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A Right for Some, a Favour for the Rest: Victim Protection and the Promise of the New Criminal Codes

Shambhavi Gour^{1*} and Vidushi Puri²¹Research Scholar Amity University Haryana²Assistant Professor Amity University Haryana

* Corresponding author. E-mail: shambhavi.gour2@gmail.com

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ABSTRACT

The Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023 were introduced as a decisive turn from a punishment-centred to a victim-centred criminal justice system. This article argues that, judged against that promise, the general criminal codes remain structurally State-centric: the victim acquires procedural efficiencies and expanded information but not independent standing, meaningful participation, or a dependable entitlement to support. The deficit, however, is neither one of imagination nor of resources. India does have a strong body of victim-centred law, though it remains scattered across special legislations rather than consolidated in one place. Section 15A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 sets out an express set of rights for victims and witnesses. The Protection of Children from Sexual Offences Act, 2012 builds a child-friendly process around the survivor, including the assistance of a support person. And the Witness Protection Scheme, 2018 acquired binding legal force when the Supreme Court endorsed it in *Mahender Chawla v. Union of India*. Deploying German criminal procedure as a comparative benchmark rather than a template, the article contends that India's most feasible route to victim-centric justice is generalisation from within: mainstreaming its own special-statute innovations into the ordinary process of the new codes, financing them through existing but chronically under-utilised victim funds, and calibrating them to survive scrutiny under Articles 14 and 21. Its original contribution is a structured mapping of India's indigenous protections against the German benchmark, and a constitutionally disciplined model for their consolidation.

INTRODUCTION: REFORM WITHOUT REPOSITIONING

For most of its modern history, Indian criminal procedure cast the victim in a supporting role. The harm was treated as a wrong done to the State rather than to the individual. Consequently, the trial unfolded as a two-sided contest between the prosecution and the accused, with the person who had actually borne the injury reduced to a peripheral figure summoned to the witness

box, examined, and then sent away.¹ Parliament's decision to replace the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act with the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA), each of which came into effect on 1 July 2024, was projected as the turning point at which this older arrangement gave way. The reform was framed as a shift from danda to nyaya, from an em-

¹RADHIKA SINGHA, A DESPOTISM OF LAW: CRIME AND JUSTICE IN EARLY COLONIAL INDIA 1-35 (1998); Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 THIRD WORLD LEGAL STUD. 107 (1985).

phasis on punishment to one on justice, and from the State to the citizen.

That claim deserves scrutiny rather than applause. Read closely, the general codes give the victim faster processes, digital touchpoints, and a periodic account of the investigation.² They stop short, however, of conferring what a genuinely victim-centred procedure requires: standing, participation, support, and an enforceable remedy.³ The reform digitises the victim's experience without repositioning the victim within the trial.

The conventional response to this shortfall is to look outward to Germany's accessory prosecution, to the European Union's minimum standards, to the enforceable victim statutes of the common-law world and to ask which foreign institution India should import.⁴ This article takes the opposite route.⁵ It argues that India need not look abroad for a model it has already built at home. Such protections operate within a set of special legislations: the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the "PoA Act"), the Protection of Children from Sexual Offences Act, 2012 ("POCSO"), and the Witness Protection Scheme, 2018, which owes its binding character to judicial endorsement.⁶ India operates a victim-centric jurisprudence that is, in places, the equal of the systems it is urged to emulate.^{7,8} Section 15A of the PoA Act, taken on its own, secures for the victim treatment that is dignified and sensitive to their disadvantage, information about each stage of the proceedings, an opportunity to be heard when bail is considered, protective measures, and compensation released in stages beginning from the registration of the first information report. What is paradoxical about victim law in India, then, is not that it does not exist but that it is hemmed

in: these safeguards are triggered only where the victim falls within a protected class, and remain dormant for everyone outside it.⁹

The reform this article proposes is therefore one of generalisation rather than importation. If the ordinary criminal process can be brought up to the standard India already applies to its most vulnerable victims, the promise of the new codes can be redeemed largely with instruments India has already drafted, tested and in fiscal terms already funded.¹⁰ Germany enters the analysis not as a template to be copied but as a benchmark against which India's indigenous protections can be measured and matured, and as a cautionary limit, because its most powerful participatory institutions are inseparable from an inquisitorial architecture that India does not share. The argument proceeds in six movements: the concept of the victim and of victim-centric justice; a doctrinal audit of the victim under the new codes; India's "islands of excellence"; the German benchmark and its limits; the analysis of generalisation, feasibility and constitutional calibration; and a consolidated model.

VICTIM-CENTRIC IS NOT PUNITIVE: THE CONCEPTUAL GROUND

The academic study of the victim is younger than the study of the crime.¹¹ Victimology emerged only in the mid-twentieth century, and its early preoccupation the victim's causal or relational contribution to the offence has long given way to a rights-based inquiry into how the criminal process treats the person harmed. For international thinking on the subject, the decisive moment came with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. That instrument set out four commitments which continue to define the field: access to justice and fair treatment, restitution, compensation, and assistance. These four commitments correspond to what is now the conventional threefold vocabulary of victim rights the right to information, the right to

²The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, §§ 173(1)–(2), 193(3)(ii), 230, INDIA CODE (India).

