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THE VULNERABILITIES OF JUVENILE VICTIMS WITHIN THE LEGAL SYSTEM: CRIMINAL JUSTICE APPROACH

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Abstract

The criminal justice system in India is grounded in the maxim that "it is better that a Hundred guilty persons escape than that one innocent suffer." While this principle Safeguards the rights of the accused, it often sidelines victims especially juveniles who Face unique vulnerabilities within the justice process. Between 2021 and 2023, NCRB data Revealed thousands of minors implicated in violent crimes, highlighting both their role as Offenders and their susceptibility as victims. For example, NCRB's Crime in India 2022 Reported 31,170 cases registered under the POCSO Act, with conviction rates remaining Below 30%, reflecting gaps in victim protection. This paper examines the structural and Systemic challenges faced by juvenile victims, evaluates the effectiveness of existing legal Protections such as the Juvenile Justice (Care and Protection of Children) Act, 2015 and The POCSO Act, 2012, and explores comparative insights from international frameworks. Using doctrinal analysis supplemented with empirical data and case law, the study seeks. To identify reforms to strengthen victim protection and ensure a balance between offender Rehabilitation and victim rights.

Keywords: Juvenile justice, Juvenile victims, Vulnerabilities, Criminal justice system, POCSO, Victim protection.

I INTRODUCTION

God has given us children as priceless gifts, and it is our duty as parents to raise them in a healthy sociocultural environment so they can grow up to be responsible adults. However, a troubling aspect in the country is the high number of minors participating in juvenile criminality.

A police investigation revealed that from January 2022 to May 2024, there were 259 minors implicated in cases of murder, attempted murder, rape, robbery, and extortion. In 2022, a total of 3,002 minors were documented as participating in various crimes, which included 152 murders. The year prior, in 2021, the figure for minors was 3,317, with 125 of those cases being murders.[1]

Based on acts including disobedience, burglary, property destruction, violence, and sexual offenses, juvenile criminality is divided into six categories. According to experts, the legislation

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[1] HT Correspondent, 'Juvenile Participation in Delhi Crime on Rise: Police Data', Hindustan Times, February 6, 2025, *available at*: https://www.hindustantimes.com/india-news/juvenile-participation-in-delhi-crime-on-rise-police-data-101734326175485.html (last visited on February 6, 2025).

as it stands now is insufficient to handle this problem, and modifications are required to enable minors to be prosecuted and sentenced like adults.[2]

Rules-breaking by young people upsets social order and draws the attention of legal and social control organizations. It is believed that juvenile misconduct poses a risk to both individual and social development, necessitating constructive, powerful remedies. Juvenile justice is based on the rehabilitative purpose, as opposed to criminal justice for adults, which is based on criminal justice against adults. This strategy promotes law-abiding conduct in the following generation.[3]

Millions of underprivileged children in India live in neglect and with sick families; they are frequently uneducated, unwell, and hungry. Millions are compelled to enter the labour at an early age, and millions remain homeless as a result of abuse, family dissolution, or the death of a loved one. The vulnerability of these children has been made worse by globalization and economic liberalization, yet poverty, which affects hundreds of millions of people in India, has not decreased due to the unequal distribution of income.

IPS officer Joy N Tirkey, a former deputy commissioner of police, who studied minors in northeast Delhi, said, "From interrogation of these minors so far, we found that they come from broken families with no one looking at their conduct due to which they fall into bad company and start committing crime for easy money or to feel powerful."

The allure of building one's own "following," the lure of making quick money, and the influence of both fictional and "real-life gangsters have resulted in a notable rise in the number of serious offenses perpetrated by young individuals lately". In numerous instances, when apprehended, young offenders are placed in correctional facilities, where they receive counselling and participate in rehabilitative programs. According to youth counsellors, many of these young criminals are motivated by gangsters and come from disadvantaged backgrounds with insufficient educational opportunities.[4]

Children represent the most vulnerable members of society, deserving special care and Protection. Yet, India continues to grapple with a troubling rise in juvenile criminality and, Simultaneously, the neglect of juvenile victims. NCRB reports show that in 2022 alone, 3,002 minors were implicated in serious crimes, including 152 cases of murder. In 2023, Delhi alone accounted for over 2,200 juvenile crime cases, the highest among all states. Behind such figures

[2] Asha Rani, 'Juvenile Crimes in India and the Law', 3(1) *International Journal of Advance Research, Ideas and Innovations in Technology* 910 (2017), *available at*: https://www.ijariit.com/manuscripts/v3i1/V3I1-1402.pdf (last visited on February 4, 2025).

[3] Bernd-Dieter Meier and Abhijit D. Vasmatkar, 'Juvenile Justice in Different Cultural Contexts: A Comparison of India and Germany', *available at*: https://zis-online.com/dat/artikel/2011_6_584.pdf (last visited on February 4, 2025).

[4] *Ibid.*

lies a broader social reality of poverty, broken families, and systemic Neglect, which not only fuels juvenile delinquency but also leaves countless children at Risk of victimization.[5]

Despite the existence of robust legislation—the Juvenile Justice Act, 2015 and the POCSO Act, 2012—the protection of juvenile victims remains inconsistent. This paper explores the Dual role of children as both offenders and victims, with an emphasis on the unique Vulnerabilities juvenile victims face.

In today's ultramodern culture, it is morally required to safeguard vulnerable youngsters. Given that they are the country's future, India's vulnerable youth and juveniles are in a dire situation. Crimes by young people have affected Indian society and called for important reforms. Two key laws have been enacted by the Indian government: "the Protection of Children from Sexual Offenses (POCSO) Act of 2012 and the Juvenile Justice (Care and Protection of Children) Act of 2015". The legislation seeks to help juveniles who are victims or offenders of crimes by providing a supportive framework. However, many challenges still exist in protecting children in India.

II UNDERDTANDING JUVENILE JUSTICE

"The Juvenile Justice Act of 2000" identifies "juvenile" as "a person who is less than 18 years old"[6], while "juvenile delinquency" pertains to unlawful actions or misbehaviour by minors. Different elements like family setting, psychological issues, and social instability lead to such actions, turning a child into a juvenile delinquent.[7] Juveniles who engage in acts that would result in punishment for adults are classified as juvenile offenses. In India, these persons are placed in dedicated facilities, where they receive care and education, while not being regarded as offenders, aligned with the rehabilitative "principles of juvenile justice".

Post India's ratification of the UNCRC in 1992, the Juvenile Justice Act of 1986 was replaced in keeping with the guidelines of the 1989 "Convention on the Rights of the Child."[8]. Changes were made in 2006 and 2010 however the act came under significant criticism after the December 2012 Delhi gang rape because of its shortcomings in tackling serious offenses committed by minors. In response to citizens' protests, Parliament revised the law in 2015,

[5] National Crime Records Bureau, Crime in India 2022: Statistics (Ministry of Home Affairs, Government of India, 2023).
[6] Juvenile Justice (Care and Protection of Children) Act, 2000, s2(k).
[7] *Supra* note 4.
[8] India Celebrates Commitment to Child Rights with National Summit for Every Child in India at Parliament on World Children's Day (November 19, 2019), UNICEF, *available at*: https://www.unicef.org/india/press-releases/india-celebrates-commitment-child-rights-national-summit-every-child-india (last visited on February 1, 2025).

reducing the minimum age of juveniles to 16 and allowing adult penalties for serious offenses. The legislation gained presidential approval on December 31, 2015.[9]

"The Juvenile Justice (Care and Protection of Children) Act, 2015" focuses on the welfare and legal protection of minors. It defines a child as any individual below the age of 18 and classifies them as either "Children in Conflict with the Law (CCL)" or "Children in Need of Care and Protection (CNCP)". In the case of CCL, "the Juvenile Justice Board (JJB)" evaluates whether the minor should be tried as an adult for heinous offences. For CNCP, the "Child Welfare Committee (CWC)" conducts inquiries to decide appropriate measures and provides care arrangements such as adoption, foster placement, sponsorship, and aftercare services.[10]

The "Protection of Children from Sexual Offences (POCSO) Act, 2012" is a legislation designed to safeguard minors under the age of 18 from "sexual exploitation" and "sexual abuse". It encompasses a broad range of offences, including both penetrative and non-penetrative sexual assault, and prescribes strict punishments for perpetrators, ranging from imprisonment to the death penalty. The Act also mandates the establishment of special Courts to ensure faster trials, with an emphasis on preserving the child's dignity and ensuring their safety throughout the judicial process.[11]

The Constitution's framers included special rules for children's protection in India's Constitution. "Article 15(3) allows the State to create laws for children," while Article 21 A guarantees "free and compulsory elementary education". Article 24 protects children from dangerous work, and Article 39(e) and (f) focus on safeguarding their development and ensuring a dignified childhood.[12] In the matter of "*Satto* v. *State of U.P.*"[13], "Justice V.R. Krishna Iyer" stated that juvenile justice seeks correction through compassion instead of punitive actions, echoing the constitutional spirit found in Articles 15(3) and 39(e). The Indian penal laws correspond with contemporary criminology, promoting a reformative strategy that emphasizes rehabilitation instead of severe punishment for juvenile offenders.[14] In the end, the

[9] Juvenile Justice (Care and Protection of Children) Act, 2000, Government of India, *available at*: https://-legislative.gov.in/sites/default/files/A2000-56.pdf (last visited on February 1, 2025).

[10] Priyanka Nandan, 'POCSO Act and Juvenile Justice: An Analysis of Existing Laws and Practices in India' 4(6) *Indian Journal of Law and Legal Research* 1 (2022), *available at*: https://ijlmh.com/wp-content/uploads/Addressing-Vulnerability-POCSO-Act-Juvenile-Justice-Act-and-Youth.pdf (last visited on February 1, 2025).

[11] *Ibid.*

[12] The Constitution of India Act, 1950.

[13] *Satto* v. *State of U.P.,* 1979 AIR 1519.

[14] IPC and Juvenile Offenders: Rehabilitation vs Punishment, Jyoti Judiciary, *available at*: https://www.jyotijudiciary.com/ipc-and-juvenile-offenders-rehabilitation-vs-punishment (last visited on February 1, 2025).

aim is to deliver compassionate assistance customized to the specific needs of young offenders, guaranteeing they obtain suitable therapeutic treatments for their situations.

III THE APPROACH OF THE CRIMINAL JUSTICE SYSTEM TOWARDS JUVENILE OFFENDERS

"Social control is one of the primary goals of any system of criminal law."[15] The goal of criminal law is to diminish criminal activity and penalize those who violate laws. There are two primary approaches: the retributive model, which emphasizes punishment, and the rehabilitative model, which aims to assist offenders in reforming. In India, the criminal law framework primarily adopts the retributive model.[16] This model fundamentally relies on the idea that individuals who have committed a wrongful act should be held accountable and face punishment for their actions.[17] In this process, factors like proportionality and reasonableness are significant in deciding the suitable punishment.[18]

The retributive model is characterized by its focus on the past, as it assesses the suitable penalty for a crime based on actions that have already taken place.[19] The objective of any criminal justice model is strongly associated with the consequentialist concept of deterrence.[20]

Particular deterrence means when someone has committed an offense, that they won't repeat it again offenses by being placed under arrest.[21] General deterrence, on the other hand, states that those who receive severe punishment for their crimes are deterred from perpetrating them by the dread of suffering the same fate.[22]

In contrast to the retributive paradigm, the rehabilitative model considers the circumstances surrounding a specific offense.[23] Essentially, this paradigm views crime as an expression of

[15] Eric L. Jensen and Jorgen Jepsen (eds), *Juvenile Law Violators, Human Rights and Development of New Juvenile Justice Systems* 3(Hart Publishing, 2006), *available at*: https://api.pageplace.de/preview-DT0400.9781847312853_A24074008/preview9781847312853_A24074008.pdf (last visited on February 2, 2025).

[16] Neetika Vishwanath, 'Criminal Justice and the Death Penalty in India: An Opinion Study with 60 Former Supreme Court Judges', *Oxford Human Rights Hub Blog*, 14 February 2018, *available at*: https://ohrh.law.ox.ac.uk/criminal-justice-and-the-death-penalty-in-india-an-opinion-study-with-60-former-supreme-court-judges (last visited on February 2, 2025).

[17] David O. Brink, 'Immaturity, Normative Competence, and Juvenile Transfer: How (Not) to Punish Minors for Major Crimes' 82 *Texas Law Review* 1555, 1557–1558(2004), *available at*: https://papers.ssrn.com/sol3-papers.cfm?abstract_id=800692 (last visited on February 2, 2025).

[18] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* 143(JH Burns and HLA Hart eds, Oxford University Press, 1996).

[19] *Supra* note 9 at 13.

[20] *Ibid.*

[21] William C. Bailey, 'Deterrence, Brutalization, and the Death Penalty: Another Examination of Oklahoma's Return to Capital Punishment' 36(4) *Criminology* 711 (1998), *available at*: https://doi.org/10.1111/j.1745-9125.1998.tb01263.x (last visited on February 2, 2025).

[22] S. Singer and D. McDowall, 'Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law' 22(3) *Law and Society Review* 521 (1988), *available at*: https://nij.ojp.gov/library/publications-criminalizing-delinquency-deterrent-effects-new-york-juvenile-offender-law (last visited on February 2, 2025).

