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## THE SECOND ASSAULT: NAVIGATING SECONDARY VICTIMIZATION WITHIN THE INDIAN JUSTICE SYSTEM

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### ABSTRACT

This article provides a comprehensive analysis of secondary victimization frequently termed the "second assault" within the Indian criminal justice system. Historically entrenched in an offender-centric paradigm, the Indian legal framework has often neglected the psychological and procedural needs of crime victims, inadvertently subjecting them to institutional re-traumatization during police investigations, medical examinations, and adversarial courtroom trials. The severity of this secondary trauma is acutely amplified for marginalized demographics, particularly individuals from Scheduled Castes and Scheduled Tribes, persons with disabilities, and acid attack survivors, thereby necessitating a highly intersectional approach to victimology. Tracing the systemic evolution of victim rights, the study examines the foundational recommendations of the Law Commissions, the Justice Malimath Committee, and the Justice Verma Committee. It further highlights the pivotal role of judicial activism in bridging statutory gaps, notably through Supreme Court directives mandating the establishment of Vulnerable Witness Deposition Centres (VWDCs) and enforcing strict anonymity protections. Finally, the article critically evaluates the transformative legislative enactments of 2023 the Bharatiya Nagarik Suraksha Sanhita (BNSS) and the Bharatiya Nyaya Sanhita (BNS). These new codes seek to institutionalize victim-centricity through procedural safeguards such as mandatory audio-video evidentiary recording, the statutory right to information, and formalized state-funded compensation mechanisms. Ultimately, the study advocates for robust capacity building and a shift toward trauma-informed institutional empathy to fully realize a restorative justice model in India.

## 1. Introduction

The traditional architecture of the criminal justice system has historically operated through an offender-centric paradigm. Rooted in the jurisprudence of retributive justice, the state assumes the role of the primary aggrieved party, prosecuting the offender to maintain social order and enforce penal statutes. Within this bipartite framework pitting the state machinery against the accused the actual victim of the crime has often been relegated to the periphery, treated merely as an evidentiary tool, a passive informant, or a witness to their own trauma.<sup>1</sup> In the adversarial battle for supremacy between the State and the accused, the victim is frequently relegated to the sidelines, becoming a mere cause for the debate rather than its focus.<sup>2</sup> However, the emergence of victimology as an academic and scientific discipline in the late twentieth century exposed a critical systemic failure: the profound neglect of the victim's psychological, physical, and legal needs during the justice process.<sup>3</sup>

This systemic neglect manifests as "secondary victimization," a phenomenon frequently described in criminological literature as the "second assault".<sup>4</sup> While primary victimization refers to the direct, personal harm caused by the criminal act itself, secondary victimization occurs when the institutions and agencies designed to deliver justice police, medical examiners, the judiciary, and broader society inadvertently subject the survivor to further trauma, disbelief, and indignity.<sup>5</sup> The realization that the pursuit of justice often inflicts as much psychological damage as the original crime has catalysed a global movement toward victim-centric jurisprudence.

In India, this transition has been a protracted and complex evolutionary journey, marked by landmark committee reports, judicial activism, and sweeping legislative reforms. The horrific 2012 Delhi gang rape forced a collective reckoning with these systemic failures, subsequently catalysing a wave of victim-cantered reforms that culminated in the 2023 Bharatiya Nyaya

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<sup>1</sup> Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, "Reforms of Criminal Justice System" 27 (2003).

<sup>2</sup> Justice P.V. Reddi, "Role of the Victim in the Criminal Justice Process" 18(1) *National Law School of India Review* 1 (2006).

<sup>3</sup> Law Commission of India, "154th Report on The Code of Criminal Procedure, 1973 (Act No.2 of 1974)." 27 (1996).

<sup>4</sup> Patricia Yancey Martin, Rasby Marlene Powell, "Accounting for the "Second Assault": Legal Organizations 'Framing of Rape Victims" 19(4) *Law & Social Inquiry* 853 (1994).

<sup>5</sup> United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted 29 November 1985) UNGA Res 40/34.

Sanhita and Bharatiya Nagarik Suraksha Sanhita enactments.<sup>6</sup> From the foundational recommendations of the 14th and 154th Law Commission Reports to the paradigm-shifting enactments of the BNS and BNSS, the Indian legal landscape is undergoing a systemic overhaul.<sup>7</sup> This report provides an exhaustive analysis of secondary victimization within the Indian criminal justice system, dissecting the procedural stages where re-traumatization occurs, the vulnerabilities of marginalized demographic intersections, the evolution of statutory and judicial safeguards, and the transformative impact of the newly minted criminal codes.

## 2. The Victimological Framework and the Second Assault

### 2.1 Theoretical Underpinnings of Victimization

To comprehend the severity of secondary victimization, it is imperative to differentiate between the layered experiences of a crime survivor. Primary victimization is the direct consequence of the offence the physical injury, financial loss, or emotional trauma inflicted by the perpetrator. Tertiary victimization often refers to the broader, long-term societal alienation and the professional marginalization a victim faces post-incident.

Sandwiched between these is secondary victimization, which criminologists define as the harm that survivors of violence suffer not merely because of the crime committed against them, but because of how institutions respond when they seek help.<sup>8</sup> Martin and Powell's seminal socio-legal framework highlights that this second assault occurs when a victim's emotional and physical needs are subordinated to the routine processing needs of the legal organization itself.<sup>9</sup> The legal philosopher Roscoe Pound posited that law is a tool for "social engineering," aimed at balancing competing interests within society.<sup>10</sup> However, when the mechanisms of this social engineering law enforcement, the medical establishment, and the judiciary abuse their power or prioritize procedural efficiency over human dignity, society itself becomes the perpetrator of the second assault. In essence, when the state's apparatus abuses its power or acts with

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<sup>6</sup> Harman Singh, Dr. Garima Yadav, "Secondary Victimization of Rape Survivors in India: A Criminological Study of Police and Court Processes" 9(1) *International Journal of Law Management & Humanities* 1405 (2026).