³*Id.* § 18(8) proviso; see *Rekha Murarka v. State of W.B.*, (2020) 2 S.C.C. 474 (India) (holding that counsel engaged by a victim under the proviso has no independent right to examine witnesses and must route questions through the Public Prosecutor).

⁴STRAFPROZESSORDNUNG [STPO] [CODE OF CRIMINAL PROCEDURE], §§ 395–402 (Ger.) (*Nebenklage*); *id.* §§ 403–406c (*Adhäsionsverfahren*); *id.* § 406g (psychosocial support during proceedings).

⁵Crime Victims' Rights Act, 18 U.S.C. § 3771 (2018).

⁶The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33 of 1989, INDIA CODE.

⁷The Protection of Children from Sexual Offences Act, 2012, §§ 33(8), 40, No. 32 of 2012, INDIA CODE; The Protection of Children from Sexual Offences Rules, 2020, r. 9.

⁸Mahender Chawla v. Union of India, (2019) 14 S.C.C. 615 (India) (approving the Witness Protection Scheme, 2018 and directing the States and Union Territories to implement it until Parliament enacts legislation on the subject).

⁹*Id.* § 2(1)(ec) (confining "victim" to a member of a Scheduled Caste or Scheduled Tribe who has suffered an offence under the Act).

¹⁰The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, r. 12(4) & annex., INDIA CODE (scale of relief payable in stages from the recording of the first information report);

¹¹Hans von Hentig, *The Criminal and His Victim: Studies in the Sociobiology of Crime* (Yale Univ. Press 1948). Benjamin Mendelsohn, A New Branch of Bio-Psycho-Social Science: Victimology, 10 *Rev. Int'l Criminologie & Police Technique* 95 (1956). ;Michael O'Connell, Victimology: A Social Science in Waiting?, 15 *INT'L REV. VICTIMOLOGY* 91 (2008).

participation, and the right to protection and reparation. Indian reform writing itself took up this vocabulary, first in the 154th Report of the Law Commission of India and later in the 2003 Report of the Committee on Reforms of Criminal Justice System, better known as the Malimath Committee.¹²

Two theoretical anchors give the concept analytical bite. The first is the procedural justice insight, associated with Tom Tyler, that people evaluate legal authority less by outcomes than by the quality of the process whether they were given voice, treated with respect and neutrality, and dealt with by trustworthy institutions.¹³ Understood in this way, allowing the victim a role is not an act of sentimentality. It bears directly on how legitimate the system appears to ordinary citizens, and consequently on how willing they are to report offences and to cooperate with the prosecution. The second is the triangular reconception of the criminal process. The classical model is bilateral State versus accused with the victim collapsed into the State's case.¹⁴ A victim-centric model is triangular, recognising three distinct interests: the State's interest in public order, the accused's interest in liberty and a fair trial, and the victim's interest in acknowledgement, protection and reparation.¹⁵ The design problem, then, is not to convert a bilateral contest into a different bilateral contest victim versus accused but to make room for a third interest without displacing the second. That constraint governs every proposal advanced in this article.

Crucially, "victim-centric" is not a synonym for "punitive."¹⁶ A system can multiply offences and lengthen sentences while leaving the actual victim as peripheral as ever; conversely, a system can reposition the victim without diluting the presumption of innocence.¹⁷ Indian criminal law reform has often conflated the two, treating harsher provisions for offences against women and children as proof of victim-

centredness.¹⁸ The conflation matters, because it allows a legislature to claim the victim's mantle while delivering, in substance, only an expansion of State power.¹⁹

It is equally important to distinguish victim-centric justice from two adjacent ideas with which it is frequently confused. It is not the same as restorative justice, which seeks to repair the relationship between offender, victim and community, often outside the formal trial; victim-centred procedure operates within the ordinary trial and is compatible with, but not dependent upon, restorative mechanisms.²⁰ Nor is it penal populism, the electoral impulse to demonstrate toughness through ever-harsher sanctions; indeed, penal populism frequently crowds out genuine victim-centredness by substituting symbolic severity for the unglamorous work of information, support and reparation.²¹ In the Indian constitutional setting, the case for victim-centred procedure rests not on populist sentiment but on Article 21's guarantee of a life of dignity which the courts have read to include the dignity of those harmed by crime on Article 14's promise of equal protection, and on the Directive Principles' concern with social justice and effective access to the legal system.²² Locating the victim's claim in these provisions, rather than in the rhetoric of retribution, is what keeps a victim-centric reform faithful to constitutional values rather than hostage to the passions of the moment.

THE VICTIM UNDER THE NEW CODES: A DOCTRINAL AUDIT

The new codes' victim-facing provisions fall into three registers substantive, procedural, and evidentiary and a candid audit shows real, if uneven, progress.