[23] *Supra* note 9 at 12.

antisocial behaviour brought on by society's incapacity to adequately integrate its constituents.[24] Therefore, while deciding on suitable punishments, the offenders' history and social standing are crucial factors to take into account. Any penalty that is administered using this methodology with the ultimate goal of resocializing a person. The rehabilitative paradigm has frequently been referred to as forward-looking because of its emphasis on the offender's future and the role that punishment plays in resocialization.[25]

This is closely related to the concept of restorative justice, which holds that the ultimate goal of any punishment is to effectively reintegrate a person into society by resolving the conflict between the victim and the offender with the help of a facilitator.[26] The victim's rights must be sufficiently safeguarded in the process, and the state must make an effort to involve them in the healing process.[27] This model's fundamental tenet is that both those who have encouraged crime and those who have been harmed by it can actively work to address the harm that crime causes.[28]

Since the juvenile justice system works with minors, it must strike a balance between various philosophies of justice. One important aspect is that rules that assume children between the ages of seven and twelve lack criminal ability reflect the fact that youngsters are more readily rehabilitated than adults.[29] International norms, which establish fourteen as the minimum age for criminal culpability, are in disagreement with this, nevertheless.[30] Rehabilitating and reintegrating children into society should be the goal of juvenile justice. Public perception is another crucial factor to take into account, since popular opinion and the media frequently advocate for a more stringent approach. As a result, a retributive paradigm that penalizes minors for major offenses is required. Juvenile justice systems often seek to strike a balance between these strategies while putting the best interests of the kid first.

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[24] *Ibid.*.
[25] *Id.* at 13.
[26] *Salil Bali* v. *Union of India*, (2013) 7 SCC 705); Council of Europe, Committee of Ministers, Recommendation CM/Rec (2018) 8 Concerning Restorative Justice in Criminal Matters (2018) ('The Recommendation').
[27] UN Economic and Social Council, Basic Principles on the Use of Restorative Justice in Criminal Matters (2000) ECOSOC Resolution 2000/14, *available at*: https://digitallibrary.un.org/record/429380?ln=en (last visited on February 2, 2025).
[28] Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2nd edn, 2015), *available at*: https://www.saferspaces.org.za/uploads/files/littlebookrjpakaf.pdf (last visited on February 2, 2025).
[29] The Indian Penal Code 1860, s.83.
[30] United Nations Committee on the Rights of the Child, '*General Comment No 24 (201x) replacing General Comment No 10 (2007) - Children's Rights in Juvenile Justice*' CRC/C/GC/24, 9 ('UN General Comment')

IV APPROACH OF THE CRIMINAL JUSTICE SYSTEM REGARDING VICTIMS

The criminal justice system in India is based on the tenets of "let hundred guilty be acquitted but one innocent should not be convicted" and "innocent until proven guilty". This system is criminal-centric and prioritizes the rights and safety of crime victims. Victims are rarely involved in the system and are often relegated to the sidelines. To prevent recurrence of victimization, it is crucial to prioritize victims and change the system's approach to criminal justice, as the accused's actions can lead to further victimization.[31]

Criminal law aims to provide justice to victims and eliminate impunity for offenders. However, victim rights and protection are often overlooked in criminal procedure legislation. India has approved the UN statement "The Basic Principles of Justice for the Victims of Crime and Abuse of Power,"[32] emphasizing the importance of victim rights globally. The criminal justice system should prioritize granting victims their fundamental rights to restore justice.

Fundamental rights include providing information during trial and investigative phases, offering financial assistance, encouraging victim participation in the criminal justice system, and expanding support services to include counselling, medical, legal, and rehabilitation[33].

In today's legal framework, victims often face considerable anguish, resulting in breaches of their basic rights. The criminal justice system frequently places more emphasis on the accused, which diminishes the process of compensating victims. Justice V.R. Krishna Iyer emphasized this issue in Rattan Singh v. State of Punjab[34], noting that the law pays insufficient attention to victims and their dependents, with victim compensation largely overlooked. This deficiency calls for legislative reform. Additionally, in Sakshi v. Union of India[35], the Supreme Court required "in-camera" proceedings for serious crimes such as rape and sexual harassment under POCSO, to protect the dignity of victims.

The UN's Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) call for Active victim participation, financial support, and access to justice—principles only Partially realized in India. The 2018 NALSA Compensation Scheme was a step forward, but NCRB data

[31] Nayana KB and Tanishta Mangaraj, 'Unveiling the Gaps: A Critical Analysis of Victim Protection under the Code of Criminal Procedure' 6(4) *International Journal of Law Management and Humanities* 2764–2776 (2023), *available at:* https://doij.org/10.10000/IJLMH.115680 (last visited on February 4, 2025).

[32] UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (ad opted November 29, 1985, GA Res 40/34), *available at*: https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse (last visited on February 4, 2025).

[33] *Ibid.*

[34] *Rattan Singh* v. *State of Punjab*, (1979) 4 SCC 719.

[35] *Sakshi* v. *Union of India*, AIR 2004 SC 3566.

reveal that only a fraction of eligible victims receive compensation due to Delays and bureaucratic hurdles.

Victims' rights and protections differ considerably across the globe[36]. In India, legal systems have developed, yet they encounter difficulties in effective enforcement. A comparison with developed countries highlights potential areas for enhancement[37].Comparative insights from the U.S. Crime Victim Rights Act (2004), which guarantees restitution and participation rights, and Canada's integrated Victim services show that institutional support mechanisms significantly improve victim Outcomes—a model India could emulate, which ensures multiple rights, including restitution. Successful delegation among states has facilitated notable execution. Canada and Australia both have similarly organized systems. Conversely, even though India possesses a legal framework, which includes the 2018 victim compensation scheme[38], challenges such as limited public awareness, inadequate resources, and a slow justice delivery system impede advancement. To strengthen the criminal justice system requires the establishment of specialized institutions and programs, as well as the development of effective implementation techniques, as demonstrated by developed nations. This method can greatly enhance results for victims in India[39].

V UNIQUE VULNERBILITIES OF JUVENILE VICTIMS

Young crime victims face various intricate vulnerabilities in the legal system, which frequently intensify their trauma and impede their ability to achieve justice. These vulnerabilities stem from developmental and emotional influences as well as structural obstacles. From a developmental viewpoint, young individuals generally possess a constrained understanding of the legal system, hindering their ability to grasp their rights, the consequences of their participation in legal matters, or the essence of their testimony.[40] Moreover, children are more prone to influence, which could affect the precision of their remarks or admissions. On an emotional plane, young crime victims frequently experience significant impacts from trauma,

[36] Michael Barchrach, 'The Protection and Rights of Victims under International Criminal Law' 34 American Bar Association 7 (2000), *available at*: https://www.jstor.org/stable/40707504 (last visited on February 6, 2025)

[37] *Ibid.*

[38] National Legal Services Authority (NALSA), Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes – 2018, *available at*: https://nalsa.gov.in/services/victim-compensation/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018 (last visited on February 7, 2025).

[39] Nayana KB and Tanishta Mangaraj, 'Unveiling the Gaps: A Critical Analysis of Victim Protection under the Code of Criminal Procedure' 6(4) International Journal of Law Management and Humanities 2764–2776(2023), *available at*: DOI: https://doij.org/10.10000/IJLMH.115680 (last visited on February 7, 2025).

[40] Express News Service, 'Juvenile Crime Rate Highest in Delhi Last Year: NCRB Data', The Indian Express, 6 December 2023, *available at*: https://indianexpress.com/article/cities/delhi/juvenile-crime-rate-highest-in-delhi-last-year-ncrb-data-9056140 (last visited on February 8, 2025).

potentially resulting in enduring psychological anguish.[41] The legal process, nonetheless, can exacerbate the trauma for these youths, especially when they are confronted with the crime again via testimony or contentious courtroom situations.[42].

Juvenile victims face developmental, emotional, and systemic vulnerabilities, Developmental limitations: Limited understanding of rights and the justice process. Emotional trauma: Testimonies often retraumatize children, particularly in cases of Sexual or domestic abuse. NCRB's 2022 data show that 95% of sexual assault victims Under POCSO were known to the accused, intensifying trauma due to familial or Community betrayal. – Systemic gaps: Lack of child-friendly procedures, delays in Proceedings, and inadequate access to legal or psychological support. – Social stigma: Victims of sexual abuse often face blame or pressure to remain silent,[43] as noted in State of Punjab v. Gurmit Singh, (1996) 2 SCC 384, where the Supreme Court recognized the Reluctance of victims to come forward due to societal pressures. Moreover, young victims often face significant obstacles in attaining justice. The legal system may lack sufficient child-friendly procedures, and many young victims do not have access to specialized legal support or counsel, leaving them vulnerable to exploitation and misunderstanding.[44] Economic and geographic barriers can further hinder their ability to participate in legal proceedings, particularly for those from disadvantaged or rural backgrounds.[45] In addition, public exposure, particularly in high-profile cases, can lead to further victimization through media sensationalism, while family dynamics—such as pressure from family members or fear of retaliation—can dissuade victims from pursuing justice.[46] Delays in legal proceedings also exacerbate the situation, prolonging the trauma and uncertainty for the victim.[47] Furthermore, the legal system often places more emphasis on offender rehabilitation than on providing adequate support for victims, leaving their recovery and well-being insufficiently prioritized. These systemic shortcomings are compounded by challenges in reporting and testifying; young victims may be reluctant to come forward due to

[41] Aarti Ashok Sharma, 'Juvenile Crime on the Rise in India: Causes, Trends & Solutions', *Record of Law*, 22 November 2024, *available at*: https://recordoflaw.in/juvenile-crime-on-the-rise-in-india-causes-trends-solutions (last visited on February 8, 2025).

[42] Manya Verma, 'Silence Shadows: Addressing the Rise of Juvenile Crimes in India', *The Legal Quorum* (2024), *available at*: https://thelegalquorum.com/silence-shadows-addressing-the-rise-of-juvenile-crimes-in-india (last visited on February 8, 2025).

[43] UNICEF, Ending Child Sexual Abuse in India: Status Report 2021 (UNICEF India, 2021).

[44]David Finkelhor and Patricia Y. Hashima, "The Victimization of Children and Youth", in Susan O. White (ed.), *Handbook of Youth and Justice* (Plenum Series in Crime and Justice, Springer, Boston, 2001), *available at*: https://doi.org/10.1007/978-1-4615-1289-94 (last visited on 9 February 2025).

[45] *Ibid.*

[46] David Finkelhor and Jennifer Dzuiba-Leatherman, 'Victimization of Children' 49(3) *American Psychologist* 173–183(1994), *available at*: https://doi.org/10.1037/0003-066X.49.3.173 (last visited on 9 February 2025).

[47] *Ibid.*

fear of disbelief or backlash, both from the perpetrator and their community.[48] As a result, the legal system's failure to address these multifaceted vulnerabilities can impede juvenile victims' ability to receive the justice and care they need, while potentially deepening their emotional and psychological wounds.

VI CHALLENGES IN PROTECTING JUVENILE VICTIM

Reporting abuse is difficult for juvenile victims for a variety of reasons, such as fear, hesitation, lack of awareness, developmental limits, and structural impediments[49]. Because they might not completely comprehend the abuse they are experiencing, these problems make it difficult for kids to grasp their rights and get the care they need. Professionals with less specialized expertise, such as law enforcement, social workers, and legal specialists, may further worsen trauma when interacting with child victims[50].

The apprehension protocols are not fully enforced, rehabilitation centre and Remand facilities are insufficient, age assessment methods are not followed, "diversion" protocols are not executed, and foster families are not scrutinized[51].Children are also discouraged from reporting abuse due to social pressure and shame, which reinforces beliefs that minimize the seriousness of child abuse or place the blame on the victims[52].

Secondary victimization may result from this setting, in which children undergo further stress as a result of many interrogations, medical testing, and exposure to the complexities of the judicial system.[53]Because of things like the covert nature of abuse and the intricacy of some acts, it can be difficult to identify child abuse. These issues are exacerbated by limited access to essential support services, including mental health resources and specialist child advocate centres. Protection concerns are made worse by some situations, such as child trafficking for work or sexual exploitation, domestic abuse, and internet exploitation[54].

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[48] Supra note 46.

[49] Juvenile Delinquency in India: Challenges and Solutions, *Bnblegal*, *available at*: https://bnblegal.com/article/juvenile-delinquency-in-india-challenges-and-solutions (last visited on 9 February 2025).

[50] *Challenges Faced by Children While Accessing Justice and Enjoying Their Human Rights*, Refugee Law Project, *available at*: https://www.refugeelawproject.org/index.php?option=com_content&view=article-&id=220:challenges-faced-by-children-while-accessing-justice-and-enjoying-their-human-rights&catid=26&-Itemid=101 (last visited on 9 February 2025).

[51] *Ibid.*

[52] Thulin J, Kjellgren C *et. al.*, 'Children's Disclosure of Physical Abuse: The Process of Disclosing and the Responses from Social Welfare Workers' 26(3) *Child Care in Practice* 285–299 (2019), *available at*: https://doi.org/10.1080/13575279.2018.1555139 (last visited on 9 February 2025).

[53]Pemberton and Mulder, 'Bringing Injustice Back In: Secondary Victimization as Epistemic Injustice' (2023) *Criminology & Criminal Justice*, *available at*: https://www.researchgate.net/publication372049228_Bringing-injustice_back_in_Secondary_victimization_as_epistemic_injustice (last visited on 9 February 2025).

[54] *Prevention of and Responses to Violence Against Children within the Juvenile Justice System*, Office of the SRSG on Violence Against Children, 2012, *available at*: https://www.unicef.org/media/66956/file/Prevention-of-and-responses-to-violence-against-children-within-the-juvenile-justice-system.pdf (last visited on 9 February 2025).

VII CONCLUSION

Society is ever-changing, necessitating improvements to meet emerging demands. Nonetheless, it is important not to suggest that those below 18 can engage in severe crimes with little repercussions. It is important to take into account both chronological age and mental maturity in legal matters. In criminal law, two essential elements are "Actus Rea" (the action) and "Mens Rea" (the intention), both of which need to be proven for a conviction. Juveniles receive protection concerning Actus Rea in juvenile law, whereas Mens Rea is frequently disregarded due to insufficient assessment criteria[55].

India's criminal justice system must evolve to balance the rights of offenders with the Protection of victims, particularly juveniles. While laws such as the JJ Act and POCSO Act Provide a strong framework, their impact is diminished by weak implementation and lack of victim-sensitive practices.