<sup>7</sup> Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>8</sup> Patricia Yancey Martin, Rasby Marlene Powell, "Accounting for the "Second Assault": Legal Organizations' Framing of Rape Victims" 19(4) *Law & Social Inquiry* 853 (1994).

<sup>9</sup> PY Martin, RM Powell, "Accounting for the "Second Assault": Legal Organizations' Framing of Rape Victims" 19(4) *Law & Social Inquiry* 853 (1994).

<sup>10</sup> Roscoe Pound, *Social Control Through Law* 37 (Yale University Press, 1942).

apathy, it perpetuates a secondary victimization that fundamentally erodes the victim's faith in the criminal justice system.<sup>11</sup>

Examples of secondary victimization are pervasive within the criminal justice process. They include treating victims with overt disbelief, employing victim-blaming language, conducting invasive and insensitive forensic examinations, and exposing the victim to aggressive, character-assassinating cross-examinations by defence counsel. The trauma is compounded when societal actors including family, friends, and the media deny the impact of the crime or stigmatize the victim, leading to a profound sense of alienation, loss of self-esteem, and diminished faith in the rule of law.

## **2.2 Polyvictimization and Amplified Psychological Trauma**

The impact of secondary victimization is not uniform; it is exponentially magnified in cases of "polyvictimization" where individuals have experienced multiple, distinct types of victimization throughout their lives.<sup>12</sup> Polyvictims enter the criminal justice system with pre-existing vulnerabilities, making them exceptionally susceptible to severe post-traumatic stress symptoms. When these individuals experience revictimization at the hands of law enforcement or the judiciary, the resulting "secondary trauma" can cause catastrophic psychological damage, leading to intense frustration, a total loss of faith in a just world, and a complete withdrawal from the legal process. Securing the robust enforcement of victims' rights such as the right to privacy, the right to be treated with dignity, and the right to information regarding case progression serves as a critical risk mitigation strategy to shield these highly vulnerable individuals from the devastating fallout of the second assault.<sup>13</sup>

## **3. Procedural Vulnerabilities: Tracing the Victim's Journey**

The journey through the Indian criminal justice system involves multiple procedural stages, each fraught with the potential for secondary victimization. For survivors of sexual and gender-based violence, these stages often represent insurmountable hurdles that prioritize procedural suspicion over survivor welfare.

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<sup>11</sup> Dheerendra Kumar Baisla, "SECONDARY VICTIMIZATION UNDER THE CRIMINAL JUSTICE SYSTEM" 2(3) *Journal of Legal Studies and Research* 62 (2019).

<sup>12</sup> National Crime Victim Law Institute, "Polyvictims: Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization" in the Criminal Justice System" March *Victim Law Bulletin* NCJ 243223 (2013).

<sup>13</sup> *Ibid.*

### 3.1 The Pre-Trial Interface: Law Enforcement and the FIR

The victim's first point of contact with the state machinery is typically the police station, where the First Information Report (FIR) is registered under Section 154 of the traditional Code of Criminal Procedure (CrPC). Empirical studies and judicial observations reveal that police stations frequently operate within patriarchal frameworks, responding to complaints with scepticism, apathy, and invasive questioning.<sup>14</sup>

Survivors routinely face formidable obstacles in registering an FIR. Police personnel may subject victims to intensive, hostile interrogations, casting doubt on their credibility or asking explicit, irrelevant questions about their past sexual history. In some instances, law enforcement resorts to bureaucratic misclassifications to minimize the gravity of the reported crime or to manage institutional workloads. Research indicates that to manipulate crime statistics or avoid complex investigations, police may classify sexual assaults under non-criminal or lesser designations such as "suspicious circumstances," "investigation of person," or "special inquiry." These misclassifications render untold numbers of victims legally invisible, denying them access to immediate support mechanisms and fundamentally betraying their trust in the state. Academic investigations, such as empirical analyses of rape trials in Indian courts, emphasize that this institutional unresponsiveness actively widens the 'justice gap', solidifying the trauma before the legal process has even formally begun.<sup>15</sup>

### 3.2 The Medico-Legal Labyrinth

Following the registration of a complaint, survivors of sexual violence are subjected to medico-legal examinations, a process historically characterized by extreme intrusiveness and clinical insensitivity. The collection of forensic evidence is undeniably vital for prosecuting offenders and linking suspects to the crime scene; however, the manner in which these examinations are conducted frequently constitutes a direct physical and psychological extension of the initial assault.

For decades, the Indian medical establishment routinely employed the unscientific and degrading "two-finger test" to assess vaginal laxity and the status of the hymen, erroneously

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<sup>14</sup> Code of Criminal Procedure 1973, s 154.