On the substantive side, the BNS gathers offences against women and children into a single chapter that is placed early in the scheme of the Code, raises the pun-

¹²Law Commission of India, *One Hundred Fifty-Fourth Report on the Code of Criminal Procedure*, 1973 (1996); Committee on Reforms of Criminal Justice System, *Report of the Committee on Reforms of Criminal Justice System* (2003); Douglas E. Beloof, *The Third Wave of Crime Victims' Rights: Standing, Remedy, and Review*, 2005 BYU L. REV. 255.

¹³TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 161–69 (2d ed. 2006); Tom R. Tyler, *Procedural Justice and the Courts*, 44 CT. REV. 26, 26–31 (2007).

¹⁴Antony Duff et al., *THE TRIAL ON TRIAL: TOWARDS A NORMATIVE THEORY OF THE CRIMINAL TRIAL* 18–32 (2007).

¹⁵Andrew Ashworth, *Victims' Rights, Defendants' Rights and Criminal Procedure*, in *THE OXFORD HANDBOOK OF CRIMINAL PROCESS* 951, 959–67 (Darryl K. Brown et al. eds., 2019).

¹⁶Lucia Zedner, *Victims*, in *THE OXFORD HANDBOOK OF CRIMINOLOGY* 419 (6th ed. 2017).

¹⁷Douglas E. Beloof, *The Third Wave of Crime Victims' Rights: Standing, Remedy, and Review*, 2005 BYU L. REV. 255.

¹⁸Law Commission of India, *154TH REPORT ON THE CODE OF CRIMINAL PROCEDURE*, 1973 (1996).

¹⁹David Garland, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* (2001).

²⁰Gerry Johnstone, *RESTORATIVE JUSTICE: IDEAS, VALUES, DEBATES* (3d ed. 2011); TONY F. MARSHALL, *RESTORATIVE JUSTICE: AN OVERVIEW* (Home Office Research Development & Statistics Directorate 1999); JOHN BRAITHWAITE, *RESTORATIVE JUSTICE AND RESPONSIVE REGULATION* (2002).

²¹JOHN PRATT, *PENAL POPULISM* (2007).

²²INDIA CONST. arts. 14, 21, 38, 39A; *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 S.C.C. 14; *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 S.C.C. 490; *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 S.C.C. 770; *Laxmi v. Union of India*, (2014) 4 S.C.C. 427.

ishments prescribed, and creates fresh offences among them, obtaining sexual intercourse on a false assurance of marriage, employment or promotion, or by suppressing one's identity. The Sanhita also brings in community service as a sentencing option for certain petty offences, which is a small but real step in a restorative direction.²³ These are victim-regarding in the sense that they take the gravity of certain harms more seriously; they are not, however, victim-empowering, because they operate entirely on the punishment side of the ledger and leave the victim's role in the process untouched.²⁴

Procedurally, the BNSS carries forward and modestly extends the participatory architecture built into the CrPC by the 2008 amendment. It retains the statutory definition of "victim" as a person who has suffered loss or injury caused by the act or omission of the accused, including the victim's guardian or legal heir.²⁵ The informant is entitled to a copy of the first information report without paying for it; information may now be registered electronically ("e-FIR") as well as through a zero-FIR; and, importantly, the police are obliged to keep the informant or victim apprised of how the investigation is progressing, including through electronic communication, within ninety days. Forensic investigation is made compulsory where the offence carries seven years' imprisonment or more. The statute also lays down protective methods for recording statements of those who have suffered sexual offences the statement may be recorded at a location the victim selects, preferably by a woman officer, and through audio-video electronic means.²⁶ Two provisions mark the outer edge of victim participation in the general Code: the victim may engage an advocate of choice to *assist* the public prosecutor, though that advocate's role is confined to submitting written arguments after the evidence is closed; and the court may not permit the withdrawal of a prosecution without first hearing the victim. The Code continues the victim compensation scheme and obliges the States to notify a witness protection scheme.²⁷

²³Bharatiya Nyaya Sanhita, No. 45 of 2023, ch. V, §§ 4(f), 63–99, 69 (India).

²⁴Matthew Hall, *Victims of Crime: Policy and Practice* 25–49 (2d ed. 2012).

²⁵Code of Criminal Procedure (Amendment) Act, No. 5 of 2009, § 2(wa) (India); Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 2(1)(y) (India).

²⁶Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 173, 176, 193, 176(3), 193(3), 349 (India); *State of Punjab v. Gurmit Singh*, (1996) 2 S.C.C. 384.

²⁷Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 338(2), 360, 395, 398 (India); *Jagjeet Singh v. Ashish Mishra @ Monu*, (2022) 9 S.C.C. 321.