Future reforms should include: -

- Establishment of victim advocate programs and child friendly courts nationwide.
- Mandatory trauma-informed training for legal professionals.
- Strengthened victim compensation and rehabilitation schemes with timely disbursal.
- Community awareness campaigns to combat stigma and encourage reporting.

By prioritizing victim protection alongside offender rehabilitation, the justice system can Better fulfil its constitutional and moral duty to safeguard children.[56]

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[55] Sumedha Sainat, 'A Critical Analysis: Juxtaposing the Juvenile Justice Systems in the United Kingdom, India, and the United States of America' 2(3) *International Journal of Legal Science and Innovation*, *available at*: https://www.ijlsi.com/wp-content/uploads/A-Critical-Analysis-Juxtaposing-the-Juvenile-Justice-Systems-in-the-United-Kingdom-India-and-the-United-States-of-America.pdf (last visited on 10 February 2025).

[56] Prakash Haveripet, 'Causes and Consequences of Juvenile Delinquency in India' 5(3) *Recent Research in Science and Technology* 29–31 (2013), *available at*: https://bureau-client-media.ams3.digitaloceanspaces.com-street-children-website-TJ5d7s/wp-content/uploads/2019/11/15135044/Haveripet-2013.pdf (last visited on 10 February, 2025).

STATE INTRUSIONS INTO FREEDOM OF CONSCIENCE AND RELIGION: CONSTITUTIONAL CHALLENGES

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Abstract

With special consideration of the rising trend of anti-conversion legislation enacted by various states, this study critically examines the Right to Freedom of Conscience and Religion (hereinafter FOCAR) within the Indian constitutional framework. Under Articles 25 through 28 of the Constitution, FOCAR, subject to constitutional restrictions, represents the "freedom to profess, practice, and propagate one's faith." Drawing from scholars including Roger Williams, John Locke, Montesquieu, and Adam Smith, this inquiry explores the philosophical and legal foundations of this privilege. Comparative analysis with other constitutional democracies, notably the United States and the United Kingdom, helps situate India's approach within the broader international legal context regarding religious freedom.

Despite the abundance of literature on religious freedom in India, much of it either provides a general overview of constitutional principles or scrutinizes case law without assessing the specific implications of anti-conversion laws. This paper addresses the lacuna by locating FOCAR at the convergence of constitutional safeguards, legislative limits, and judicial interpretation. Although there has been an extent of research on freedom of religion and anti-conversion legislation, this paper expands the argument by evaluating how expansive legislative definitions risk compromising constitutional protections of conscience.

Using a doctrinal legal methodology, the research thoroughly analyses constitutional provisions, court rulings, and anti-conversion legislation. Under the section "Constitutional Safeguards of FOCAR," key constitutional provisions are examined alongside important court decisions that have significantly shaped its development.

The question of whether FOCAR protects the right to convert remains a major point of debate. Particular attention is given to investigating the definitional limits and constitutional legality of terms such as "allurement," "inducement," and "divine displeasure" used in various state laws. Analysis indicates that while prohibiting forcible conversions may be constitutionally valid, current laws often extend beyond this aim and could unintentionally infringe on FOCAR. As new laws are enacted and court interpretations vary, it may be unwise to draw definitive conclusions. Nonetheless, the findings advocate for legislative clarity, fewer statutory definitions, and a reaffirmation of the principle that personal religion and conscience are private matters that should be protected from unwarranted government interference inside the Indian constitutional framework.

Keywords: FOCAR, Conversion, Propagate, Faith, Inducement/Allurement, Anti-Conversion.

I INTRODUCTION

In India, "If life can be likened to a pie, religion is not one piece of that pie alongside the pieces labelled politics, economics, social structure, education, and law. Rather, religion is the fruit found in every piece of the pie."[1] FOCAR is universally regarded as an essential facet of the

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[1] Robert D. Baird, Religion and Law in India: Adjusting to the Sacred as Secular in *Religion and Law in Independent India* 7 (Manohar, New Delhi, 2005).

liberty of mind, next to the freedom of speech, opinion, and expression, as it enables one to form religious opinion or thought and to follow that as per his conscience without any obstruction from the State. This civil liberty, however, also encapsulates within its ambit the freedom not to be associated with or affiliated with any religion or faith.[2] This seminal freedom is considered one of the most important civil liberties inherent within an individual's broader right to "life, liberty, and security" of an individual.[3] It has been viewed as an indispensable civil liberty representing the supreme manifestation of human choice.[4]

It has been observed that "religion has still been a volatile subject in our secular country. The aggressive measures adopted by certain religious groups for the proselytization of their faith have thrown up challenges to our polity."[5] Religious conversion, being among the most contentious aspects of faith-based liberties, frequently generates tensions between different religious communities and their respective adherents.[6]

Various States have passed laws with the object of regulating religious conversions and prohibiting conversions through coercion, fraud, or allurement, purportedly to preserve public order and protect societal interests. However, these enactments have been a matter of various contentions, with a view that they may encroach upon the FOCAR, particularly the freedom to propagate religion. There has been a sparking debate on to balance between individual liberties and public order.

II JURISPRUDENTIAL FOUNDATION FOR FOCAR

History reveals that in the past, the subjects in a territory had to accept the religion of the ruler.[7] However, following the principle of religious liberty propounded by several scholars[8] and advancements at the international level[9] regarding the recognition and institutionalization of

[2] *Dr. Ranjit Suryakant Mohite* v. *Union of India*, PIL No. 139 of 2010, Bombay High Court (23 Sept. 2014), (2015) 6 Bom CR 609.
[3] Amit Parmar, *Right to Religion under the Indian Constitution* 116 (Cyber Tech Publications, New Delhi, 1st edn., 2016).
[4] Faizan Mustafa and Jagteshwar Singh Sohi, "Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy" 2017 *Brigham Young University Law Review* 915 (2018).
[5] Furquan Ahmad, Vishnu Konoorayar, Puneeth Puttaiah and K.N. Chandrasekharan Pillai, *A Study of Compatibility of Anti-Conversion Laws with Right to Freedom of Religion in India* (Oct. 12, 2008), *available at*: https://ssrn.com/abstract=2359250 (last visited on May 1, 2025).
[6] *Supra* note 5.
[7] Derek H. Davis, "The Evolution of Religious Freedom as a Universal Human Right: Examining the Role of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief" 2002 *Brigham Young University Law Review* 219, 220 (2003).
[8] For instance: Roger Williams, John Lock, Montesquieu etc.
[9] For instance: The Parliament of the World's Religions in Chicago, 1893; The First World Congress on Religious Freedom in London, 1900 etc.

religious liberty during the late 19th and early 20th centuries, most democracies declared their neutrality on matters of religion.

Roger Williams, popularly known as the father of religious freedom, has observed that the "liberty of conscience is an enduring aspect of being human as it enables a person to communicate with God as per one's will"; therefore, it is sacred.[10] He opined that there should be no interference in matters of religion by either a private individual or by the state, as it would indirectly be interference with "God's work". At a time when the religious character of the state remained uncontested, William, a man of prudence, vehemently advocated for equality of status in matters of religion and was a crusader of tolerance. He asserted that respect for the conscience of the other is paramount for the perseverance of social peace and the integrity of religion. Per Williams, for the ascertainment of freedom of conscience in its true sense, what is fundamentally important is the "separation of church from the state."

A robust account of the significance of FOCAR in a civilized society has been offered by *John Locke.* Per Locke, religion is a matter of conviction and not coercion, and he regarded it as a private affair, instead of regarding it as a public affair, contrary to the then prevailing popular opinion. He identified several fundamental civil rights that governments must actively safeguard, among which featured the freedom to practice one's faith without interference. According to Locke, a man's conscience is left entirely to the man, and the state must protect the right of every individual under its jurisdiction to practice religious beliefs of their own. He believed that the State would prosper if it would let citizens choose their religion as per their wish and stated that "history must close the chapter on the union of church and State."[11] Locke's observation firmly established the idea of FOCAR as a fundamental civil liberty essential to the functioning of an organized society.

Montesquieu, yet another crusader of FORAC, unequivocally argued for the separation of church and state in furtherance of his doctrine of separation of powers. Montesquieu argued that all religions should tolerate other religions and emphasized the "duty of the state to promote tolerance" among different religions by enabling citizens to adopt a religion.

Adam Smith believed that in the long run it is in the best interest of society as a whole and the government in particular to allow people to freely choose their religion, as it will help in

[10] Edward J Eberle, 'Roger Williams' Gift: Religious Freedom in America' 4 *Roger Williams University Law Review* 440 (1999).

[11] John Locke, 'A Letter Concerning Toleration', in John Horton and Susan Mendus (eds), *A Letter Concerning Toleration in Focus* 31-44 (Routledge, 1st edn., 1991).

preventing civil unrest and will certainly reduce intolerance.[12] Smith opined that "a person, without any interference of the state, is free to discuss and consider relative claims of differing religion" and either to reject them all or embrace any of them. If the individual later decides to renounce his religion or decides to embrace another, he is at liberty to do so."[13]

With regard to these enduring philosophical footings, it is apparent that FOCAR is not merely a civil liberty but also the cornerstone of a genuinely inclusive and democratic society, one that centres on tolerance, respect for fellow citizens, and the firm separation of religion from state authority.

III GLOBAL PRESPECTIVE OF FOCAR

Today, as many as one-third of the nations of the globe (both democratic and non-democratic) possess formal guarantees securing the FOCAR within their constitutional scheme.

The *United States* was the first democracy to establish FOCAR as a constitutionally protected civil liberty. The First Amendment to the Constitution of US in 1791 *inter alia*, provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." By this amendment United States officially sanctioned the separation of state and church, guaranteeing religious liberty. *Madison*, who also happened to be the framer of the Constitution of the United States, opined, "religious persuasion is an inalienable right of an individual over which no government, including government based on majority rule, could have legitimate power".[14] The US Supreme Court's progressive judgments[15] have played a pivotal role in upholding and expanding the constitutional protections for FOCAR.

In the *United Kingdom*, The Human Rights Act[16] and the Equality Act[17] passed in consonance with the European Convention on Human Rights, 1950 (ECHR) [18] provides for "freedom of thought, conscience, and religion, subject to certain restrictions." Sec. 13, Human Rights Act affirms the right to FOCAR per art. 9 of the Convention and "guarantees the freedom of thought, conscience, and religion, subject to certain restrictions" which are necessary to put in a democratic society under law. The Equality Act that consolidates different anti-discrimination

[12] Adam Smith, *Wealth of Nations* 643-649 (Penn State Electronic, Classics edn, 2005).
[13] Donald Eugen Smith, *India as a Secular State* 4 (OUP, 1st edn., 1963).
[14] "Memorial and Remonstrance", *available at*: https://mtsu.edu/first-amendment/art./870/memorial-and-remonstrance (last visited on May 1, 2025).
[15] For instance: *Engel* v. *Vitale* 370 US 421 (1962); *Everson* v. *Board of Education* 330 US 1 (1947); *Reynolds* v. *United States* 98 US 145 (1878); *Minersville School District* v. *Gobitis* 310 US 586 (1940), etc.
[16] The Human Rights Act, 1998, (c. 42).
[17] The Equality Act, 2010, (c. 15).
[18] The European Convention on Human Rights, 1950, adopted by the Council of Europe on Nov. 4, 1950.

legislation and regulations previously enacted in the UK provides, *inter alia*, for the protection of people from "discrimination on the grounds of religion or belief."

FOCAR is a recognized freedom in *Australia* as well. Sec. 116 of the Constitution of Australia[19] prohibits the state from establishing religion, enforcing religious practices, restricting religious freedom, or requiring religious tests for public office. It has been commented that s. 116 is an attempt "to ensure that religion should be kept out of public discourse" and that "religious considerations would not colour issues of public policy".[20] The Constitution of *Canada* similarly enshrines these fundamental protections.[21]

Following the path of these constitutional democracies, several democratic countries that got their democratic constitutions mostly after World War II across the globe have also recognised this freedom as an inalienable fundamental right under such constitutions.[22]

What sets India distinct, however, is the number of restraints affixed to this freedom.[23] Unlike the United States, where the "free exercise" clause has been interpreted broadly,[24] or the United Kingdom[25] and Australia,[26] where limits are narrowly tailored to essential public interests, India's constitutional scheme permits restrictions on grounds of public order, morality, health, etc. This larger range of permissible restrictions, together with state-level anti-conversion laws, moves India's model closer to a restricted variation of religious freedom, making it much narrower than global democratic norms.

IV INTERNATIONAL PROTECTION OF FOCAR

The famous *"Peace Treaty of Westphalia*" of 1648, an important landmark of the evolution of international law and international relations, is also the pioneer of religious liberty at the international level. Art. V and VII of the Treaty dealt with the religious freedom of the empires,

[19] The Commonwealth of Australia Constitution Act, 1900.
[20] Joshua Puls, 'The Wall of Separation: Sec. 116, The First Amendment and Constitutional Religious Guarantees' 26(1) *Federal Law Review* 151 (1998).
[21] The Constitution Act, 1982, s.2(a).
[22] For instance: the Constitution of Japan, 1946, art. 20; the German Basic Law, 1949, art.4; the Constitution of Spain, 1978, s.16; the Constitution of Switzerland, 1999, art. 15; the Constitution of south Africa, 1996, s. 15, the Constitution of Brazil, 1988, art. 5 etc. provides for the FOCAR as a civil liberty.
[23] Constitution of India, arts. 25(1), 25(2)(a)–(b), 26, 27, 28(1)–(2).
[24] National Constitution Center, "Interpretation: The Free Exercise Clause", *available at*: https://constitutioncenter.org/the-constitution/amendments/amendment-i/interpretations/265#the-free-exercise-clause (last visited on May 1, 2025).
[25] U.S. Department of State, "2023 Report on International Religious Freedom: United Kingdom", *available at*: https://www.state.gov/reports/2023-report-on-international-religious-freedom/united-kingdom/ (last visited on May 1, 2025).
[26] Attorney-General's Department, "Right to Freedom of Thought, Conscience and Religion or Belief", *available at:* https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny-public-sector-guidance-sheets/right-freedom-thought-conscience-and-religion-or-belief (last visited on May 2, 2025).

where it has been stated that the "Catholic and Protestant religions will be recognized as equal" and that the "rulers will be allowed to choose a religion for their territory and their subjects".[27] *The Universal Declaration of Human Rights (UDHR),* which the United Nations General Assembly (UNGA) adopted to "protect and promote human rights to further international peace and comity," identified religious freedom as a fundamental right. Art. 18 of the Declaration asserts that everyone has the right "to freedom of thought, conscience and religion". The immediate clause has within its scope the right "to change one's religion as well as the freedom, either alone or in group and in public or in private, to manifest one's religion through teaching, practicing, worship and observance".