<sup>15</sup> Paribhasha Sharma, N. Prabha Unnithan and Sneha Kadyan, "Untangling captured law and the justice gap: Rape cases in an Indian court" 75(257) *International Social Science Journal* 603 (2025).

correlating these physiological traits with the survivor's past sexual habituation. This practice functioned as a form of institutionalized victim-blaming, exposing the victim to allegations of possessing a "loose moral character" and compromising their dignity. The trauma of such examinations was so profound that it often eclipsed the trauma of the rape itself. Despite explicit recommendations by the Justice Verma Committee (2013) to abolish this test noting that the existence of a hymen is legally irrelevant to the definition of rape under Section 375 of the Indian Penal Code (IPC) the practice stubbornly persisted in certain jurisdictions until stringent judicial and executive bans, accompanied by updated Ministry of Health and Family Welfare guidelines, were strictly enforced.<sup>16</sup>

Furthermore, the clinical environment in which evidence is collected exacerbates the trauma. Victims are often required to surrender their clothing, provide swabs from intimate areas (vaginal, anal, oral), and undergo blood and urine tests for baseline HIV and VDRL status in settings lacking privacy and basic empathy. Modern forensic protocols require swift collection of biological samples to prevent degradation, placing immense pressure on the victim immediately following the assault. However, special tests and investigations carry their own limitations and potential for misinterpretation; for instance, research evidence is divided on the use of colposcopy to detect micro-injuries, and the toluidine dye test and Wood's lamp have known limitations and false-positive rates. The absence of comprehensive training for medical officers in trauma-informed care means that the victim is frequently treated merely as a repository of biological evidence a crime scene to be processed rather than a severely traumatized patient requiring immediate psychological support, dignity, and stabilization.

### **3.3 The Courtroom Crucible**

The transition from the investigative pre-trial phase to the courtroom introduces the most visible and public manifestation of the second assault. Once the trial commences, the victim's agency dramatically diminishes. The prosecution represents the State, and the victim is treated primarily as a witness, deprived of a dominant voice in the proceedings.<sup>17</sup>

During the trial, the adversarial nature of the common law justice system takes a heavy psychological toll. Victims are compelled to narrate the intimate and harrowing details of their

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<sup>16</sup> The Committee on Amendments to Criminal Law, "Report of the Committee on Amendments to Criminal Law" 221 (2013).

<sup>17</sup> Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, "Reforms of Criminal Justice System" 27 (2003).

assault repeatedly in a formal, intimidating, and often hostile forum. The cross-examination by defence counsel is structurally designed to dismantle the victim's credibility, utilizing aggressive, humiliating tactics that implicitly or explicitly blame the victim for the crime. Section 154(a) of the Indian Evidence Act historically permitted questions pertaining to the general moral character of a rape survivor, a legal provision that essentially placed the victim's character on trial.<sup>18</sup> Feminist legal scholars have sharply critiqued the underlying patriarchal tone of judicial reasoning, noting that even well-meaning judgments frequently evaluate women against the archetype of the 'ideal Indian woman', thereby trivializing the survivor and embedding secondary victimization within the court's very language.<sup>19</sup> Furthermore, academic critiques of early landmark rulings argue that the judiciary's historically narrow interpretations of sexual violence and reliance on universality have often failed to address the deeply gendered reality of the courtroom, prolonging the survivor's ordeal.<sup>20</sup>

Moreover, physical proximity to the accused during the trial can induce severe anxiety, panic, and fear of reprisal. Prior to recent interventions, victims were forced to stand in the same room as their abusers, sometimes facing direct threats or intimidation from the accused's family or associates. The cumulative effect of repeated court appearances, protracted trial delays, unsympathetic judicial officers, and a hostile environment effectively transforms the pursuit of justice into an endurance test. This tertiary and secondary victimization explains why many victims eventually turn hostile, alter their testimonies, or withdraw their complaints entirely, succumbing to the unbearable pressure of the system.

#### **4. Intersectional Vulnerabilities in the Justice System**

Secondary victimization is not a monolith; its severity is acutely amplified at the intersections of caste, class, gender, and disability. The Indian criminal justice system's structural biases disproportionately affect marginalized demographic groups, rendering their access to justice exceptionally perilous and fraught with unique forms of institutional violence.

##### **4.1 Caste-Based Marginalization: The SC/ST Experience**

For members of the Scheduled Castes (SC) and Scheduled Tribes (ST), interacting with the

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<sup>18</sup> Indian Evidence Act 1872, s 154.

<sup>19</sup> Priyansha Badoni, Dr. Faizanur Rahman, "Judicial Stereotyping in Sexual Violence Cases and Secondary Victimization of Women in India" 43(S1) *Journal of Advanced Zoology* 44 (2022).

<sup>20</sup> Madhumanti Mukherjee, "Judging in the Presence of Women as Legal Persons: Feminist Alternative to the Indian Supreme Court Judgment in *Sakshi v. Union of India*" 1(2) *feminists@law* 1 (2011).

legal system involves navigating deeply entrenched socio-economic discrimination. Victims of caste-based atrocities face pervasive secondary victimization through systemic police apathy, the outright refusal to register FIRs under the stringent Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (PoA Act), and frequent collusion between law enforcement and dominant caste perpetrators.

When victims from these communities attempt to seek justice, they are routinely subjected to social boycotts, economic strangulation, and violent physical intimidation. A prevalent tactic employed by perpetrators is the filing of false, retaliatory counter-cases against the victim to force a "compromise" and the subsequent withdrawal of the original atrocity complaint. This weaponization of the legal apparatus results in abysmally low conviction rates and deeply demoralizes the marginalized community.

Recognizing this specific, intersectional vulnerability, the Indian Parliament enacted the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015, inserting a comprehensive new chapter specifically detailing the "Rights of Victims and Witnesses" (Section 15A).<sup>21</sup> Section 15A imposes a mandatory duty on the State to protect victims from intimidation and provides an exhaustive list of socio-legal rights. These encompass the right to immediate cash or in-kind relief, the right to maintenance expenses and socio-economic rehabilitation, and the right to be informed of case progression alongside receiving free copies of the chargesheet. Additionally, the Act mandates the video-recording of all proceedings relating to offences under the Act and empowers Special Courts to conceal the names and addresses of witnesses, issuing immediate non-disclosure directives to prevent harassment. This legislative framework acknowledges that a standard approach to victimology is insufficient for communities facing systemic oppression, mandating that victims be treated with fairness, respect, and dignity, with explicit regard to their poverty and educational disadvantages.