Evidentially, the BSA modernises the treatment of electronic and digital records, which properly implemented strengthens the evidentiary footing of victims in offences where digital traces are decisive.²⁸

The honest verdict is that the new codes are strongest precisely where they ask least of the system's structure. They digitise information flows, accelerate timelines, and expand the categories of harm the criminal law names. What they do not do is confer on the victim any independent procedural standing. The victim's advocate assists but cannot lead; the victim is heard before withdrawal but not, as of right, at bail or sentencing; compensation remains a discretionary, State-funded scheme severed from the verdict rather than an entitlement fixed within it.²⁹ The reform, in short, mistakes efficiency for empowerment: it improves the victim's experience of a process in which the victim remains an object rather than a participant.

The cost of leaving the victim an object of the process rather than a participant in it is secondary victimisation the additional harm the criminal process itself inflicts on the person it exists to vindicate. It accumulates across the whole journey: at the police station, where reporting may be discouraged or the FIR delayed; during investigation, where the victim may be repeatedly summoned, kept uninformed, and left unprotected against intimidation; and at trial, where cross-examination can be conducted in a manner that humiliates rather than tests, and where years of adjournments compel the victim to relive the offence at each hearing. The new codes address fragments of this protective statement-recording for sexual offences, the ninety-day information duty, a nod to witness protection but they do so piecemeal and without a general standard requiring that the victim be shielded from avoidable re-traumatisation.³⁰ The BSA's modernisation of digital evidence, welcome in itself, illustrates the same tendency: it improves the machinery of proof without altering the position of the person whose harm the proof concerns. A reform serious about the victim would treat the mitigation of secondary victimisation as a design objective running through every stage, not as an incident of a handful of special provisions.

National Crime Records Bureau figures show that 4,45,256 cases of crimes against women were registered during 2022, which works out to approximately fifty-

²⁸Bharatiya Sakshya Adhiniyam, No. 47 of 2023, §§ 2(d), 57–63 (India).

²⁹Sam Garkawe, *The Role of the Victim During Criminal Court Proceedings*, 17 *Crim. L.F.* 595 (2006).

³⁰Jo Goodey, *Victims and Victimology: Research, Policy and Practice* 109–34 (2005).

one first information reports in every hour. Against this, the conviction rate for crimes against women was around 26.5% in 2021, while pendency remained close to 95% in effect, courts were disposing of only about one case out of every twenty. For rape, the conviction rate in 2022 stood at 27.8%.³¹ A system that secures a conviction in barely a quarter of the cases it registers, while the overwhelming majority languish undecided, is one in which the victim's interest in acknowledgement and reparation is, in practice, routinely defeated regardless of how swiftly the FIR is now filed online. Faster inputs into a system with these outputs do not, without more, produce victim-centred justice; they produce a better-documented backlog.

INDIA'S ISLANDS OF EXCELLENCE: THE SPECIAL-STATUTE REGIMES

The central claim of this article is that the model India is told to import from abroad already exists at home quarantined inside special statutes designed for particular classes of victim. Three examples establish the point.

Introduced by the 2015 amendment and in force from January 2016, Section 15A is fairly described in the literature as trailblazing for Indian law, because it is the first Indian provision to enumerate the rights of victims and witnesses as a coherent code rather than as scattered concessions.³² It requires that the victim be treated with fairness, dignity and fairness as well, and with due regard to any special need arising from age, gender, educational disadvantage or poverty a needs-sensitive standard that anticipates the “individual assessment” logic of European victim law. It guarantees notice of court proceedings on time, a right to be heard on bail, protection for victims and witnesses, the video-recording of proceedings, assistance from non-governmental organisations and social workers, and under the associated rules relief in cash or kind beginning at the FIR stage rather than at the trial's end. In its front-loading of relief, Section 15A is in one respect *more* victim-protective than the celebrated German adhesion procedure, which resolves compensation only within the eventual judgment.

³¹NAT'L CRIME RECS. BUREAU, MINISTRY OF HOME AFFAIRS, *CRIME IN INDIA 2022* ch. 3A, tbls. 3A.1, 3A.2, 3A.8 (2023); NAT'L CRIME RECS. BUREAU, MINISTRY OF HOME AFFAIRS, *CRIME IN INDIA 2021* ch. 3A, tbl. 3A.8 (2022).

³²Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, No. 1 of 2016, § 10 (introducing § 15A into the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989); Sukhadeo Thorat & Umakant, *B.R. Ambedkar: Perspectives on Social Exclusion and Inclusive Policies* 312–18 (Oxford Univ. Press 2020).

POCSO constructs its entire procedure around the fact that the victim is vulnerable. It provides for special courts and special public prosecutors designated for the purpose, trials held in camera, arrangements that spare the child from having to face the accused while testifying, and safeguards for the child's identity. Under the POCSO Rules, a “support person” may also be appointed to accompany the child and assist through both investigation and trial.³³ The support person is, in functional terms, an indigenous cousin of Germany's statutory psychosocial process accompaniment a non-legal, continuous presence whose task is to reduce the secondary victimisation that the criminal process itself inflicts.³⁴