The International Covenant on Civil and Political Rights, 1966 (ICCPR)[28] also ensures the "right to freedom of thought, conscience and religion" through art. 18.[29] Similarly, art. 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (UNCERD)*[30] also recognized the right to FOCAR at the international level. The UNGA further adopted the *"Declaration on the Rights of Minorities*,"[31] affirming the "rights of minorities to profess and practice religion of their choice". Several regional human rights treaties, such as the *ECHR*[32]*, ACHR*[33]*, ACHPR,*[34] etc., also provide for the protection and promotion of the FOCAR as a fundamental civil liberty within their respective domain.

V TRACING THE ROOTS OF FOCAR: A HISTORICAL PRESPECTIVE

The Indian civilisation is based on the notion of religious tolerance, peaceful co-existence, and mutual trust among people belonging to several religious communities. In contrast to Western nations, India's tradition of FOCAR and religious pluralism emerged independently of any

[27] Steven Patton, 'The Peace of Westphalia and its Effects on International Relations, Diplomacy and Foreign Policy' 10(1) *The Histories* 92 (2019).
[28] The International Covenant on Civil and Political Rights, 1966, adopted by the UN General Assembly on Dec. 16, 1966.
[29] *Id.* at art. 18, art. 18 provides: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his own choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others. 4. The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.".
[30] The International Convention on the Elimination of All Forms of Racial Discrimination, 1965.
[31] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.
[32] *Supra* note 18.
[33] The American Convention on Human Rights, 1969, adopted Nov. 22, 1969, art. 12.
[34] The African Charter on Human and Peoples' Rights, 1981 adopted June 27, 1981, art.8.

church-state power struggles. Liberty of religious preference was perhaps deeply rooted in India's history and unique cultural heritage, which was founded on the doctrine of *"Sarva Dharma Sambhava"*. The eternal ethos of humanity preached through epics such as the *Mahabharata* and *Ramayana*, the philosophy of Swami Vivekananda and Rishi Aurobindo towards attaining co-existence of different religions, the teachings of Adi Shankaracharya and Srimanta Sankardev as to religious tolerance have contributed immensely in this regard. Reflecting this idea, in *Bijoe Emmanuel*[35] it has been remarked by Reddy J.: "Our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practises tolerance; let us not dilute it".[36]

The presence of religious tolerance and co-existence of religious beliefs can also be understood through peeping into the religious activities of several celebrated emperors of the past.[37]

The British also did not attempt to destroy the prevalent religious harmony. That might be because of their experience with the famous "*Sepoy* Mutiny" of 1857. They pursued a policy of limited necessary interference. This became evident from what Hastings had stated: "That in all suits regarding inheritance, marriage, caste and other religious usages or institutions, the law of the Koran with respect to Mahometans [Muslims], and those of the Shaster [Shastra] with respect to Gentoos [Hindus] shall be invariably be adhered to."[38] More or less, there was freedom of religion during the colonial rule, as the Imperial laws mostly attempted to reform the society by obstructing some practices believed to be part of the religion then.

The constitutional foundation of FOCAR was first formally articulated in the *Nehru Report* for the first time in 1928, wherein Motilal Nehru, in the capacity as the Chairman of the Committee to prepare a Draft Constitution as empowered by the "All Party Conference" held in February 1928, had inserted provisions concerning FOCAR. [39]

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[35] *Bijoe Emmanuel* v. *State of Kerala* (1986) 3 SCC 615.
[36] *Id.* at para 27.
[37] For instance: Chandragupta Maurya, Ashoka, Akbar etc.
[38] Ludo Rocher, "Indian Response to Anglo-Hindu Law" 92(3) *Journal of the American Oriental Society* 419 (1972).
[39] The Nehru Report 102–103 (1928), *available at*: https://sites.google.com/site/cabinetmissionplan/nehru-report-1928-full-text/doc1 (last visited on Apr. 12, 2025), "4...(xi) There shall no state religion for the Commonwealth of India or for any province in the Commonwealth, nor shall the state either directly or indirectly endow any religion or give any preference or impose any disability on account of religious belief or religious status.
(xii) No person attending any school, receiving state aid or other public money shall be compelled to attend the religious instruction that may be given in the school.
(xii) No person shall by reason of his religion, caste or creed be prejudiced in any way in regard to public employment, office of power or honour and the exercise of any trade or calling.".

VI CONSTITUTIONAL SAFEGUARDS OF FOCAR IN INDIA

In India, FOCAR is placed under art. 25, 26, 27, and 28 of the Constitution. Apart from the above-stated provisions, this freedom also reflects through many of its provisions, especially under art. 14, 15, 16, 29, and 30.[40] Additionally, art. 51A(e) of the Constitution imposes an affirmative obligation to "promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious…diversities". The 42nd Amendment's[41] insertion of 'secular' into the Preamble highlighted the constitutional demand for religious neutrality in governmental activities. The court has maintained the secular article of the Constitution as part of its "basic feature."[42]

India's constitutional framework embodies a forward-looking vision, ensuring uniform rights for all citizens while safeguarding their freedom of belief and religious practice. The Supreme Court viewed the idea of secularism provided by the Constitution as: "There is no mysticism in the secular character of the State. Secularism is neither anti-God nor pro-God; it treats alike the devout, the antagonistic, and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion."[43]

art. 25 provides for the "freedom of conscience and free profession, practice, and propagation of religion" as a fundamental right in India. Per art. 25, every person in India is "equally entitled to enjoy the freedom of conscience and the right freely to profess, practice and propagate religion". This right, however, is not absolute.[44] art. 25 subjects this right to two kinds of limitations. These are: "(i) public order, morality and health, and (ii) other fundamental rights mentioned in Part III of the Constitution". Under the same provision, the State also reserved its right to legislate for "providing social welfare and reform or opening up of Hindu religious institutions of a public character to all sections and classes of Hindus". As per Explanation II appended to art. 25, for the instant purpose, the term Hindu includes the people "professing the Sikh, Jaina or Buddhist religions and the reference to Hindu religious institutions shall be construed accordingly".

The Supreme Court has defined religion broadly as a "matter of faith with individuals or communities, and it is not necessarily theistic". [45] When established, it gives "a set of ethical

[40] M. Ajzal Wani, "Freedom of Conscience: Constitutional Foundations and Limits" 24(2/4) *Journal of the Indian Law Institute* 290 (2000).
[41] The Constitution (Forty-second Amendment) Act, 1976.
[42] For instance: *Kesavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461, *S. R. Bommai* v. *Union of India*, AIR 1994 SC 1918 etc.
[43] *St. Xaviers College* v. *State of Gujarat*, AIR 1974 SC 1389, para. 74.
[44] *Govindalalji* v. *State of Rajasthan*, AIR 1963 SC 163.
[45] *S. P. Mittal* v. *Union of India*, (1983) SCR (1) 729.

norms to its followers and defines the rituals, observances, ceremonies, and modes of worship".[46] Conscience has been defined as "internal judgment or assessment of right or wrong".[47] The constitutional connotation of the term in which sense of the art. 25 uses it is "belief, faith, and the conceptual aspect of religion".[48] The freedom of conscience, therefore, connotes a person's "right to entertain beliefs and doctrines concerning matters, which are regarded by him to be conducive to his spiritual wellbeing".[49] In the Indian context, "freedom of conscience is associated with the right to profess, practise, and propagate religion. They go together and together they form part of the right to freedom of religion as provided by art. 25 of the Constitution."[50]

Art. 26 provides the freedom to run religious affairs "to every religious denomination or a section thereof, subject to public order, public morality, and public health." Unlike art. 25, this provision confers a guarantee of collective or group rights in this regard to the FOCAR.

Both *art. 27 and 28* provide for two specific kinds of fundamental rights mandating FOCAR in India. Art. 27 forbids "levying and collection of any specific tax" by the State from a person for the "promotion or maintenance of any particular religion or religious denomination".

In *Dara Singh* v. *Union of India*[51] the Supreme Court was of the view that, as per the constitutional scheme, the State "shall not interfere in the matters of religion" and in any "other incidental matter which is directly and substantially connected with religion". The existence of such a provision under the Constitution reflects the age-old cultural harmony and religious co-existence in India.

VII PROPAGATING FAITH VS. CONVERTING BELIEF: THE INDIAN CONSTITUTIONAL DILEMMA

Propagate means "to transmit or spread one's religion by an exposition of its tenets".[52] It means to "spread and publicise one's views for the edification of others".[53] The dictionary meaning of the term propagation, as quoted by Basu, is "to transmit or spread from person to person or from place to place".[54] It, however, does not mean conversion and only encapsulates within

[46] *Commissioner Hindu Religious Endowments* v. *L. T. Swamiar*, AIR 1954 SC 282.
[47] *Sayed Shah Muhammed Al Hussain* v. *Union of India*, AIR 1999 Kant. 112.
[48] V. P. Bharatiya, 'Conscience and the Constitution', 1 *Supreme Court Cases Journal* 58 (1987).
[49] *Ratilal Panachand Gandhi* v. *State of Bombay*, AIR 1954 SC 388.
[50] *Ibid.*
[51] *Dara Singh* v. *Union of India* AIR 2011 SC 1436.
[52] *Rev. Stanislaus* v. *State of Madhya Pradesh*, AIR 1977 SC 908.
[53] M. Ajzal Wani, "Freedom of Conscience: Constitutional Foundations and Limits" 24(2/4) *Journal of the Indian Law Institute* 290, 292 (2000).
[54] William Dwight Whitney and Benjamin Eli Smith, VI *Century Dictionary* 3470 (The Century Co., 3rd edn., 1904).

its ambit the "conveyance of one's own beliefs to another by exposition or persuasion without coercion".[55] The Supreme Court, at various instances, emphasized the right of a person to propagate one's religion.[56] It has been observed that the right, if exercised, may not only offer a better understanding of different faiths but also provide a further choice to the individual of adopting a suitable faith.[57]

The fundamental matter of contention concerning the right to propagate remains whether it includes under its ambit conversion and, if it includes conversion, to what extent?

During Constituent Assembly debates, member Ruthnaswamy contended that since religions like Christianity and Islam fundamentally involve proselytization by doctrine, constitutional provisions should expressly safeguard their right to propagate beliefs according to their religious principles[58] However, the persisting view of the majority was that the term "propagation" would include conversion not by force or undue influence but conversion of an "adult to any religion because of conviction of will."[59]

This led to the second contention. Few members believed in inserting a provision prohibiting conversion by fraudulent means, by coercion, and the conversion of a minor. This proposal, however, got discarded. Ambedkar, in this regard, has suggested that the issue of forced conversion and conversion of a minor be better left to the legislature rather than incorporating it in the Constitution.[60] It is pertinent to mention here that the Assembly has categorically emphasised that "no unlimited right of conversion to been given under the guise of right to propagation." This stand remained constant throughout the judicial precedents.

The Supreme Court, in *Digyadarsan* v. *State of A.P.*[61], concerning conversion, was answered negatively by holding that "the right to propagate one's religion means the right to communicate a person's beliefs to another person or to expose the tenets of that faith, but would not include the right to 'convert' another person to the former's faith." In *Rev. Stainislaus*[62], relying on dictionaries[63], the court has reiterated that: "what the Article grants is not the right

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[55] *Supra* note 52.

[56] For instance: *Ratilal Panachand Gandhi* v. *State of Bombay* AIR 1954 SC 388; *Commissioner Hindu Religious Endowments* v. *L. T. Swamiar*, AIR 1954 SC 282; *Durgah Committee, Ajmer* v. *Syed Hussain Ali and Others*, AIR 1961 SC 1402 etc.

[57] *Supra* note 52.

[58] B. Shiva Rao, *The Framing of India's Constitution* 201 (Universal Law Publishing, 6th edn., 2015).

[59] *Id.* at 211–213.

[60] *Id*. at 297.

[61] *Digyadarsan* v. *State of A.P* AIR 1970 SC 181.

[62] *Supra* note 52.

[63] The Court relied on the meaning of the expression 'propagate' given in Shorter Oxford Dictionary (i.e., "to spread from person to person, or from place to place, to disseminate, diffuse a statement, belief, practice, etc.,") and Century Dictionary (which is an Encyclopaedic Lexicon of the English Language) Vol. VI. (i.e., "to transmit

to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets". In case of the right to conversion of others to one's religion, there is clear judicial instruction that such conversion must be free from any undue influence, and the person converted must be a major. The court was of the opinion that the impugned anti-conversion laws[64] were not "to regulate religion", but rather "to avoid disturbance to the public order". However, this decision of the Supreme Court is not devoid of criticisms.[65]

However, it has to be noted that the right to profess religion necessarily implies the "freedom of an individual to follow any religion or belief".[66] None is bound to remain a member of a particular sect or religious group against his wishes, and he may, if he so desires, change his religion by professing another religion. [67]

In *Shafin Jahan v. Asokan K. M.*[68] the Supreme Court has observed that people who are above 18 years of age are free to choose religion as "every person is the final judge of their own choice of religion" and their parents will not be entitled to either nullify or invalidate such conversion.