#### **4.2 Gender, Disability, and Age**

Women and girls with physical, intellectual, or psychosocial disabilities face insurmountable barriers in reporting crimes and accessing justice. Due to social stigma regarding their sexuality and cognitive capabilities, their testimonies are frequently dismissed *ab initio* as unreliable. In

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<sup>21</sup> Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015, s 15A.

several documented instances, police personnel have actively mocked disabled survivors of sexual violence, questioning their sensory perception of the assault or dismissing their claims entirely based on their psychosocial conditions. The lack of accessible infrastructure, sign-language interpreters, and special educators at police stations and hospitals further isolates these victims, effectively denying them their fundamental right to legal redress and ensuring impunity for perpetrators who specifically target them due to their lack of mobility or communicative capacity.

Child victims represent another highly vulnerable demographic. The trauma of navigating an adult-oriented, adversarial judicial process can severely impair a child's psychological development, creating long-lasting cognitive and emotional scars. Recognizing this, the Protection of Children from Sexual Offences (POCSO) Act 2012 introduced stringent guidelines for child-friendly reporting and trial procedures. The Act mandated child-friendly courts, the presence of special educators, and compensation mechanisms. Section 33 of the POCSO Act explicitly outlines compensation parameters, requiring courts to consider the severity of mental harm, loss of educational opportunity, medical expenses, and the child's relationship to the offender.<sup>22</sup> Despite these robust statutory provisions, implementation remains a persistent challenge. Research highlights that a substantial majority of POCSO cases remain pending for years, demonstrating that systemic delays continue to subject child victims to prolonged legal limbo, negating the therapeutic jurisprudence the Act intended to foster.

### **4.3 Acid Attack Survivors: The Quest for Specialized Recognition**

Victims of acid attacks suffer a uniquely horrifying form of violence, where the perpetrator explicitly intends to disfigure, cause excruciating physical agony, and inflict permanent social ostracization. Historically, the IPC categorized acid attacks under the general ambit of "grievous hurt" (Section 320), a classification that failed fundamentally to capture the gravity, intent, and lifelong consequences of the offence.

The Law Commission of India, in its 226th Report (2009), highlighted this gross inadequacy. The Commission argued that acid attack survivors live a life of societal seclusion, are denied employment opportunities, and face perpetual discrimination, effectively depriving them of

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<sup>22</sup> Protection of Children from Sexual Offences Act 2012, s 33.

their right to life and personal liberty under Article 21 of the Constitution.<sup>23</sup> Scholars studying victimology through the lens of acid attack survivors emphasize that these individuals face an inherent, perpetual discrimination that effectively brands them as social outcasts, necessitating a highly specialized rehabilitative approach.<sup>24</sup> The Report strongly advocated for the inclusion of acid attacks as a specific, distinct offence in the IPC, classifying it as cognizable, non-compoundable, and non-bailable. Furthermore, recognizing the massive financial burden of reconstructive surgeries and lifelong medical care, the Commission proposed a dedicated law for victim compensation, laying the groundwork for specialized, state-funded Victim Compensation Schemes that address the distinct physical and psychological realities of disfigurement.<sup>25</sup>

## 5. Evolution of Victim Rights: Committees and Legislative Landmarks

The shift from a strictly retributive model to a restorative, victim-centric approach in India was heavily influenced by international developments, most notably the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.<sup>26</sup> Domestically, this evolution was meticulously guided by critical interventions from Law Commissions and expert reform committees.

### 5.1 Early Law Commission Reports and the Genesis of Witness Protection

The discourse on protecting the individuals who interface with the criminal justice system began with the 14th Report of the Law Commission (1958) and the 4th National Police Commission Report (1980), both of which acknowledged the severe hardships and intimidation faced by witnesses. The 154th Law Commission Report (1996) on the Code of Criminal Procedure marked a watershed moment in Indian victimology.<sup>27</sup> Acknowledging that the system had long concentrated overwhelmingly on the rights of the accused to the detriment of the victim, the Commission proposed structural measures for victim protection, legal aid, and

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<sup>23</sup> Law Commission of India, "The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a Law for Compensation for Victims of Crime" 18 (2009).

<sup>24</sup> Amlanika Bora, Harshita Priyadarshi, "The Concept of Victimology through the Lens of Acid Attack Victims: A Judicial Paradigm" 6(7) *International Journal of Science and Research* 1458 (2017).

<sup>25</sup> Law Commission of India, "The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a Law for Compensation for Victims of Crime" 18 (2009).

<sup>26</sup> United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted 29 November 1985) UNGA Res 40/34.

<sup>27</sup> Law Commission of India, "154th Report on The Code of Criminal Procedure, 1973 (Act No.2 of 1974)." 27 (1996).

state-funded compensation. Influenced by international models and domestic state initiatives, the 154th Report laid the intellectual groundwork for treating compensation not as an *ex gratia* act of charity, but as a fundamental legal right rooted in the state's failure to protect its citizens from criminal harm.<sup>28</sup>

Subsequent reports, including the 172nd Report, the 178th Report, and the 198th Report (2006) titled "Witness Identity Protection and Witness Protection Programmes," further solidified the consensus that the anonymity and physical safety of witnesses and victims are prerequisites for a functional justice system.

### **5.2 The Justice Malimath Committee (2003)**

The Justice Malimath Committee on Reforms of the Criminal Justice System (2003) provided a comprehensive critique of the existing adversarial framework. The Committee observed that the victim's interests were entirely subsumed by the State, resulting in the victim becoming a "forgotten entity".<sup>29</sup> To rectify this, the Malimath Committee advocated for a radical expansion of the victim's participatory rights.