The Witness Protection Scheme, 2018 was drawn up by the Ministry of Home Affairs after consultation with the States and the National Legal Services Authority. In *Mahender Chawla v. Union of India* the Supreme Court gave it the status of binding “law” under Articles 141 and 142, to hold the field until Parliament enacts legislation on the subject. It represents the first comprehensive framework operating across the country for assessing threats, protecting identities, arranging relocation and providing protective measures within the courtroom.³⁵ Though nominally about witnesses, it protects victims who testify, and it demonstrates that India can construct and judicially entrench a sophisticated protective infrastructure when the will exists.³⁶

Taken together, these regimes already deliver, for defined categories of victim, most of what a mature victim-centric system requires: dignified and needs-sensitive treatment, structured information, a voice at critical junctures, protection, support, and front-loaded reparation.³⁷ India's problem is not conceptual poverty but *distributional arbitrariness*: it protects victims in inverse concentric rings, lavishing the fullest protection on categorically-defined vulnerable victims and leaving the ordinary victim the person robbed, assaulted,

³³Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 24, 26, 33, 35, 37; Protection of Children from Sexual Offences Rules, 2020, rr. 4, 5, 9 (India).

³⁴Thomas Weigend & Jenia Iontcheva Turner, The Constitution of Criminal Procedure: Victims and Witnesses, in *THE OXFORD HANDBOOK OF CRIMINAL PROCESS* 861, 880–87 (Darryl K. Brown et al. eds., 2019).

³⁵*Mahender Chawla v. Union of India*, (2019) 14 S.C.C. 615; Witness Protection Scheme, 2018 (Ministry of Home Affairs, Government of India).

³⁶*Smruti Tukaram Badade v. State of Maharashtra*, (2022) 8 S.C.C. 825 (approving Vulnerable Witness Deposition Centres and extending procedural protection to vulnerable witnesses); *Sakshi v. Union of India*, (2004) 5 S.C.C. 518.

³⁷UN Office on Drugs and Crime, *Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* 15–49 (1999).

defrauded or maimed outside any special statute with the thinnest entitlements of all.³⁸

Intellectual honesty, however, requires a second observation that strengthens rather than weakens the thesis. India's islands of excellence are themselves imperfectly realised. In the special courts constituted under the PoA Act, the acquittal rate across 2014-2022 has been high above 60% overall while conviction rates have remained under a third for most offences against Dalit women. The lesson is not that the indigenous models are hollow, but that *enactment is not implementation*: a victim-centric provision delivers protection only when matched by trained personnel, funded services, and institutional accountability. That lesson, as the next section shows, is the very lesson Germany also teaches from the opposite direction.

THE GERMAN BENCHMARK AND ITS LIMITS

German criminal procedure is the natural benchmark for a study of victim participation because it has, over four decades, built the victim into the trial more deeply than almost any comparable system and because it does so within a code, not a constitution, making its techniques legible to a reforming legislature.³⁹

Four institutions deserve attention here. The first is the *Nebenklage*, or private accessory prosecution, governed by Sections 395 to 402 of the *Strafprozessordnung* (StPO), which allows victims of serious offences sexual offences, homicide, grievous bodily harm to join the public prosecution as accessory prosecutors. Once she does so, the victim ceases to be simply a witness: she may remain present throughout the proceedings, put questions, apply for evidence to be taken, make statements, deliver a closing address, and, within certain limits, prefer an appeal independently of the public prosecutor. Second, the *Adhäsionsverfahren*, under Sections 403 to 406c StPO, allows the victim's claim for civil compensation to be decided within the criminal proceeding, sparing a separate civil suit. Third, since 2017, statutory *psychosoziale Prozessbegleitung* (psychosocial process accompaniment) under Section 406g StPO and the dedicated PsychPbG provides qualified, non-legal support before, during and after the main hearing, available as a court-appointed entitlement for particularly vulnerable victims such as minors subjected to serious sexual or violent crime. Fourth,

Section 397a StPO provides for State-funded victim counsel in serious cases, and Sections 406d to 406l StPO assemble a dense code of information rights. Notably, German law avoids the loaded word "victim," referring instead to the "aggrieved person" (*Verletzte*) a linguistic caution that keeps the presumption of innocence in view by not presupposing, before conviction, that a crime occurred at all.⁴⁰

Two limits must, however, temper any impulse to transplant. The first is *structural*. These institutions are load-bearing parts of an inquisitorial architecture, in which the court itself drives fact-finding and the prosecutor is conceived as an objective organ of justice rather than a partisan.⁴¹ Within such a framework, an accessory prosecutor adds to what is fundamentally an inquiry into the truth. Carried across into India's adversarial contest without adaptation, however, the same institution could turn the trial into a two-against-one pursuit of the accused, with the victim functioning as a second prosecutor an arrangement that sits uneasily with the guarantee of a fair trial. Otto Kahn-Freund made the point that whether a legal institution can be transplanted depends on how closely it is tied to the political and procedural structures in which it is embedded. The *Nebenklage* is tied closely; psychosocial accompaniment is not. The second limit is *empirical*. German scholarship documents that even this admired system underperforms in practice, applying its protections to victims of sexual violence without living up to the high standards it promises on paper. Germany, in other words, teaches the same lesson as India's own special courts: the frontier of victim-centric justice is implementation, not drafting.⁴²

The comparative payoff is therefore twofold. Germany supplies a *yardstick* the mature form of each victim function against which India can measure its indigenous provisions and identify what to deepen. And it supplies a *warning* that rights unaccompanied by funded services and institutional discipline remain ornamental, and that an adversarial system must adapt, not copy, the inquisitorial victim.