India's constitutional architecture treats "freedom of conscience" as the foundational pillar supporting the derivative rights to profess, practice, and propagate religion. While "freedom of conversion" flows intrinsically from freedom of conscience and the resultant right to profess, it remains distinct from "freedom to propagate."[69] Crucially, propagation must align with the conscience-based freedoms of adherents of other faiths. Article 25's guarantee of religious

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or spread from person to person or from place to place; carry forward or onward; diffuse; extend; as to propagate a report; to propagate the Christian religion").

[64] Orissa Freedom of Religion Act, 1967, (Act No. 2 of 1968); Madhya Pradesh Dharma Swantantraya Adhiniyam, 1968, (Act No. 27 of 1968).

[65] H. M. Seervai, *Constitutional Law of India* (Universal Law Publishing, 4th edn.): has criticized Rev. Stainislaus the following main grounds:

i. Legislative history of Article 25 has been overlooked;
ii. The Court did not ask the central question which was involved in the appeal viz., whether conversion is a part of the Christian religion;
iii. To propagate religion is not to impart knowledge and to spread it more widely, but to produce intellectual and moral conviction leading to action, namely, the adoption of that religion.
iv. Freedom of conscience gives a person freedom to choose or not to choose any one of the many religions, which are being propagated. On his deciding to choose a particular religion, which is being propagated with a view to its acceptance, and on his being prepared to comply with the requirements necessary to be a member of that religion, he has the freedom to be converted to that religion. Therefore, conversion does not in any way interfere with the freedom of conscience but is a fulfilment of it and gives meaning to it.

[66] *Punjabrao* v. *Deshmukh* AIR, 1965 SC 1179.

[67] *Ibid.*

[68] *Shafin Jahan* v. *Asokan K M,* (2018) 16 SCC 408.

[69] *Supra* note 7 at 220.

liberty extends universally to all individuals, not selectively to any single religious community.[70]

In *S. R. Bommai*[71] it was succinctly put forward that "no man possesses a right to dictate to another what religion he believes in; what philosophy he holds, what shall be his politics or what views he shall accept". The above observation of the Apex Court is sufficient to summarise the judicial position as to protecting and promoting the right to FOCAR in India.

VIII AN EXAMINATION OF INDIA'S ANTI-CONVERSION LAWS

Following India's independence in 1947, policymakers have repeatedly proposed nationwide laws to govern interfaith conversion practices.[72] Although no effort has been entirely successful so far, some states, where the overwhelming problem is prevalent and there is sustained public demand, have enacted anti-conversion laws. Nine state legislatures have passed conversion regulation acts applicable within their jurisdictional boundaries.

In furtherance of the Niyogi Committee Report[73], Madhya Pradesh enacted *Madhya Pradesh Dharma Swantantraya Adhiniyam, 1968.* A similar legislation was also enacted by Orissa

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[70] *Ibid.*

[71] *S R Bommai* v *Union of India* AIR 1994 SC 1918.

[72] For instance: 'Indian Converts (Regulation and Registration) Bill, 1954' moved by Mr Jethalal Harikrishna Joshi; 'Backward Communities (Religion) Protection Bill, 1960'; 'Freedom of Religion Bill, 1979' moved by O.P Tyagi; etc.

[73] The Committee came to the following conclusions:

i. The aim of many of the Christian Missions is to resist the progress of national unity;
ii. Their aim is to emphasize the difference in the attitude toward the principle of co-existence between India and America;
iii. Their aim is to take advantage of the freedom accorded by the Constitution of India to the propagation of religion and to create a Christian Party in the name of Indian democracy on lines of the Muslim League ultimately to make out a claim for a separate State, or at least to create a 'militant minority';
iv. The bulk of the foreign money received ostensibly for educational and medical institutions is spent on proselytism. Most of the amount is utilized for creating a class of professional proselytizers, both foreign and Indian. There is a great disparity between the scales of salaries and allowances paid to foreign Missionaries on the one hand and to their native mercenaries on the other';
v. The Committee also noted various methods of propagating Christianity. Many Missionary publications attacked Hindu Idol Worship in rather offensive terms. vi. Evangelization in India appears to be part of the uniform world policy to revive Christendom for re-establishing Western supremacy and is not prompted by spiritual motives. The objective is to disrupt the solidarity of the non-Christian societies, and the mass conversion of a considerable number of Adiwasis with this ulterior motive is fraught with danger to the security of the State. The Christian Missions are making a deliberate and determined attempt to alienate Indian Christian Community from their nation. It was made clear by the Niyogi Committee that the Christian Missions worked in such a way as to provide a clear proof that religion was being used for political purposes. Evangelization was not a religious philosophy but a force for politicization. The Church in India was not independent but was accountable to those who paid for its upkeep. That is why the umbrella concept of 'Partnership in Obedience' covered the flow of foreign finances to the Church and its Missions in India.

With respect to above Niyogi Committee made the following recommendations:

a. Those Missionaries whose primary object is proselytism should be asked to withdraw and the large influx of foreign Missionaries should be checked and regulated;
b. The use of medical and other professional services as a direct means of making conversions should be prohibited by law;

(Orissa Freedom of Religion Act, 1967). Following the trajectory of Madhya Pradesh and Odisha, various other states took up the subject matter and enacted similar legislations.[74] The most recent update in this regard has been the enactment of *the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021.*

The objectives of all these legislations are largely identical. They provide for the "prohibition of unlawful conversion from one religion to another by misrepresentation, force, undue influence, coercion, inducement/allurement, or by any fraudulent means or by marriage" to "maintain public order and to nip in the bud the attempts by certain subversive forces to create social tension."[75]

Inducement/Allurement may be understood "means and include offer of any temptation in the form of– (i) any gift, gratification, easy money, or material benefit either in cash or kind; (ii) employment, free education in reputed school run by any religious body; or (iii) better lifestyle, divine displeasure or otherwise;"[76] Force "shall include a show of force or a threat for injury of any kind including threat of divine displeasure or social excommunication"[77] Fraud shall include "misrepresentation or any other fraudulent contrivance"[78] All these legislations prohibits unlawful conversion from one religious faith [79] to another and provides for punishment for the contravention thereof.

c. Attempts to convert by force or fraud or material inducements, or by taking advantage of a person's inexperience or confidence or spiritual weakness or thoughtlessness, or by penetrating into the religious conscience of persons for the express purpose of consciously altering their faith, should be absolutely prohibited;
d. The Constitution of India should be amended in order to rule out propagation by foreigners and conversions by force, fraud and other illicit means;
e. Legislative measures should be enacted for controlling conversions by illegal means;
f. Rules relating to registration of Doctors, Nurses and other personnel employed in hospitals, should be suitably amended to provide a condition against evangelistic activities while rendering professional service;
g. Circulation of literature meant for religious propaganda without approval of the State Government should be prohibited.

Report of the Niyogi Committee on Christian Missionary Activities in Madhya Pradesh (Extracted in V. Sundaram, "Lurid Drama of Proselytism after 1947 – III", *available at*: http://www.newstadynet.com/2006sud/06apr/2904ss1.html (last visited on May 1, 2025)).

[74] For instance: Chhattisgarh Freedom of Religion Act, 1968 (The Madhya Pradesh Act was adopted by the State of Chhattisgarh after its formation); Arunachal Pradesh Freedom of Religion Act, 1978; Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002 (Repealed); Gujarat Freedom of Religion Act, 2003; Rajasthan Dharma Swatantraya (Freedom of Religion) Act, 2006; and Himachal Pradesh Freedom of Religion Bill, 2006.

[75] Gujarat Freedom of Religion Act 2003, (Act No 22 of 2003).

[76] Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act 2021, (Act 3 of 2021), s.2(a).

[77] Orissa Freedom of Religion Act 1967, (Act No 2 of 1968), s.2(b).

[78] Madhya Pradesh Dharma Swatantraya Adhiniyam 1968, (Act No 27 of 1968), s.2(d).

[79] Arunachal Pradesh Freedom of Religion Act 1978, (Act No 4 of 1978), s.2(c).

Several of these statutes incorporate requirements for obtaining advance authorization from the District Magistrate before organizing or attending conversion-related ceremonies in any capacity.

Notably, certain aspects of these laws require careful consideration.

It is apprehended with concern that the meaning appended to Inducement/Allurement in these legislations has been unduly expansive. Special attention must be drawn to the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, which has sought to cover within the ambit of allurement "free education" in schools run by religious bodies. The Orissa Freedom of Religion Act, 1967 defines "inducement" expansively to encompass "the offer of any gift or gratification, either in cash or in kind and shall also include the grant of any benefit, either pecuniary or otherwise." This broad interpretation of "inducement" or "allurement" risks combining true Christian giving with coercive proselytization. Such an overbroad legislative definition would prohibit faith-based organizations from delivering humanitarian relief, since even kind gestures can be misunderstood as clandestine conversion operations. The inclusion of "any benefit, either pecuniary or otherwise" and notably "free education" is very problematic and raises enormous issues. Such a provision is in apparent contravention of art. 26, which permits the "freedom to establish and maintain institutions for religious and charitable purposes" and is liable to be built in a manner which is consonant with the spirit of art. 26. Definitions of inducement/allurement in each of these legislations should be revised and constructed in conformity with the plan of art. 26.

The statutory inclusion of "divine displeasure" as a defining criterion suffers from problematic vagueness. Judicial scrutiny reveals the Supreme Court has repeatedly grappled with interpreting this nebulous phrase, attempting to delineate which actions might constitutionally qualify as invoking "divine displeasure". Such ambiguity in legislative drafting creates unpredictability in enforcement and risks arbitrary application.[80] However, there exists no definite explanation as to what constitutes divine displeasure. Each time, the subject matter has been decided in view of the facts and circumstances of the respective case. Whereas, such circumstantial interpretation has never been subject to controversy or scrutiny, but still, precision in the use of any word in a statute is desirable.

Chhattisgarh Dharma Swatantrata Adhiniyam 1968 has excluded from the ambit of 'conversion' return to "ancestor's original religion or his own original religion by any

[80] For instance: *Baburao Patel* v. *Dr. Zakir Hussain*, AIR 1968 SC 904; *Lakhi Prasad* v. *Nathmal Dokania*, AIR 1969 SC 583; etc.

person."[81] Such a proviso explicitly implies that reconversion by use of fraud, allurement, or force is not punishable under the provisions of the Act. It must be recognised that forced conversion in any form is a violation of FOCRA. Similarly, per *the Rajasthan Freedom of Religion Bill, 2006*, conversion means "renouncing the religion of one's forefathers and adopting another."[82] and has excluded from its ambit conversion from its ambit other conversions that may be by use of fraud, allurement, or force. Likewise, the *Himachal Pradesh Freedom of Religion Act, 2006* mandates a notice for the intention of conversion[83], but no such notice is required in cases where a person reverts back to his original religion.[84] Analogous to the case of Chhattisgarh, it also failed to recognise reconversion by use of fraud, allurement, or force. Herein discussed provisions are in direct contravention of art. 14. Intelligible differentia may exist in these cases, but in no manner whatsoever is there any reasonable nexus with the object sought, therefore, these provisions must be brought in consonance with the spirit of art. 14.

Socio-Legal Dimensions

The practical execution of anti-conversion laws in India illustrates how imprecise and overbroad criteria translate into socio-legal limits on religious freedom. It has been observed that subsequent state enactments, such as those in Uttar Pradesh and Madhya Pradesh, expand beyond preventing coercion by criminalising conversions through marriage and by establishing onerous notice requirements.[85] It has been noted that these frameworks alter the presumption against individual autonomy by permitting third parties to register complaints, therefore institutionalising suspicion against voluntary conversions.[86]

These measures have been viewed as a form of "structural violence" that embeds majoritarian concerns into law.[87] It has been noted how restrictions have been utilised to monitor interfaith couples and minority religious organisations, even when no evidence of duress is evident. This

[81] Chhattisgarh Dharma Swatantraya Adhiniyam 1968, (Act No 27 of 1968), s.2(b).
[82] Rajasthan Freedom of Religion Bill 2006, Bill No 12 of 2006, s 2(c).
[83] Himachal Pradesh Freedom of Religion Act 2006, Bill No 31 of 2006, s.4.
[84] *Id.* at proviso.
[85] Sakshi Parashar and Setu Gupta, "Regulating Religious Choices: Foundations and Legitimacy of Anti-Conversion Laws in India" 18 *Religion and Human Rights* 1 (2023), *available at*: https://brill.com/view/journals/rhrs/18/1/article-p1_1.pdf (last visited on May 1, 2025).
[86] *Ibid.*
[87] M. Sudhir Selvaraj, "Acts of Violence? Anti-Conversion Laws in India" 33 *Social and Legal Studies* 790 (2024), *available at*: https://journals.sagepub.com/doi/full/10.1177/09646639241251613 (last visited on May 4, 2025).

socio-legal effect, he believes, is not in convictions but in the deterrent effect that discourages religious practice and interfaith association.[88]

Similarly, it has been emphasised how "love jihad" rhetoric facilitates the use of anti-conversion laws against mixed marriages.[89] Data demonstrates that couples face persecution through police investigations and community pressure, even where courts subsequently validate the validity of their conversions. [90]

Despite numerous prosecutions, conviction rates remain modest, indicating the disparity between enforcement and actual findings of coercion. This mismatch illustrates that the laws are often deployed as instruments of control rather than justice, reinforcing scholarly concerns that overbreadth in legislative design undermines the constitutional promise of freedom of conscience.[91]

Comparative Matrix of Constitutional Provisions, Judicial Pronouncements, and State Anti-Conversion Laws Relating to Freedom of Conscience and Religion in India

Dimension	Key Provisions / Cases	Position / Effect
Constitutional Provisions	Article 25: Freedom of conscience; profession, practice, and propagation of religion	Guarantees individual right, subject to public order, morality, health; permits social reform laws.
	Article 26: Freedom to manage religious affairs	Collective right of denominations to establish and maintain religious institutions.
	Article 27: Freedom from taxation for promotion of religion	State cannot levy taxes to promote or maintain any religion.
	Article 28: Freedom from religious instruction in State institutions	Prohibits compulsory religious instruction in

[88] *Ibid.*

[89] Garima Tiwari and Ankit Dhotrekar, "'Love Jihad' in India and Its Socio-Legal Conspectus: Conversion Dilemma and Contentious Laws" *International Journal of Public Law and Policy* (2023), *available at*: https://www.inderscienceonline.com/doi/abs/10.1504/IJPLAP.2023.127310 (last visited on May 5, 2025).