Key recommendations included granting the victim the right to be impleaded as a party in serious criminal proceedings (where punishment is 7 years or more), the right to adduce evidence, and the right to appeal against trial court acquittals a right previously reserved exclusively for the prosecution.<sup>30</sup> The Committee explicitly critiqued the assumption that the state-appointed prosecutor adequately represented the victim's emotional and legal interests, arguing that this disenfranchisement was a primary driver of secondary victimization. Furthermore, the Committee strongly endorsed the creation of a comprehensive Victim Compensation Fund, funded partly by assets confiscated from organized crime.

### **5.3 The Justice Verma Committee (2013)**

Following the horrific and fatal gang rape of a young woman in Delhi in December 2012, the Government of India constituted a three-member committee headed by former Chief Justice J.S. Verma to recommend rapid amendments to criminal laws pertaining to sexual violence.

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<sup>28</sup> Ibid.

<sup>29</sup> Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, "Reforms of Criminal Justice System" 27 (2003).

<sup>30</sup> Ibid.

The Committee's exhaustive 2013 report provided a comprehensive blueprint for dismantling the secondary victimization ingrained in the handling of sexual assault cases.<sup>31</sup>

The Justice Verma Committee strongly advocated for systemic, end-to-end reforms. It mandated modern police reforms, including mandatory online FIR registration to bypass hostile desk officers, the installation of CCTVs in all police station questioning rooms, and the penalization of officers who refuse to register complaints. In terms of medical protocols, it established the absolute prohibition of the two-finger test, asserting that a victim's past sexual history is irrelevant to the issue of consent, and recommended prioritizing therapeutic care over rigid forensic collections. Institutionally, it urged the immediate establishment of Rape Crisis Cells to provide holistic legal and psychological support from the moment an FIR is registered. Finally, it proposed electoral and educational reforms, such as the disqualification of political candidates charged with sexual offences and the introduction of sexuality education to dismantle gendered experiences and patriarchal perceptions at a societal level.<sup>32</sup>

The trajectory of these reforms demonstrates a clear legislative evolution over the past few decades. The 154th Law Commission Report (1996) laid the foundation by emphasizing victim compensation and protection, notably recommending the establishment of a Victim Assistance Fund.<sup>33</sup> Building on this, the Justice Malimath Committee (2003) expanded the focus to procedural rights, advocating for the victim's right to implead in cases and actively participate in trials.<sup>34</sup> The specific vulnerabilities of acid attack survivors were later addressed by the Law Commission's 226th Report (2009), which proposed recognizing acid attacks as distinct offences necessitating dedicated compensation.<sup>35</sup> This progressive momentum culminated in the Justice Verma Committee (2013), which introduced comprehensive legal reforms for sexual violence, fundamentally challenging institutional practices like the two-finger test and mandating improved police accountability to curb secondary trauma.<sup>36</sup>

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<sup>31</sup> The Committee on Amendments to Criminal Law, "Report of the Committee on Amendments to Criminal Law" 221 (2013).

<sup>32</sup> *Ibid.*

<sup>33</sup> Law Commission of India, "154th Report on The Code of Criminal Procedure, 1973 (Act No.2 of 1974)." 27 (1996).

<sup>34</sup> Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, "Reforms of Criminal Justice System" 27 (2003).

<sup>35</sup> Law Commission of India, "The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a Law for Compensation for Victims of Crime" 18 (2009).

<sup>36</sup> The Committee on Amendments to Criminal Law, "Report of the Committee on Amendments to Criminal Law" 221 (2013).

## 6. Judicial Activism and the Development of Precedents

In the absence of comprehensive, proactive statutory rights, the Indian higher judiciary has actively invoked its constitutional powers to bridge legislative gaps. Through landmark judgments, the Supreme Court has issued directives that have fundamentally reshaped procedural law to protect victims and witnesses from secondary trauma.

### 6.1 Securing the Courtroom: *Sakshi v Union of India*

In *Sakshi v Union of India* (2004), a non-governmental organization filed a Public Interest Litigation seeking to expand the substantive definition of rape under Section 375 of the IPC to include all forms of non-consensual penetration, arguing that the narrow definition violated India's international obligations under CEDAW and the UN Convention on the Rights of the Child.<sup>37</sup>

Relying on the doctrine of *stare decisis*, the Supreme Court declined to usurp the legislative function of amending the substantive definition, noting that redefining a century-old criminal statute via judicial interpretation would cause legal chaos. However, the Court recognized the profound trauma inflicted upon victims during trials. To mitigate this "second assault," the Court issued transformative procedural guidelines to protect victims of child abuse and sexual violence. The directives included allowing testimonies to be recorded via video link or from behind a physical screen to prevent direct visual contact with the accused. Furthermore, it mandated *in-camera* proceedings and required defence counsel to submit cross-examination questions in writing to the presiding judge, who would then pose them to the victim in a sensitive, dignified manner. This judgment implicitly acknowledged that the physical architecture and adversarial procedures of the traditional courtroom directly contributed to secondary victimization.

### 6.2 The Duty of the State: *Zahira Habibulla H Shiekh v State of Gujarat*

The psychological pressure exerted on witnesses leading them to turn hostile was addressed in the context of mass violence in *Zahira Habibulla H Shiekh v State of Gujarat* (2004).<sup>38</sup> The Supreme Court explicitly linked the concept of a "Fair Trial" to the protection of witnesses,

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<sup>37</sup> *Sakshi v Union of India* AIR 2004 SC 3566.