³⁸Michael Bohlander, *Principles of German Criminal Procedure* 163–66 (Hart Publ'g 2012).

⁴¹John D. Jackson & Sarah J. Summers, *The Internationalisation of Criminal Evidence: Beyond the Common Law and Civil Law Traditions* 44–58 (Cambridge Univ. Press 2012).

⁴²Tamara Hörnle, Victims in the German Criminal Process: Improvements and Persistent Deficits, in *CRIME, PROCEDURE AND EVIDENCE IN A COMPARATIVE AND INTERNATIONAL CONTEXT: ESSAYS IN HONOUR OF MIRJAN DAMAŠKA* 317 (John Jackson et al. eds., Hart Publ'g 2008).

³⁸R.I. Mawby & Sandra Walklate, *Critical Victimology: International Perspectives* 178–203 (SAGE Publ'ns 1994).

³⁹Thomas Weigend, Delikttopfer und Strafverfahren, 114 ZEITSCHRIFT FÜR DIE GESAMTE STRAFRECHTSWISSENSCHAFT 67 (2002).

FROM ISLANDS TO MAINLAND: GENERALISATION, AFFORDABILITY AND CONSTITUTIONAL

Calibration

The preceding analysis yields a precise reform hypothesis: India can redeem the victim-centric promise of the new codes by universalising its own special-statute protections across the ordinary criminal process, drawing on Germany to specify their mature form and to mark the outer limit of what an adversarial system can safely absorb. Whether that hypothesis holds turns on three questions of fit, of affordability, and of constitutionality and it is to these that this section now turns, in prose rather than in the shorthand of a table, because the argument lives in the relationships between the provisions rather than in their mere enumeration.

Consider first the fit between what India already possesses and what the general codes lack, function by function. The most basic guarantee of a victim-centred process is that the person harmed be treated with dignity and according to individual need. India already articulates precisely such a standard but only in Section 15A(2) of the PoA Act, which commands that the victim be dealt with fairly and with regard to any disadvantage of age, gender, education or poverty. This is the domestic analogue of the individual, needs-based treatment that animates European practice, yet the general codes contain no comparable clause; the ordinary victim enjoys no statutory entitlement to dignified or need-sensitive treatment at all. The same asymmetry recurs with the right to information. The PoA Act obliges the State to keep the atrocity victim informed of every stage of the proceedings, and Germany assembles an entire code of information rights in Sections 406d to 406l of its *Strafprozessordnung*; the general codes, by contrast, offer the ordinary victim only a free copy of the first information report and a single ninety-day progress update a thin and one-off gesture where the special statute offers a continuing stream.⁴³ The pattern deepens as the functions become more demanding. On support, POCSO furnishes the child victim with a support person to accompany and steady her through investigation and trial an indigenous cousin of Germany's statutory psychosocial process accompaniment while the general codes furnish the adult victim with nothing of the kind. On protective testimony, POCSO shields the child from confrontation with the

accused, permits in-camera proceedings, and guards her identity, and German practice normalises video-link and recorded testimony; the general codes extend protective modalities only to the recording of certain sexual-offence statements, leaving the ordinary vulnerable witness to the full rigours of open confrontation. On protection against intimidation and reprisal, India possesses, in the Witness Protection Scheme, 2018, a sophisticated, judicially entrenched framework of threat assessment, identity protection and relocation, yet the general codes do no more than direct the States to notify some scheme, without anchoring the duty to those concrete standards.⁴⁴ On voice, the PoA Act secures the atrocity victim a hearing at the bail stage, and the German *Nebenklage* represents the mature though, for reasons already given, non-transplantable form of participatory standing; the general codes confine the ordinary victim's voice to an advocate who may merely assist the prosecutor and to a single guaranteed hearing before the withdrawal of a prosecution. And on reparation, the PoA rules release relief in stages from the moment the FIR is recorded, while Germany decides the victim's compensation within the criminal judgment itself; the general codes retain a compensation scheme that is discretionary, State-funded and severed from the verdict, and provide the ordinary victim no dedicated counsel at all, where the PoA Act already channels free legal aid through the legal-services authorities and Germany appoints victim counsel at State expense under Section 397a.

The cumulative finding is stark and, for the reformer, encouraging: of the eight functions that together constitute a victim-centred process dignified treatment, information, support, protective testimony, protection, voice, reparation and counsel seven are already delivered by some Indian statute,⁴⁵ and not one is consolidated in the general codes. India's deficiency is therefore not conceptual but distributional: it has written the victim-centred process it is told it lacks, and then confined it to enclaves. The reform is overwhelmingly a task of internal generalisation, with Germany contributing the mature specification of only the two functions India delivers thinly even in its enclaves continuous accompaniment and process-linked reparation.