[90] *Ibid.*

[91] Monika Jain, "Anti-Conversion Law: Critical Analysis in India" *Journal of Human Rights Law and Practice* (2019), *available at*: https://lawjournals.celnet.in/index.php/jhrlp/article/view/273 (last visited on May 10, 2025).

		fully State-funded educational institutions.
Judicial Positions	*Rev. Stainislaus* v. *State of Madhya Pradesh* (1977)	Right to propagate religion does not include the right to convert others.
	Bijoe Emmanuel v. *State of Kerala* (1986)	Freedom of conscience protected; Jehovah's Witness children not compelled to sing national anthem.
	S. R. Bommai v. *Union of India* (1994)	Secularism declared part of the basic structure of the Constitution.
	Shafin Jahan v. Asokan K. M. (2018)	Adults enjoy autonomy to choose and change religion; parental interference invalid.
State Anti-Conversion Laws	Orissa Freedom of Religion Act, 1967	Prohibits conversion by force, fraud, inducement; requires prior intimation.
	Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968	Prohibits conversion by coercion or allurement; imposes reporting requirements.
	Chhattisgarh Dharma Swatantrata Adhiniyam, 1968	Exempts reconversion to ancestral faith from penal scrutiny.
	Himachal Pradesh Freedom of Religion Act, 2006	Mandates prior notice of conversion to District Magistrate.
	Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021	Expansive definition of 'allurement,' including

		free education and threat of divine displeasure.

IX WAY FORWARD

The Indian legal context regarding FOCAR is powerfully ingrained in the nation's historical memory and intellectual traditions. From its primordial cultural foundations, India has maintained a culture of pluralism, encouraging the tranquil coexistence of many religious systems. This civilizational attitude of religious tolerance and mutual respect created the framework for the constitutional safeguards that would follow in post-independence India. The Constitution enshrines not only the freedom to practice and transmit religion but also implies the inherent liberty to analyse, reject, or alter one's convictions. In this larger view, FOCAR is not a passive covenant but an active assertion of individual liberty over concerns of conscience. Philosophically, FOCAR connects with the liberal democratic assumption that the individual is autonomous in selecting questions of belief. It adopts the assumption that religious identity is neither static nor imposed, but rather a dynamic component of human activity. The constitutional notion of secularism in India is not constructed in indifference to religion but in the equal reverence for all faiths and the freedom of people to relate or not relate to any faith in accord with their conscience. In this scenario, FOCAR becomes a core feature of secularism, assuring that the state neither emphasizes nor penalizes religious identification, and that religion remains a matter of personal conviction, not public imposition.

Legally, this freedom has survived a difficult past. The state, while maintaining neutral on questions of religion, maintains the power to regulate actions that may disrupt public order or offend constitutional morals. It is within this sector that the friction between individual liberty and communal harmony frequently occurs, particularly with regard to religious conversions. FOCAR, as a notion, must incorporate the freedom to embrace or deny religion with the state's role to cultivate civic calm and order. The legal system, however, is encumbered with a difficult balancing act, preserving the sanctity of choice while assuring community stability.

The constitutional guarantee of freedom of religion has never been absolute. It is tempered by concerns of public order, morality, and health, demonstrating the drafters' endeavour to balance opposing interests in a diverse community. Within this paradigm, forcible conversions have been regarded not as exercises of freedom, but as distortions of it. Consequently, legal remedies attempting to restrict coercive or fraudulent conversions have evolved in several jurisdictions. However, these techniques must be properly constructed and effectively implemented. While

the objective to reduce misuse is good, there is an enormous risk that such regulation will trespass into the domain of human liberty, suppressing genuine expressions of religion and conscience.

In modern India, the trajectory of FOCAR is reaching a more problematic and ideologically challenging phase. As governments continue to construct or update anti-conversion laws, the jurisprudential issue lies in establishing the appropriate limitations of official intervention. The expanding legal debate must be alert to the peril of overreach, when legislation aimed at criminalizing compulsion may inadvertently hinder genuine religious transformation formed out of personal conviction. The lack of compulsion must be believed until shown otherwise, and any presumption to the contrary might reverse the fundamental guarantee of liberty.

Policy Suggestion: National Framework

A constructive way forward may be the adoption of a comprehensive national framework on conversion regulation, replacing the current patchwork of various state-level legislations. Such a framework should be devised under parliamentary jurisdiction to assure uniformity and constitutional coherence. Its design must be guided by three principles: (i) narrow tailoring, whereby only coercive, fraudulent, or forceful conversions are prohibited, without criminalizing voluntary faith-based transformation; (ii) procedural safeguards, ensuring that prior notification or permissions do not unduly burden personal liberty, while mechanisms for accountability remain available to prevent abuse; and (iii) constitutional alignment, harmonizing with Articles 25–28 as well as Articles 14 and 21, thereby securing both individual autonomy and communal harmony. A national model law, if carefully designed, would eliminate contradicting state interpretations, prohibit misuse of imprecise words such as "allurement" or "divine displeasure," and underline that freedom of conscience remains at the foundation of India's secular democratic order.

X CONCLUSION

As the socio-political backdrop becomes increasingly complex, the long-term repercussions of these legislative changes remain uncertain. It is arguably too early to forecast the future proportions of FOCAR in India conclusively. However, the crucial litmus test is in upholding the spirit of the constitutional commitment to religious freedom while safeguarding societal cohesion. This needs a continual devotion to the ideals of judicial prudence, legislative restraint, and democratic vigilance. Upholding FOCAR in its widest sense, protecting both the

freedom to believe and the right not to believe is crucial to safeguarding the pluralistic and secular basis of the Indian republic.

The constitutional protection of freedom of conscience and religion was envisioned as a bulwark against state incursion into the innermost realm of human sovereignty. While the prohibition of forcible or fraudulent conversions is a justifiable state purpose, the vagueness and overbreadth of contemporary anti-conversion legislation reach well beyond this aim. By criminalizing innocent religious acts under sweeping words such as "allurement," "inducement," or "divine displeasure," these restrictions risk destroying the fundamental basis of FOCAR. The constitutional promise consists not merely in tolerating faith but in affirming individual liberty of belief, change, and non-belief. Unless future legislative frameworks are constructed with clarity, prudence, and devotion to Articles 25–28, India's commitment to secularism and pluralism would remain weak. The key challenge, therefore, is to ensure that the constitutional protection of FOCAR is not diminished by rules that, in attempting to prevent coercion, incorrectly confine conscience.

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PRAGATI CONSTRUCTION CONSULTANTS v. *UNION OF INDIA*, 2025 SCC ONLINE DEL. 636

- **Asangha Rai***

Abstract

The only statutory remedy available to challenge an Arbitral award is under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the A&C Act, 1996') however, the wording of the said section does not lay down any procedure requirement to comply with the same. There has been growing malicious practice by litigants for non-compliance of certain filing procedures while making such application just with the intent to stall limitation. After many contrasting views of different benches of the High court of Delhi with respect to what would amount to 'non-est' filing in terms of section 34 petition under the A&C Act, 1996, a full bench was formed in Pragati Construction Consultants v. Union of India[1] to finally decide on this issue.

This case comment analyzes the judgment passed by the full bench of the High Court of Delhi, which meticulously determined what constitutes curable defects, mandatory procedures, and non-compliance that would render the petition under section 34 of the A&C Act, 1996 'non-est'. It also highlighted the significance of the parties' intent and the conduct while making such petition.

I INTRODUCTION

The Arbitration Act vests upon the principle of minimal judicial intervention and since Section 34 of the A&C Act, 1996 is the only judicial recourse available to challenge an Arbitral Award, the said section serves great judicial importance and scrutiny. The recourse to a court against an Arbitral award indicates that a party aggrieved by the outcome of an Arbitral award can initiate proceedings for judicial review if the aggrieved party successfully establishes on the basis of the Arbitral record the serious infirmities the party suffered or if the award was patently illegal and in direct conflict with the public policy or the fundamental policy of India. Overtime, it has been a settled law that the Section 34 courts has all the powers and the jurisdiction to set aside an Arbitral award but the aforesaid section fails to stipulate a specific mandatory procedural requirement on how such recourse can be made to challenge such award.

It is a settled principle that rules or procedure serve as a handmaid to justice rather than its mistress[2] and Judges have the residuary power to act *ex debito justitiae*[3] as the ultimate goal of jurisprudence is to do justice, processual, as much as substantive.[4]

In light of the aforesaid jurisprudence principles set over time, the High Court of Delhi while adjudicating a section 34 petition in *Bharat Broadband network limited* v. *Sterlite Technologies*

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[1] 2025 SCC OnLine Del 636.

[2] *Salem Advocate Bar Assn. (II)* v. *Union of India,* (2005) 6 SCC 344.

[3] *Rani Kusum* v. *Kanchan Devi,* (2005) 6 SCC 705.

[4] *Sushil Kumar Sen* v. *State of Bihar,* (1975) 1 SCC 774.

Limited[5] observed contrasting findings by different benches of the High court of Delhi regarding the admissibility and validity of the procedure to challenge an Arbitral award under Section 34 of the A&C Act, 1996. Some verdicts in *Oil and Natural Gas Corporation Ltd.* v. *Joint Venture of Sai Rama Engineering Enterprises & Megha Engineering & Infrastructure Ltd,*[6] *Prayag Polytech Pvt. Ltd.* v. *Raj Kumar Tulsian,*[7] *and in Unilec Engineers Ltd. v. HPL Electric and Power Ltd,*[8] observed that non-compliance of some procedural requirements like, non-attachment of a statement of truth or insufficient signatures are defects that are curable and cannot be deemed as *non-est*, while some verdicts in *Oil and Natural Gas Corporation Ltd.* v. *Planetcast Technologies Ltd.,*[9] *Department of Social Welfare* v. *Sarvesh Security Services Pvt. Ltd,*[10] *Jay Polechem (India) Ltd.* v. *S.E. Investment Ltd,*[11] *Ircon International Ltd.* v. *Reacon Engineers (India) Pvt. Ltd.*[12] opined to the contrary.

A broader issue further arose when the Hon'ble High Court of Delhi in *Pragati Construction* considered determining "*whether non-filing of the Arbitral Award itself would render a Section 34 petition as "non-est."*

Therefore, all the above contrasting issues rendered by different benches were clubbed for a full bench reference in *Pragati Constructions* to determine the questions of law on *'what would amount to non-est filing under section 34 of the A&C Act, 1996?'*

II WHAT IS 'NON-EST'?

"Non-est." is a legal term where a legal instrument is treated to be non-existence because it goes beyond the remedial and fundamental irregularities. Such legal instruments are considered to be invalid in the eyes of law and cannot be revived retrospectively.[13]

III THE LIMITATION TO CHALLENGE AN ARBITRAL AWARD.

Before delving into the issue, it is important to understand the time period to challenge an Arbitral award under the A&C, Act 1996. The legal recourse to challenge an Arbitral award is inelastic and inflexible. The limitation is specified under section 34(3) of the A&C, Act 1996 that stipulates a time limit of three months with an additional condonable delay of thirty days,

[5] OMP(COMM) 20/2024.
[6] 2023 SCC OnLine Del 63.
[7] 2023 SCC OnLine Del 6058.
[8] 2023 SCC OnLine Del 5162.
[9] 2023 SCC OnLine Del 8490.
[10] 2019 SCC OnLine Del 8503.
[11]2018 SCC OnLine Del 8848.
[12] 2022 SCC OnLine Del 1860.
[13] *Sunny Abraham* v. *Union of India*, (2021) 20 SCC 12.

provided that a sufficient cause is shown. The adjudicating court is not bound to entertain any delay, if the award is challenged beyond the threshold of 120 days (90+30 days). However, the adjudicating court is bound to condone the delay even if the section 34 petition was initially filed within limitation and then was re-filed, after rectifying the defects, beyond the limitation period.

Although, the Hon'ble Supreme Court had made it clear that Section 5 of the Limitation Act, 1963 would not apply to extend the time to contest the arbitral award, it nonetheless permitted the court to condone the delay if the petition was refilled within the stipulated three months and thirty days.[14]

Since, neither the A&C Act, 1996 nor the High Court of Delhi Rules, 2018 expressly lay down a procedural format or specify essential requirements needed while filing a petition challenging an Arbitral award under section 34, there had been growing amount of malicious practice to stall the limitation by merely filing a section 34 petition without any basic adequate requirements or format at the face of it.

IV QUESTIONS FOR DETERMINATION BEFORE THE FULL BENCH.

The questions for the full bench in *Pragati Construction Consultants* were to determine:

1. Whether non-filing of the impugned Award while filing the section 34 petition would render the petition *'non-est.'*?
2. Whether the failure to file a statement of truth, *vakalatnama*, or insufficient signatures in plaints are mandatory and not curable defects, and non-compliance thereof would renders the petition *'non-est*.'?

V FINDINGS OF THE COURT

The Filing of the Impugned Award is Mandatory

The court opined that filing of impugned award while taking recourse under section 34 of the A&C Act, 1996 is essential and not an empty procedural requirement, which cannot be considered to be curable later. The Court reasoned that it would be unable to determine the grounds of validity as specified under section 34(2)(a) of the A&C Act, 1996 without the copy of the impugned Arbitral award. It observed, "*Filing of the Arbitral Award under challenge along with the application under Section 34 of the A&C Act is not a mere procedural formality,*

[14] *Union of India* v. *Popular Construction Company*, (2001) 8 SCC 470.

but an essential requirement. Non-filing of the same would, therefore, make the application "non-est" in the eyes of the law."