<sup>38</sup> *Zahira Habibulla H Shiekh v State of Gujarat* AIR 2004 SC 3114.

observing that if witnesses are threatened or forced to give false evidence, the trial is fundamentally compromised. The Court emphasized the salutary duty of every witness to assist the State, but correspondingly highlighted that no nation can afford to expose its citizens to the peril of harassment by anti-social elements. This jurisprudence paved the way for modern witness protection schemes, cementing the state's positive obligation to prevent the intimidation that characterizes secondary victimization.

### **6.3 Protecting Anonymity: *Nipun Saxena v Union of India***

The right to privacy and protection from media-driven social ostracization was robustly solidified in *Nipun Saxena v Union of India* (2019).<sup>39</sup> The Supreme Court addressed the rampant violation of Section 228A of the IPC, which strictly prohibits the disclosure of a rape victim's identity. The Court made a scathing observation regarding the societal landscape: victims of sexual offences are frequently treated worse than the perpetrators, subjected to intense media scrutiny, ridicule, and lifelong stigma.

To curb this tertiary victimization, the Court issued stringent directives prohibiting all forms of media print, electronic, and social from publishing the victim's name or any facts that could lead to their identification. Crucially, the judgment mandated that FIRs relating to sexual offences (under various sub-sections of Section 376 IPC and the POCSO Act) must absolutely not be placed in the public domain. The Court also ruled that victims retain their right to anonymity even when filing appeals under Section 372 of the CrPC, and directed police to maintain documents containing the victim's identity in sealed covers, replacing them with anonymized versions in public records.

### **6.4 Empowering the Victim: *Mallikarjun Kodagali v State of Karnataka***

For decades, victims lacked an independent statutory right to appeal an acquittal, remaining entirely reliant on the State's prosecutorial discretion. While the insertion of the proviso to Section 372 of the CrPC in 2009 granted victims this right, procedural ambiguity remained regarding whether victims were required to obtain special leave from the High Court to file such appeals, placing an additional bureaucratic burden on them.

In *Mallikarjun Kodagali v State of Karnataka* (2019), a three-judge bench of the Supreme

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<sup>39</sup> *Nipun Saxena v Union of India* (2019) 2 SCC 703.

Court definitively resolved this controversy.<sup>40</sup> The Court ruled that the victim possesses an absolute, substantive right to prefer an appeal against an order of acquittal without requiring special leave. Justice M.B. Lokur observed that the rights of victims of crime have historically drawn sporadic attention from Parliament and the judiciary, and that the system must move beyond trauma to recognize victim rights as a core, central component of human rights and social justice. This landmark judgment effectively elevated the victim from a passive spectator to an empowered, active stakeholder in the appellate process.

## 7. Institutionalizing Protection: Deposition Centres and Anonymity

The judicial directives in *Sakshi* laid the groundwork, but the physical infrastructure of Indian courts required a systematic overhaul to genuinely protect vulnerable demographics from intimidation during trials.

### 7.1 Vulnerable Witness Deposition Centres (VWDCs)

To institutionalize the protection of vulnerable witnesses across the country, the Supreme Court in *Smruti Tukaram Badade v State of Maharashtra* (2022) issued sweeping, pan-India directives under Article 142 of the Constitution.<sup>41</sup> The Court recognized that a hostile, adversarial environment deters victims from deposing freely, thereby altering the authenticity of testimonies and impeding substantive justice.

The Court expanded the definition of a "vulnerable witness" far beyond child victims (minors under 18) to comprehensively include age-neutral and gender-neutral victims of sexual assault, persons suffering from mental illness (under the Mental Healthcare Act 2017), speech or hearing-impaired individuals, and any witness deemed to have a high threat perception. It mandated all High Courts to adopt the Vulnerable Witness Deposition Centres (VWDC) Scheme and establish dedicated, barrier-free, and safe deposition centres in every district.

These VWDCs are designed meticulously to prevent secondary victimization. Guidelines mandate the avoidance of any direct exposure between the victim and the accused, utilizing video links, one-way mirrors, and the assistance of intermediaries or a *guardian ad litem*. They feature waiting rooms, crèche facilities for childcare, and permit the witness to carry comfort

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<sup>40</sup> *Mallikarjun Kodagali v State of Karnataka* (2019) 2 SCC 752.

<sup>41</sup> *Smruti Tukaram Badade v State of Maharashtra* 2022 SCC Online SC 78.

items. Crucially, to prevent the trauma of demonstrating intimate touching during sexual offence trials, judges are directed to use body outline diagrams rather than asking the victim to point to their own body. A committee chaired by Justice Gita Mittal has driven the operationalization of these centres, conducting extensive training programs across states, ensuring that the judiciary is sensitized to the nuanced needs of these witnesses. As of recent assessments, the overwhelming majority of High Courts have established these permanent centres, fundamentally altering the physical and psychological landscape of testimony collection in India.<sup>42</sup> Academic analysis applying Vulnerability Theory to these measures argues that deposition centres do not undermine the adversarial principle of orality, but rather build witness resilience, allowing for more accurate fact-finding by removing the traumatizing stimuli of a traditional courtroom.<sup>43</sup>

## 8. The Transformative Legislative Enactments: BNS and BNSS (2023)

In a historic overhaul of colonial-era jurisprudence, the Indian Parliament enacted the Bharatiya Nyaya Sanhita (BNS) and the Bharatiya Nagarik Suraksha Sanhita (BNSS) in 2023, replacing the 1860 Indian Penal Code and the 1973 Code of Criminal Procedure, respectively. A central, explicitly stated objective of the BNSS is to transition the criminal justice system toward a citizen-centric and victim-centric model, incorporating technological advancements and procedural safeguards explicitly designed to mitigate secondary victimization.<sup>44</sup> Socio-legal analyses of the BNSS suggest that these reforms have the potential to shift the victim's status from a passive observer to an active participant, provided that systemic hurdles like police apathy and limited legal aid are simultaneously addressed.<sup>45</sup>

### 8.1 Evidentiary Reforms and Mitigating Investigative Trauma

Under the previous CrPC regime, victims possessed largely indirect rights mediated via prosecutorial statutes, lacking express rights to be informed during investigative stages. The BNSS fundamentally alters this power dynamic.