The second question is affordability, and here the evidence is more arresting still, because it reveals that India's victim-support deficit persists not for want of

⁴³Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, § 15A(11)–(12) (India); Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 173, 193 (India).

⁴⁴Protection of Children from Sexual Offences Rules, 2020, rr. 4–5 (India); Witness Protection Scheme, 2018 (Ministry of Home Affairs, Government of India).

⁴⁵RIANE LETSCHERT ET AL., VICTIMS' RIGHTS AND THE EU VICTIMS' DIRECTIVE: A PRACTICAL GUIDE 15–38 (Wolf Legal Publishers 2019).

money but in spite of money that lies unspent. The Nirbhaya Fund, earmarked for the safety and support of women, has long gone under-used. A Parliamentary committee found that only a little more than a third of the corpus had actually been released roughly ₹3,581 crore out of ₹9,288 crore, or about 38.55%. The Supreme Court, for its part, has cautioned that unless the money is genuinely spent, the Fund is no more than lip service.⁴⁶ The compensation machinery tells the same story from the delivery end. The National Legal Services Authority disbursed only around ₹40 crore in victim compensation nationwide in 2022 a figure dwarfed by the 4,45,256 crimes against women registered that year and even after the Central Victim Compensation Fund was topped up in the months following the new codes' commencement, only about sixty per cent of the additional grant had been utilised by the end of 2024, with States blaming slow inter-departmental approvals. Practitioners note a persistent gap between compensation awarded and compensation disbursed, and a striking scarcity of court references to the scheme even in sexual-offence cases.⁴⁷ The bottleneck, in short, is not the size of the corpus but the architecture of delivery.

Germany's experience converts this diagnosis into a design lesson. German victim support is not carried on the shoulders of the exchequer alone; it is delivered through a deliberate hybrid statutory entitlements to compensation and to psychosocial accompaniment, State victim-protection foundations that meet emergencies, a nationwide victims' helpline reachable on a single number, and, above all, Weisser Ring, the country's only nationwide victim-support organisation, which operates largely through trained volunteers and independently of State funding.⁴⁸ The significance for India is direct. A country of India's scale cannot, and need not, build victim support as a new arm of the bureaucracy; it can instead knit together components it already possesses the non-governmental organisations that the Parliamentary committee itself praised for delivering psychosocial support to survivors, the State legal-services authorities that already administer compensation, and the national helplines already operating for women, children and emergencies into a hy-

brid delivery layer funded from the idle corpus. The affordability objection, so often raised against victim reform in a populous developing country, is therefore answered twice over: the money exists, and the cheapest and most scalable delivery model civic and volunteer-anchored rather than wholly statist is one India is unusually well placed to build.

The third question is constitutionality, for generalising victim participation touches the accused's fair-trial guarantee under Article 21 as expounded since *Maneka Gandhi v. Union of India*, and must honour the equality guarantee of Article 14. The discipline this article urges can be reduced to a single design principle voice, not control. The victim should gain structured opportunities to be informed, supported, heard and repaired; the victim should not acquire powers to lead the prosecution, to cross-examine at large, or to veto prosecutorial discretion, for these would convert the adversarial trial into a contest of two accusers against one accused.⁴⁹ It is precisely here that the German comparison earns its keep negatively, by marking the outer boundary of safe adversarial borrowing: India should take Germany's information, support, protection and reparation functions, which leave the balance of the contest undisturbed, while declining full accessory prosecution, which in an adversarial setting would upset it. The German linguistic instinct speaking of the "aggrieved person" rather than the "victim" deserves the same respect, since a genuinely victim-centred procedure must take care not to let solicitude for the complainant harden, before verdict, into a presumption of the accused's guilt. Understood this way, victim voice and the presumption of innocence are not rivals but companions: a proportionate reform that adds participation without subtracting fair-trial protection answers both Article 14's demand for even-handedness among similarly situated victims and Article 21's demand for a fair and dignified process.

FINDINGS

The analysis supports five principal findings. First, the new criminal codes advance the victim's cause chiefly by improving the efficiency and transparency of a process in which the victim's structural position is unchanged; they digitise the victim's experience without conferring standing, and thus mistake efficiency for empowerment. Second, that this is a genuine deficit, and not a cosmetic one, is confirmed by outcomes a

⁴⁶Dep't-Related Parliamentary Standing Comm. on Home Affairs, Two Hundred Forty-Eighth Report on the Working of the Ministry of Women and Child Development on the Nirbhaya Fund (Rajya Sabha Secretariat 2021); *Nipun Saxena v. Union of India*, (2019) 2 S.C.C. 703.

⁴⁷National Legal Services Authority, Annual Report 2022–2023 (2023); Ministry of Home Affairs, Government of India, Annual Report 2024–2025 (Victim Compensation Fund).

