigate re-traumatization during investigation.

International Framework: Article 68(1) and (2) of the Rome Statute establishes the Victims and Witnesses Section (VWS) under the Registry. The Court possesses broad powers to order protective measures: voice alteration, image distortion, pseudonymity, in-camera evidence, and international relocation protocols. The threshold explicitly balances the protection of the accused's rights to a fair trial against the interests of political branches or local police establishments.

3.4 Pillar IV: Restitution, Reparations, and Rehabilitation

BNSS Framework:

- Section 395: Re-enacts the judicial power to order compensation from the fines imposed on the accused, or directly payable by the convict.
- Section 396: Institutionalizes the Victim Compensation Scheme, mandating State and Central Governments to maintain designated rehabilitation funds administered by the Legal Services Authorities (DLSA/SLSA). Interim compensation can be awarded even if the offender is untraced or acquitted.
- Section 397: Enforces mandatory, cost-free first aid and emergency medical treatment by all public and private hospitals for survivors of rape and acid attacks.

International Framework: Article 75 of the Rome Statute empowers the ICC to order direct or collective reparations, including restitution, compensation, and rehabilitation against a convicted person. Crucially, Article 79 establishes the Trust Fund for Victims (TFV). The TFV features a unique dual mandate: implementing court-ordered judicial reparations and using voluntary donor funds to provide physical, psychological, and material rehabilitation to victims prior to a formal conviction, addressing structural trauma on an ongoing basis[*ibid.*].

3.5 Pillar V: Appellate Remedies and Recourse

- BNSS Framework: The Proviso to Section 413 guarantees the victim an independent right of appeal against:
 - An order of acquittal;
 - A conviction for a lesser offense;
 - The imposition of inadequate compensation.

Unlike under the earlier CrPC regime, where leave to appeal had to be navigated under stricter thresholds, the right of the victim under the Section 413 proviso remains a substantive right, aligning with the precedent in *Mallikarjun Kodagali v. State of Karnataka* (2019)[*Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752].

International Framework: Under Article 82(4) of the Rome Statute, a legal representative of the victims, the convicted person, or the Prosecutor may appeal an order of reparations under Article 75. However, victims have a narrower standing to appeal verdicts on guilt or innocence directly, which remains the preserve of the OTP and the defense, reflecting a structural distinction between finding criminal culpability and redressing victim harm.

4. Comparative Synthesis Matrix

Analytical Parameter	Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023	International Criminal Court (Rome Statute / RPE)
Philosophical Focus	Auxiliary to State; restorative elements layered onto the common-law adversarial framework.	Dual model: retributive justice for the international community alongside independent restorative participation.
Locus Standi & Representation	Subordinate to Public Prosecutor; written submissions only with court leave (Section 338(2)).	Autonomous standing; independent legal representation via external counsel or OPCV (Article 68(3)).
Checks on State Discretion	Mandates judicial hearing of the victim before prosecutorial withdrawal (Section 360 Proviso).	Independent Pre-Trial Chambers assess OTP decisions not to proceed; victims may submit views.

Right to Information	90-day mandatory status reports (Section 193(3)(ii)); free statutory copies (Sections 173(2), 230).	Institutionalized registry outreach via VPRS; proactive multi-stage notification (Rule 92).
Victim & Witness Protection	State-notified Witness Protection Schemes (Section 398); in-camera rape trials (Section 366).	Specialized, neutral Victims and Witnesses Section (VWS); dynamic relocation, pseudonymity, and trauma counseling (Article 68).
Reparative Framework	Victim Compensation Scheme via Legal Services Authorities (Section 396); medical mandate (Section 397).	Judicial reparations orders against convicts (Article 75) and structural Trust Fund for Victims (Article 79).
Appellate Power	Broad right to appeal acquittal, lesser offenses, and inadequate compensation (Section 413 Proviso).	Standing to appeal reparations orders (Article 82(4)); appeal on merits limited to OTP and Defense.

5. Critical Challenges and Systemic Deficits

5.1 In the BNSS Framework:

- **The "Assistance" Bottleneck:** Despite rhetoric around victim empowerment, Section 338(2) limits victim advocates to assisting the Public Prosecutor. When prosecutorial strategy conflicts with the victim's interests (outside of withdrawal), the victim lacks independent procedural agency to examine witnesses or shape the theory of the case.
- **Discretionary and Delayed Compensation:** Under Section 396, the actual disbursement of compensation depends on state-level allocations and bureaucratic clearance by Legal Services Authorities. Delays often leave victims without timely financial rehabilitation during trial proceedings.
- **Execution Gaps in Protection:** While Section 398 statutorily recognizes witness protection, domestic schemes remain administratively dependent on state police forces, creating institutional conflicts of interest in cases involving custodial abuse or influential political actors.

5.2 In the International Criminal Justice System:

- **Procedural Delay and Bureaucratic Latency:** The victim application and verification process under Article 68(3) frequently takes years, risking secondary victimization through procedural fatigue.
- **Resource Scarcity of the Trust Fund:** As noted in TFV strategic assessments, court-ordered reparations are frequently constrained by the indigence of convicted individuals, shifting financial pressure onto voluntary state contributions.
- **Geographic and Cultural Remoteness:** Operating from The Hague, the ICC struggles with accessibility for victims in conflict zones, requiring complex intermediary networks that can dilute communication and community expectations.

6. Conclusion and Recommendations

The comparative landscape of victim justice demonstrates a converging recognition: criminal proceedings cannot remain purely an affair between the sovereign and the accused. The enactment of the BNSS, 2023, represents a meaningful evolution in Indian criminal jurisprudence, codifying mandatory information sharing, checking state withdrawal, and formalizing victim compensation schemes. However, when placed against the normative

benchmark of the Rome Statute and modern international standards, the BNSS retains an auxiliary model that limits autonomous representation. To fulfill the broader mandates of constitutional justice under Articles 14 and 21, as well as UN Sustainable Development Goal 16, domestic criminal procedure must evolve from viewing the victim merely as a protected dependent to recognizing them as an independent, empowered participant throughout the judicial process.

6.1 Recommendations:

1. Codify Independent Intervenor Status: Section 338(2) of the BNSS should be amended to grant victims independent intervenor status, permitting cross-examination and active participation where the victim demonstrates that state prosecution does not adequately address their legal interests.
2. Establish a Dedicated Victim Redressal Agency: Drawing inspiration from the ICC's Victims Participation and Reparations Section (VPRS), Indian states should institutionalize specialized victim-liaison desks within District Courts to handle statutory notifications, witness transport, and immediate legal counseling.
3. Establish a Non-Derogable Victim Compensation Corpus: India's compensatory model should adopt the ICC Trust Fund's proactive assistance mandate. Setting up an automated, non-lapsable central fund would allow pre-trial restorative relief without making victims navigate separate, protracted proceedings before Legal Services Authorities.
4. Decouple Witness Protection from Local Law Enforcement: Following the model of the ICC's independent Victims and Witnesses Section, domestic witness protection cells must operate under judicial oversight rather than local police hierarchies to ensure neutrality and institutional credibility.

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