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<sup>42</sup> *Ibid.*

<sup>43</sup> Suhani Chhaperwal, From Courtroom to Screen: Upholding Orality and Protecting Vulnerable Witnesses in India, *available at*: <https://nliulawreview.nliu.ac.in/blog/from-courtroom-to-screen-upholding-oralty-and-protecting-vulnerable-witnesses-in-india/> (last visited on April 18, 2026).

<sup>44</sup> Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>45</sup> Reema Mariam Philip, "Reimagining Justice: A Socio-Legal Analysis Of Victims' Rights Under The Bharatiya Nyaya Sanhita And Bharatiya Nagarik Suraksha Sanhita, 2023" VII(III) *Indian Journal of Law and Legal Research* 1008 (2025).

To address the severe trauma, delays, and police apathy encountered at the FIR stage, the BNSS formalizes the concept of the "Zero FIR" (Section 173(1)), allowing victims to legally register a complaint at any police station across the country, irrespective of the territorial jurisdiction where the crime occurred.<sup>46</sup> It also permits the registration of FIRs through electronic communication (e-FIRs), reducing the immediate necessity for a traumatized victim to physically navigate a potentially hostile police station environment. For offences carrying a punishment of 3 to 7 years, the police may conduct a preliminary enquiry, strictly time-bound to 14 days, preventing indefinite delays.

Crucially, to prevent the coercion, manipulation, or hostile interrogation of sexual assault victims during the pre-trial phase, Section 176 of the BNSS mandates the audio-video recording of the victim's statement.<sup>47</sup> For offences of rape, the BNSS explicitly directs that the recording must be conducted at the residence of the victim or a place of her choice, by a female police officer, in the presence of parents, guardians, or social workers. This statutory requirement severely curtails the potential for police intimidation, ensures a transparent evidentiary record, and provides a familiar, safe environment for the survivor. Furthermore, under Section 183(6)(a), the recording of the statement before a Magistrate must be undertaken exclusively by a female Judicial Magistrate, ensuring an empathetic judicial interface.

## **8.2 The Right to Information and Mandatory Participation**

The BNSS ends the systemic informational marginalization of the victim by embedding participatory rights directly into the statute. Under Section 193(3)(ii) of the BNSS, the investigating officer is legally bound to inform the victim or the informant about the progress of the investigation within 90 days, utilizing electronic communication.<sup>48</sup> Additionally, Section 174 requires police to forward daily diary reports of non-cognizable cases to the Magistrate every 14 days, enforcing institutional accountability. This mandated transparency restores a sense of agency and control to the victim, counteracting the alienation fostered by the traditional system.

Moreover, the BNSS places a vital check on the arbitrary power of the state to unilaterally withdraw prosecutions. Under Section 321 of the old CrPC, the prosecution could seek

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<sup>46</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 173(1).

<sup>47</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 176.

<sup>48</sup> Bharatiya Nagarik Suraksha Sanhita, 2023.

withdrawal of a trial for political or administrative reasons without ever consulting the victim, stripping them of agency and leaving them bewildered and denied justice. Section 360 of the BNSS mirrors the withdrawal provision but introduces a profound, democratizing proviso: the court cannot allow the withdrawal of the prosecution without first affording the victim a formal opportunity to be heard.<sup>49</sup> This paradigm shift legally recognizes the victim as an indispensable, primary stakeholder whose consent and perspective must be actively evaluated before terminating judicial proceedings.

### **8.3 Restitution and the Victim Compensation Framework**

The financial devastation resulting from a crime including massive medical expenses, loss of livelihood, and the cost of long-term psychological therapy is a core component of victimization that the justice system historically ignored. The traditional framework relied heavily on Section 357 of the CrPC, which allowed courts to award compensation out of the fine imposed on the convicted offender. However, this retributive model was inherently flawed; compensation was entirely contingent upon the successful conviction and the financial capacity of the accused.

Section 357A, inserted into the CrPC in 2009 upon the recommendations of the 154th Law Commission, created a State-funded Victim Compensation Scheme, ensuring relief even when the offender was untraced, acquitted, or discharged. The BNSS carries forward, refines, and strengthens this restorative justice model through Sections 395 and 396.<sup>50</sup> While the statutory language mirrors its predecessors, the integration of these provisions within a broader victim-centric code emphasizes that state-funded compensation is an enforceable right intended for holistic rehabilitation, rather than discretionary state charity. The role of District and State Legal Services Authorities in determining and dispersing this compensation independently of the trial's outcome remains critical to ensuring victims possess the financial resources required to rebuild their lives.

### **8.4 Substantive Penal Shifts: The BNS**

Parallel to procedural reforms, the substantive penal code, the Bharatiya Nyaya Sanhita (BNS), reorganizes and prioritizes offences. Offences against women and children have been given

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<sup>49</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 360.