The Non-Filing of the Statement of Truth is a Curable Defect

The court further emphasized the requirement of Order VI Rule 15 A of the CPC, 1908 which stipulates verification of pleading with an affidavit would also be applicable to section 34 petition as section 10 of the Commercial Court Act, 2015 grants the jurisdiction to commercial division or courts to do so. Additionally, it noted that failing to file or filing a statement of truth incorrectly are procedural errors that can be fixed, and would not invalidate the section 34 petition. However, in the event of determining the question of condoning the delay in refiling, the court ought to be cognizant to analyze the non-filing or the nature of the defect during the initial filing, the time taken by the counsel to rectify and refile the same. In the event that the petition is accompanied by other cumulative faults, the court may inadvertently form an opinion that the section 34 petition was filed with malafide intent solely to stall the limitation period, and thus the filing may be deemed *'non-est'*.

Other Minor Defects are Curable Subject to Proper Conduct of the Party While Filing

On the other defects like non-filing or defective vakalatnama, unsigned pleadings, irregular pages, improper verification, changes in ground after re-filing insufficient, blank pages or no court fees, etc. the bench observed that "*procedural defects cannot be allowed to triumph the substantive rights of a party."* It opinionated that since section 34 is the only remedy available to the aggrieved party to challenge the Arbitral award, mere procedural errors or minor defects should not be made an explicit ground to hold a section 34 petition as '*non-est*.' and if the nature and the contents of the petition has been substantially changed from the time of being initially filed, the court can form the opinion that the original petition was never intended to be the final petition and hence can deem it as '*non-est*'.

VI OPINION AND SUGGESTION.

It is reiterated again that the Section 34 of the A&C Act, 1996 is the only recourse available for the litigants aggrieved from an Arbitral award. The said section neither lays down a straitjacket formula nor any statutory requirement that mandates the filing of an Impugned Award in the first instance while challenging an Arbitral award and furthermore, the Delhi High Court (Original Side) Rules, 2018 also does not envisage any rules as such. The moot issue of whether non-filing of an Impugned Award is mandatory or not while challenging an Arbitral Award had

been affirmed by the High Court of Delhi in *Union of India* v. *Panacea Biotech Limited*[15], but the same was challenged through a Special Leave Petition and is pending adjudication before the Supreme Court.[16]

The section 34 of the A&C Act, 1996 is of great significance having being the only remedy available for legal recourse, but one cannot, on the pretext of non-availability of any statutory procedural requirements, choose to ignore filing vital documents like the impugned award or the statement of truth etc. along with the petition, which is important to access, contradict and validate the averments made in the petition. It has always been a standard practice in courts that while appealing any order passed by a subordinate court, the filing of the copy of the impugned order along with it, is not only mandatory but also a customary. The non-filing of such vital documents cannot be considered an inadvertent mistake, which could be curable. Thus, non-filing of an impugned Award when filing a Section 34 petition would render it not only infructuous but would also indicate the malicious conduct and the adverse inference of the party to abuse the due process of law.

VII CONCLUSION

This full bench verdict of the High Court of Delhi has clarified the basic mandatory filing requirements while taking the legal recourse to challenge and Arbitral award under section 34 of the A&C, Act 1996, and non-compliance of certain mandatory requirements would make the petition '*non-est*'. It also emphasized that the court should decipher the intent and the conduct of the party and thereafter form an opinion to determine whether the original petition was filed maliciously just to stall limitation or was it done under genuine bonafide intent.

It has always been a standard judicial practice that facts and circumstance of each case are different and the courts must always adjudicate with the greatest judicial parity and prevent triumphs by way of technical knockouts.[17] In light of the above ruling, the Court, while dealing with the issue of *'non-est'* with respect to section 34 petition, should always keep in mind that it is the only remedy available for the aggrieved parties and the parties/litigants taking such legal recourse should refrain from malicious practice and adhere to proper filing and re-filing procedures with the right conduct and intent.

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[15] 2023 SCC OnLine Del 8491.
[16] SLP(C) No. 012190/2024.
[17] *R.N. Jadi & Brothers* v. *Subhashchandra*, (2007) 6 SCC 420.

RIGHTS AND ROLES REIMAGINED; COMPARING THE JOURNEY THROUGH CRPC AND BNSS IN THE EYES OF A VICTIM

- *Neya A.S.*[*]

Abstract

The voice of a victim has often been heard only in the media reporting the crimes and not much thereafter. The Indian Criminal Justice System so far has not been very friendly or considerate of the plight of victim and had reduced their roles to nothing great than a witness. With the Law Commissions and Judicial precedents highlighting the rights and roles of victims, the Bharatiya Nagarik Suraksha Sanhita (2023) is the legislative initiation for a victim centric approach transforming the Criminal Justice Administration. Through this study, we capture the differences of procedures and rights of victims under the Criminal Justice Administration systems stipulated in CrPC and the new BNSS. Tracing the evolution of rights of victims, every aspect of the new provisions of the Sanhita, starting from the definition of 'victim' to the inclusion of participatory rights, right to information and compensation will be critically analysed and appreciated. The new changes such as the recognition of 'Zero FIR', Victim to be heard before withdrawal of prosecution and the right to copies of FIR and other documents are progressive. However, their practical application is a question to be answered. The new Sanhita also includes changes in provisions that grants certain rights to the accused such as the power to conduct preliminary enquiry before filing FIR and magistrate to hear the accused even before taking issue of process in case of private complaints. These changes, though intended to safeguard due process, may prove detrimental to the rights of victim with the potential to cause delays and complexities. Hence, it is necessary that a travel through BNSS is made in the eyes of victim through all stages and proceedings.

Objectives: This Article aims to critically analyse the evolution of victim rights in India by comparing the legal and procedural frameworks of the CRPC and the BNSS. The Article tests and evaluates the BNSS's claim of implementing a victim-centric approach.

Methods: A comparative legal analysis of the specific provisions relating to victims of both CrPC and BNSS is undertaken. The evolution of victim rights is traced through Judicial Precedents and Key law Commission Reports. This article also makes use of recent case studies to test the reforms against practical realities.

Findings: Though the BNSS introduces several textual reforms, provisions that contain discretionary language and lack of robust enforcement mechanisms reveal the lacunae present in the new law also. To bridge the gap between legislative intent and ground-level implementation, it is necessary to improve administrative efficiency and accountability. This study concludes with concrete policy suggestions for the same.

Key words: Victim, BNSS, Compensation, Participatory rights, Right to information.

I INTRODUCTION

A Criminal Justice system has multiple objects to achieve. Its origin may be the penalisation of crime and moving on with the prevention but its projects a wide scope as of now. Maintaining

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peace in the society through prevention of crime and the penalisation of the offender, even though the main functions of a Criminal Justice system[1] often does very little to restore the Victims of crime to what is justice. Prevention and penalisation protects future victimisation but the already victimised needs restoration, rehabilitation and a sense of justice. That sense of Justice is what is to be examined from the viewpoint of a victim of Crime.

Indian Criminal Justice system has evolved at different dimensions to ensure that the different stakeholders are represented and their grievances are addressed. The system was initially predominantly offender-centric (arguably still is), that often neglected the rights and roles of victims both in substantive and procedural forms of law. But as the nation developed towards restorative justice, the need arose to place the victims back at their original positions that involved origin of rights in lines with the fundamental rights embedded in the Constitution. Birthed through Judicial precedents, succeeded by amendments, the New Criminal Laws of 2023 promise a victim centric approach that needs a analysis from the standpoint of a victim. [2] This study addresses a gap in the existing scholarship, which predominantly analyses the BNSS from an offender or state-centric perspective, by repositioning the victim at the centre of the evaluation.

II UNDERSTANDING THE ROLE OF A VICTIM IN THE CRIMINAL JUSTICE SYSTEM

In General, a person who suffers a harm due to a particular act or omission is called the victim. A 'victim of crime' is a person who has been harmed as the consequence of the crime committed by the offender. Black's Law Dictionary defines victim as a *"person harmed by criminal acts, attack target"*.[3] The Declaration of Basic Principles of Justice for Victims defines the term Victim under Article 1 as:[4]

> persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate criminal laws operative within the Member States, including those laws proscribing criminal abuse of power.

[1] Ahmad Siddique, *Criminology: Problems and Perspective* 504 (Eastern Book Company, Lucknow, 2001).
[2] Srimathi S, "Victim-Centric Reforms in Indian Criminal Law: Enhancing Support and Protection for Victims" *Lexosphere* (2024), *available at:* https://lexosphere.in (last visited on May 7, 2025).
[3] Black's Law Dictionary (11th edn. 2019).
[4] UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, GAOR, UN Doc A/RES/40/34 (November 29, 1985), art. 1.

The declaration provides for a very wide definition that shows the restorative objective of identifying and rehabilitating all the possible sufferers of a crime. The Declaration also provides that status of a person as a victim would be regardless of the status of the perpetrator or stage of criminal proceeding.[5] The declaration also provides the term victim to include family of dependents of the main victim wherever appropriate. In India, the first ever Criminal Procedure did not include any definition on the term Victim.[6] The Code of Criminal Procedure of 1973 also did not have a defining provision initially, but in 2009 was amended to include the definition of victim as:[7]

> a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir

A General reading would suffice to understand India's consonance with the International Principles, but a keen read would indicate that the definition actually differs from the Declaration's objective of disconnecting the status of victim from the status of proceedings. The words "has been charged" in the above definition of CrPC indicates that the accused person has to be charged with a certain offence and that offence must have resulted in the loss or injury to the person to call him as the victim. This inconsistency is now gone as we have the new Criminal Procedure – Bharatiya Nagarik Suraksha Sanhita of 2023, that reproduces a similar definition with a small change. Section 2 (y) states,[8]

> victim means a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and includes the guardian or legal heir of such victim;

Hence, the ambit has been expanded to include there is no injustice caused to a citizen because of inefficiency or sideling of the Criminal Justice system. While moving towards a restorative justice-oriented system might be a prominent factor for evolution of victim rights, the realisation of the significant role a victim plays in the Criminal Justice System has also helped in amending the procedural laws accordingly. Importantly,

[5] *Id.* at art. 2.
[6] Code of Criminal Procedure, 1898, Act No. V of 1898 (repealed 1974).
[7] Code of Criminal Procedure, 1973, Act No. 2 of 1974, s.2(wa) (amended by The Criminal Law (Amendment) Act, 2009, No. 5 of 2009).
[8] Bharatiya Nyaya Sanhita, 2023, (No. 1 of 2023), s.2(y).

- Victims are vital for prosecution of crimes thus enabling and enhancing the delivery of Justice.[9]
- The Voice of Victims is essential to address issues on prevention and redressal of crimes.[10]
- The dialogue of Victims is at times to determine the punishment in consonance with the retributive theory of punishment.[11]
- Victims' voices are necessary to bring upon legislative reforms and rights to create a more balanced Criminal Justice system addressing gaps in implementation.[12]

It is therefore crucial for a victim to assume a prime role in the Criminal Justice system, which translates into specific rights. The 1985 declaration recognises the rights of victims notably the access to justice and fair treatment[13], restitution[14], compensation[15], and assistance[16]. In India, the rights have also been incorporated through Hon'ble Supreme Court decisions and Law Commission reports.

III A VICTIM UNDER THE CRPC AND THE EVOLUTION OF RIGHTS

The CrPC from its start did not have the requisite provisions to inculcate the rights of victims. Through several efforts by lawmakers, reformers and stakeholders, the Indian Criminal Justice System sailed towards victim centric reforms. There were several reports and recommendations that concentrated Victim rights especially concentrating on specific crimes such as acid attacks and Sexual offences etc. However, two reports stand significant in shaping the procedural format to include rights of victims in Criminal Justice System.

154th Law Commission Report (1997)

Headed by Justice K. J. Reddy, this report undertook a victimological view for the first time stressing on Compensatory and Participatory rights of Victim.[17] The report stressed the need for public assistance to victims that includes addressing medical, psychological, medical and

[9] Debalina Roy, "Victim Participation in Criminal Justice System" 2 *International Journal of Legal Research & Analysis* 27 (2023). *available at*: https://www.doi-ds.org/doilink/04.2023-37968426 (last visited on May 7, 2025).
[10] Government of Canada, "History and Theory - The Role of the Victim in the Criminal Process: A Literature Review - 1989 to 1999" (2021), *available at:* https://justice.gc.ca (last visited on May 7, 2025)
[11] R Garg, "Victim's Rights under the Indian Criminal Law System" *iPleaders* (2022), *available at:* https://blog.ipleaders.in (last visited on May 7, 2025).
[12] Justice P.V. Reddy "Role of the Victim in the Criminal Justice Process," 18 *National Law School of India Review* 1 (2006).
[13] *Supra* note 4, arts. 4, 5.
[14] *Supra* note 4, art. 11.
[15] *Supra* note 4, art. 12.
[16] *Supra* note 4, art. 15.
[17] Law Commission of India, "154th Report on the Code of Criminal Procedure" (1996).

social needs. This Report is significant in stressing on a Victim compensation scheme taking note of a Victim Assistance Scheme in the state of Tamil Nadu.[18]

Justice Malimath Committee Report (2003)

Chaired by Justice V. S. Malimath, the committee pointed out the plight of the victims and the inefficiency of the system that fails to protect and rehabilitate Victims. The Committee made several recommendations to make *"sure that the system must focus on Justice to Victims"*[19] Once again, the need for a compensation was stressed on citing best practices abroad.