⁴⁸Weisser Ring e.V., Annual Report 2023 (2024); Federal Ministry of Justice (Ger.), Opferschutz im Strafverfahren (Victim Protection in Criminal Proceedings) (2023).

⁴⁹INDIA CONST. arts. 14, 21; *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248; *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 S.C.C. 158.

conviction rate of roughly a quarter in crimes against women and a pendency rate near ninety-five percent which show the victim's interest in acknowledgement and reparation to be routinely defeated in practice however swiftly the FIR is now filed. Third, India already possesses, within its special statutes, a mature and in places world-class victim jurisprudence: seven of the eight functions that constitute a victim-centred process are already delivered by the PoA Act, POCSO or the Witness Protection Scheme, 2018, so that India's real failing is the distributional arbitrariness by which the fullest protection is reserved for categorically-defined victims and the thinnest left to everyone else. Fourth, the reform is affordable, because the constraint is delivery rather than money: dedicated funds lie substantially unspent, compensation actually disbursed is a fraction both of the harm and of the available corpus, and Germany demonstrates a civic, hybrid delivery model of the kind India is well placed to assemble from existing NGOs, legal-services authorities and helplines that does not depend on a new bureaucracy. Fifth, generalisation is constitutionally sustainable provided it is disciplined by the principle of voice rather than control, taking from Germany those functions that leave the adversarial balance intact and declining those that would not.

RECOMMENDATIONS AND SUGGESTIONS

The findings translate into a compact, enactable package expressible as general provisions in the BNSS or, more immediately, as a State pilot under the Concurrent List that mainstreams the indigenous protections while observing the voice-not-control limit. The core recommendations are eight. India should enact a general victim-treatment standard, modelled on Section 15A(2) of the PoA Act, requiring that every victim be treated with fairness, dignity and regard to individual need, supported by a brief individual assessment at the reporting stage. It should convert the solitary ninety-day update into a structured right to information stage-wise notice of arrest, bail, charge, trial dates, disposal and release delivered through the very digital infrastructure in which India's reach can exceed Germany's. It should create a support-person entitlement for vulnerable adult victims, generalising POCSO's support person and Germany's psychosocial accompaniment. It should extend protective testimony screens, video-link and the avoidance of confrontation beyond children to vulnerable adult witnesses. It should give the protection duty statutory teeth by anchoring it to the concrete standards of the Witness Protection Scheme, 2018 rather than to an unspecified future scheme. It

should confer a structured victim voice at bail, withdrawal and sentencing a right to be heard, not to control, preserving the public prosecutor's primacy. It should tie reparation to the process, front-loading interim relief on the PoA model and obliging the court to consider compensation within the judgment itself, in the spirit of the German adhesion procedure and of the existing judicial insistence that compensation be actively weighed. And it should provide State-funded victim counsel for serious offences, generalising the legal aid already available under the PoA Act and mirroring Section 397a of the German code.

Beyond these black-letter reforms, three broader suggestions would determine whether the package lives on paper or in practice. The first concerns delivery: India should resist the temptation to build victim support as a new government department and instead assemble a hybrid, Weisser-Ring-style layer that empanels trained non-governmental and volunteer support persons, routes them through the State legal-services authorities, and consolidates the existing women's, children's and emergency helplines into a single, well-publicised victims' helpline all financed by ring-fencing a defined share of the idle Nirbhaya corpus for victim services rather than for hardware alone. The second concerns proof: the reform should be introduced first as a single-State pilot accompanied by a published evaluation framework that tracks take-up, measures of secondary victimisation, disbursement timelines, and any effect on conviction and pendency, so that generalisation nationwide rests on evidence rather than on faith the very discipline whose absence has hollowed out both India's special courts and, at the margins, Germany's own model. The third concerns coherence: in the medium term, India should consider consolidating its scattered victim provisions those of the general codes, the PoA Act, POCSO, the compensation schemes and the Witness Protection Scheme into a single Victims of Crime (Rights and Support) framework, so that the victim's rights are found in one legible instrument rather than reconstructed from a dozen, and so that the exception, once generalised, is also made durable.

CONCLUSION

The new criminal codes promised to reposition the victim from spectator to participant. On a candid reading, they have digitised the spectator's seat rather than moved it. Yet the resources for genuine repositioning are not to be found principally in Berlin. They are found in India's own statute book in Section 15A of the PoA Act, in POCSO's support person, in the

Witness Protection Scheme entrenched by Mahender Chawla where a mature, needs-sensitive, participatory and reparative conception of the victim already operates for those the law has chosen to protect. India's task is to end the distributional arbitrariness by which the fullest protection is reserved for categorically-defined victims and the thinnest for everyone else. Germany's contribution is to show what the mature form of each protection looks like, and to warn as India's own special courts also warn that rights unmatched by funded services remain words on paper. The exception India has already built should become the rule. That is a reform India can largely draft from its own precedents, fund from its own idle corpus, and defend within its own Constitution and it is a more honest, more feasible, and more intellectually defensible path to victim-centric justice than the importation the literature reflexively recommends.

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