<sup>50</sup> Bharatiya Nagarik Suraksha Sanhita 2023, ss 395-396.

precedence, structured under a new Chapter V, symbolizing a shift in legislative priority. Furthermore, the BNS removes the age differential for minor victims of gang rape, standardizing severe protections across all child victims.<sup>51</sup>

The transition from the CrPC (1973) and IPC (1860) to the BNSS and BNS (2023) brings significant procedural shifts designed specifically to curb secondary victimization. Under Section 154 of the CrPC, territorial jurisdiction often hindered FIR registration, a barrier now addressed by Section 173(1) of the BNSS, which institutionalizes the "Zero FIR" across jurisdictions and introduces "e-FIRs" to reduce trauma at the reporting stage.<sup>52</sup> Investigatory trauma is further mitigated by Section 176 of the BNSS; whereas Section 161 of the CrPC relied on standard police recording, the new provision mandates audio-video recording for rape victims at their residence by a female officer.<sup>53</sup> The BNSS also fundamentally alters prosecution withdrawals; replacing the state's discretionary power under Section 321 of the CrPC, Section 360 of the BNSS strictly requires that the victim be heard before any case is withdrawn.<sup>54</sup> Protections for victim identity have also been explicitly strengthened; Section 228A of the IPC is superseded by Section 72 of the BNS, which imposes stricter penalties for identity disclosure, specifically targeting media leaks to prevent voyeuristic public exposure.<sup>55</sup> Finally, addressing the historic informational void, Section 193(3)(ii) of the BNSS introduces a novel mandate requiring police to provide 90-day progress updates to the victim electronically, enforcing unprecedented investigative transparency.<sup>56</sup>

## **9. Forward-Looking Strategies and International Perspectives**

While the legislative transitions to the BNS and BNSS, coupled with the judicial directives establishing VWDCs, represent monumental progress, the eradication of secondary victimization requires a fundamental cultural and systemic transformation that extends beyond statutory text. Laws and guidelines alone cannot deliver restorative justice if the personnel implementing them remain entrenched in patriarchal, or efficiency-driven mindsets.

To effectively mitigate the "second assault," the Indian justice system must look toward

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<sup>51</sup> Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>52</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 173(1).

<sup>53</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 176.

<sup>54</sup> Bharatiya Nagarik Suraksha Sanhita 2023, s 360.

<sup>55</sup> Bharatiya Nyaya Sanhita 2023, s 72.

<sup>56</sup> Bharatiya Nagarik Suraksha Sanhita, 2023.

innovative, multidisciplinary solutions and international best practices. For instance, the FYDO project, a European pilot initiative, has successfully explored the deployment of "facility dogs" as a scientifically validated means of mitigating secondary victimization among survivors of sexual and gender-based violence during justice interactions.<sup>57</sup> Integrating such trauma-support mechanisms into Indian VWDCs could further reduce the physiological stress of testifying. Achieving holistic justice requires moving beyond mere procedural adjustments by embracing therapeutic jurisprudence and positive victimology, thereby ensuring that international principles of victim rights are integrated into the local socio-cultural context.<sup>58</sup>

Regionally, organizations like the South-Asian Society of Criminology and Victimology emphasize the necessity of cross-border scientific exchange to frame legislative policies that specifically cater to victims of abuse of power, terrorism, and cyber-crimes. As digital victimization rises a challenge noted across ASEAN jurisdictions where digital exploitation remains chronically underreported due to stigma India must ensure its cyber-crime frameworks are equally victim-centric.

Ultimately, the bedrock of this transformation is extensive, continuous capacity building. Police officers, medical practitioners, and judicial officers must undergo mandatory sensitization and trauma-informed training to replace cultures of suspicion with cultures of support. Medical protocols must universally discard unscientific practices and prioritize the psychological stabilization of the victim alongside the collection of forensic evidence. Furthermore, the implementation of Victim Compensation Schemes (under Section 396 of the BNSS) must be streamlined; bureaucratic delays, inadequate funding, and a lack of uniformity across states currently hamper the efficacy of these vital rehabilitative schemes. A robust support infrastructure, including properly funded Rape Crisis Cells, widespread availability of special educators for disabled victims, and strictly expedited trials, is imperative to bridge the gap between statutory rights and lived reality.

## **10. Conclusion**

The historical trajectory of the Indian criminal justice system reflects a gradual, hard-fought, but determined shift away from an exclusive focus on the offender toward a restorative

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<sup>57</sup> Conor O'mahony Et.Al, "Secondary Victimization In The Justice System: Facility Dogs To The Rescue" 7(3) *Irish Judicial Studies Journal* 145 (2023).

<sup>58</sup> Ganesh Shrirang Nale, "Victimology In Global And Indian Perspectives: Evolution, Impact, Legal Frameworks, And Contemporary Developments" 5(13) *Indian Journal Of Legal Review* 184 (2025).

paradigm that actively seeks to heal and empower the victim. The phenomenon of secondary victimization the "second assault" has long served as a devastating barrier to justice, inflicting severe psychological trauma through systemic police apathy, invasive and degrading medical procedures, and courtroom hostilities that put the survivor's character on trial.

However, the relentless advocacy of victimologists, the foundational and structural recommendations of the Law Commissions and the Justice Verma Committee, and the robust, constitutional judicial activism of the Supreme Court have collectively dismantled several of these formidable barriers. The mandatory establishment of Vulnerable Witness Deposition Centres and the aggressive judicial protection of victim anonymity demonstrate an evolving commitment to preserving human dignity within the legal apparatus. Simultaneously, the enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS) embeds the fundamental rights to information, participation, audio-visual evidentiary recording, and financial restitution directly into the procedural bedrock of the nation.

To realize a truly equitable justice system, these sweeping legal and infrastructural advancements must be accompanied by a profound institutional empathy. The state and its actors must consistently recognize that the victim is not merely a piece of biological evidence or a witness required to secure a conviction, but the primary stakeholder whose restoration and rehabilitation is the ultimate measure of substantive justice. By continuing to refine procedural safeguards, embracing innovative support mechanisms, and relentlessly fostering a trauma-informed institutional culture, the Indian legal system can effectively neutralize the second assault, ensuring that the pursuit of justice serves as a mechanism for healing rather than a source of compounded, lifelong trauma.