Apart from this, the Hon'ble Apex Court has also discussed the need for pro-victim reforms in the Indian Criminal Justice system through various judgments.[20]

The CrPC prominently revolves around the prosecution and the defence and with the duty of the judge to be a neutral referee. The Victim in general may play the role of complainant/witness and after that the State through the prosecution assumes the role of prosecuting the offender. On one side, the State represents the victim which also on the other limits the role of the victim. The CrPC, however, hosts certain victim-centric provisions to ensure the right to participation, information and compensation to the victims, which can be categorised as follows:

Right to Information

- **Copy of Information recorded[21]:** The informant who may also be a victim shall be provided with a copy of information recorded under Section 154 free of cost.
- **Right to Report Non-Recording of FIR[22]**: If the officer in charge of a police station refuses to record an FIR, the victim can send it directly to the Superintendent of Police by post.

[18] S Muralidhan, "Rights of Victims in the Indian Criminal Justice System" *National Human Rights Commission Journal* (2004), *available at:* https://www.ielrc.org/content/a0402.pdf (last visited on May 7, 2025).
[19] Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, 2003).
[20] *Delhi Domestic Working Women's Forum* v. *Union Of India And Others* (1995) SCC CRI 7; *State of Himachal Pradesh* v. *Sanjay Kumar* (2017) SCC 2 51; *Rudul Shah* v. *State of Bihar* (1983) 4 SCC 141; *Nilabeti Behara* v. *State of Orissa* (1993) 2 SCC 746; *Vishaka* v. *State of Rajasthan* (1997) 6 SCC 24; *Chandrima Das* v. *Railway Board* (2000) 2 SCC 465; *Sakshi* v. *Union of India* (2004) 5 SCC 518; *Ankush Shivaji Gaikwad* v. *State of Maharashtra* (2013) 6 SCC 770.
[21] Code of Criminal Procedure, 1973, (Act No. 2 of 1974), s.154 (2).
[22] *Id.* at s.154 (3).

- **Right to Be Informed of Investigation Halt**[23]: The police officer must inform the victim or informant if a decision is made not to investigation and must report the reasons for the same.
- **Access to Police Reports**[24]: The final report submitted to the Magistrate must be given, a copy, to the informant.

Participatory Rights

- **Request for Investigation through Magistrate**[25]: Victims can approach a Magistrate under Section 190 to request an investigation. The Magistrate can then order the police to investigate, ensuring a thorough examination of the case.
- **Direct Approach to Magistrate**[26]: Victims can directly approach a Magistrate to take cognizance of an offense.
- **Engagement of Private Legal Counsel**[27]: Although prosecutions are conducted by Public Prosecutors, victims can engage private legal counsel to represent them. The private lawyer can submit written arguments after the evidence is presented.
- **Participation in Plea Bargaining Process**[28]**:** The Victim along with the Prosecutor and accused may participate in a meeting to work out a Mutually satisfactory disposition that can also provide for compensation to be paid to the victim as a pre-requisite to plea bargaining.
- **Right to Appeal**[29]: Victims can appeal against acquittals, inadequate sentences, or insufficient compensation.

Right to Compensation

- **Compensation for Victims**[30]: Courts can direct compensation to victims from fines imposed on the accused. However, the Accused should be convicted to provide compensation under this provision.
- **Victim Compensation Scheme**[31]: To address the previous lacuna of having to wait till conviction of an accused to provide relief to the victim, this provision was introduced

[23] *Id.* at s.157 (2).
[24] *Id.* at s.173 (2)(ii).
[25] *Id.* at s.156 (3).
[26] *Id.* at s.190.
[27] *Id.* at ss.225, 302, 303.
[28] *Id.* at s.165C.
[29] *Id.* at s.372.
[30] *Id.* at s.357.
[31] *Id.* at s.357A.

that provides for monetary support from the State. The Victim Compensation Scheme as a result of a major law reform is a part of restorative justice that provides of compensations regardless of the status of accused.

- **Expenses of Prosecution**[32]: Courts may impost costs on the accused to pay expenses incurred by the victim in prosecuting the case in non-cognizable cases.

Apart from these, there are provisions that specifically protect vulnerable victims such as mandating woman officer for recording statement from women victim[33] and statement of victim of rape to be recorded at the residence of victim[34], Immediate medical assistance free of cost to victims of rape and other certain offences.[35] Despite such provisions, implementation and awareness was always a question which also involved the need for specific provisions to address further lacunas and introduce suggestions made by Courts.

IV A VICTIM UNDER THE BNSS

As an effort to revamp our criminal justice system, 3 new criminal laws were introduced, i.e Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam which were passed in 2023 and came into force from July 1, 2024. The new laws replace the "colonial" laws and bring about significant changes that reflect the modern realistic needs of the system such as digital evidence, modern crimes, inclusion of evolved rights, etc. Significantly, the BNSS claims to adopt a victim centric approach since its statement of objects and reasons state that,[36]

> Citizen centric approach have been adopted for supply of copy of first information report to the victim and to inform them about the progress of investigation, including by digital means. In cases where the punishment is seven years or more, the victim shall be given an opportunity of being heard before withdrawal of the case by the Government.

Hence, the objective in itself lists out certain main inclusions that provide right to information and participation for the victims. The Ministry of Home Affairs, in its E- poster claims that:[37]

[32] *Id.* at s.359.
[33] *Id.* at s.154.
[34] *Id.* at s.157.
[35] *Id.* at s.357C.
[36] Bharatiya Nagarik Suraksha Sanhita, Bill No. 122 of 2023, Statement of Objects and Reasons, Lok Sabha Debates, August 11, 2023.
[37] Bureau of Police Research and Development, "Victim-Centric Approach: Empowering Victims, Ensuring Justice" *available at:* https://bprd.nic.in/uploads/pdf/20240220073206286614 3VictimCentricApproach.pdf (last visited on May 7, 2025).

It recognises the victim as a stakeholder in the criminal proceedings, providing participatory rights and expanded right to information for the victim. The law has been reformed to place victims at the centre of the criminal justice system, offering unprecedented rights and opportunities.

While the CrPC took initial steps, the BNSS attempts a systematic restructuring. The key changes brought by BNSS can be analysed under specific rights categories.

Change in Definition[38]

As previously stated, the words "*has been charged*" in the definition of CrPC[39] indicated that the accused person had to be charged with a certain offence and that offence must have resulted in the loss or injury to the person to call him as the victim.

This position of law was both inconsistent to the International principles as well as Fundamental rights of victims as a victim cannot be provided the status of victim based on the efficiency of the criminal justice system identifying and charging the offender. This inconsistency is now gone as BNSS replaces the earlier definition removing the phrase "has been charged".

Right to information

- **Zero FIR and E-FIR[40]:** Victims can file complaints in any Police Station about a cognizable offence, regardless of which area the offence was committed. Instead of having to visit Police Stations in person, E-FIRs allow people to file an FIR online, which also extends to the facility of tracking the same and check status of complaints online.[41] This is a welcoming approach that highly helps vulnerable victims and victims requiring immediate care. The introduction of Zero FIR concept is the result of *Justice Verma Committee*[42] recommendations as well as significant Decisions of the Supreme Court such as *Satvinder Kaur* v. *State (1999)*[43] and *Lalitha Kumari* v. *State of UP (2014)*[44].

[38] Bharatiya Nagarik Suraksha Sanhita, 2023, (Act No. 2 of 2023), s.2(y).
[39] Code of Criminal Procedure, 1973, (Act No. 2 of 1974), s.2(wa).
[40] Bharatiya Nagarik Suraksha Sanhita, 2023, (Act No. 2 of 2023), s.173.
[41] Bureau of Police Research and Development, "Victim-Centric Approach: Empowering Victims, Ensuring Justice" *available at:* https://bprd.nic.in/uploads/pdf/20240220073206286614 3VictimCentricApproach.pdf (last visited on May 7, 2025).
[42] Justice J.S. Verma, "Report of the Committee on Amendments to Criminal Law" (Ministry of Home Affairs, Government of India, 2013).
[43] *Satvinder Kaur* v. *State (NCT of Delhi)* (1999) 8 SCC 728.
[44] *Lalita Kumari* v. *State of U.P*. (2014) 2 SCC 1.

- **Copy of the information to the "Victim"[45]:** Earlier, there was no explicit mention of supply of copy of FIR to the victim. The word used was 'informant' which usually was the victim himself or a representative of the victim. However, the mirror provision of Section 154 of CrPC which is Section 173 of BNSS states that a copy of information as recorded must be provided, free of cost, to the informant *or* victim. Now, the conjunction 'or' in the provision makes it almost nothing special from the previous provision as the Police may choose to provide copy either to the informant or the victim. Even though the recognition is one step ahead, its efficiency is to be questioned.
- **Information on Progress of Investigation[46]:** As per the newly introduced provision, the police officer is required to update the process of investigation to the informant ***or*** victim within a period of 90 days, by any means including electronic communication. This is a welcoming step towards right to information to the victim as a deadline has been stipulated within which the Police must update the victim. But even here the problem of Police having the discretion to choose between informant and victim is concerning. It is true that in most cases the informant and victim are the same or close to each other but there are cases when distinct unrelated persons fall under the ambit of Informant and Victim and such unguarded provision may not deem effective to the victim.
- **Supply of copy of Police Report and other documents[47]:** The magistrate is bound to furnish to the accused and the victim, copy of Police report and other documents that includes witness statements, confession statements, etc, within 14 days from the production of accused, free of cost. However, the provision reads as "…..furnish to the accused and the victim *(if represented by an advocate)* free of cost, a copy of each….". Hence the victim must be represented by an advocate in order to exercise this right to copy of Police Report and other documents. This intervention is again questionable since private counsel representation of victims is rare. Also, the view that a victim not represented by a private advocate need not require a copy of the document also sounds dismissive of their right to information. Without a sound legal aid system to assist

[45] Bharatiya Nagarik Suraksha Sanhita, 2023, (Act No. 2 of 2023), s.173 (2).
[46] *Id.* at s.193.
[47] *Id.* at s.230.

socially and economically disadvantaged victims, meaningful participation of victims intended may not be achieved.[48]

Participatory Rights

- **Victim to be heard before withdrawal from Prosecution[49]:** No Court shall permit withdrawal from prosecution without giving an opportunity of being heard to the victim.

This is another welcoming participatory right now guaranteed that prevents any backdoor agreements between Prosecution and the accused and protects victim's stakes in the legal proceedings.

Facilitating speedy trial

- The new Act contains several provisions for the speeding up of Trial and criminal proceedings, making it more accountable.[50] A registered medical practitioner shall forward the examination report of a rape victim within 7 days.[51] Commitment of cases to be undertaken within 90 days of taking cognizance which may extend to 180 days for reasons recorded in writing.[52] Charges to be framed in the Court of Sessions within 60 days from the date of first hearing on charge.[53] The introduction of independent Directors of Prosecution in each district also may assist in speedy disposal of cases.[54]

Apart from these, we still have the previous provisions that specifically protect vulnerable victims such as mandating woman officer for recording statement from women victim, statement of victim of rape to be recorded at the residence of victim[55], and Medical examination of Victim of Rape[56], Medical assistance, free of cost, to victim of rape.[57] However, now they introduce audio visual means of communication and recording of statements and evidence and a women magistrate is required to record statement of victim for offences against women as

[48] P39A Admin, "Criminal Law Bills 2023 Decoded #13: Victims' Rights" (2023) *P39A Criminal Law Blog available at:* https://p39ablog.com/2023/11/criminal-law-bills-2023-decoded-13-victims-rights/ (last visited on May 7, 2025).
[49] Bharatiya Nagarik Suraksha Sanhita, 2023, (Act No. 2 of 2023), s.360.
[50] A Kumar, "BNSS vis-à-vis CrPC: An Overview of the Rights of Accused and Victims" *available at:* https://cdnbbsr.s3waas.gov.in/...pdf (last visited on May 7, 2025).
[51] Bharatiya Nagarik Suraksha Sanhita, 2023, (Act No. 2 of 2023), s.184 (2).
[52] *Id.* at s.232.
[53] *Id.* at s.251.
[54] Triumvirlaw, "The Transformation of Criminal Law in India: A Comprehensive Overview" (2024) *available at:* https://triumvirlaw.com/2024/07/20/... (last visited on May 7, 2025).
[55] Bharatiya Nagarik Suraksha Sanhita, 2023, (Act No. 2 of 2023), s.176.
[56] *Id.* at s.184.
[57] *Id.* at s.184.

far as practicable and if not a male magistrate, in the presence of a female officer.[58] Table 1 provides a comparative table of the key victim rights under the CrPC and BNSS.

Table 1

Comparative Analysis of the key victim rights under the CrPC and BNSS.

Right / Provision	**Code of Criminal Procedure, 1973**	**Bharatiya Nagarik Suraksha Sanhita, 2023**
Definition of 'Victim'	S. 2(wa): Person who suffered loss/injury due to act/omission for which accused "has been charged".	S. 2(y): Person who suffered loss/injury due to act/omission of the accused. Removes "has been charged".
Zero FIR	Not explicitly mentioned; recognized judicially (*Lalitha Kumari v. State of UP*).	S. 173(1): Explicit statutory recognition. Can be filed at any police station.
Copy of FIR	S. 154(2): Copy to be provided to the "informant" free of cost.	S. 173(3): Copy to be provided to the "informant ***or*** victim" free of cost.
Updates on Investigation	No specific statutory timeline for providing updates.	S. 173(3): Officer must inform the "informant ***or*** victim" of the investigation progress within 90 days.
Copy of Police Report/Documents	S. 207: Furnished to the accused. Victim's right not explicitly mentioned.	S. 230: Copy of police report and documents to be furnished to the accused and the victim *(if represented by an advocate).*
Hearing before Withdrawal of Prosecution	Not mandatory.	S. 262(2): Court shall not permit withdrawal without giving an opportunity of hearing to the victim.
Recording of Statement of Woman	S. 160(1) Proviso: Statement to be recorded at her residence by a woman officer.	S. 180 Proviso: Retained. Adds that as far as practicable, a

[58] *Id.* at s.183 (6).

		woman magistrate shall record the statement under S. 164.

Overall, there have been significant changes moving towards a victim centric – criminal justice system. Despite a few strong welcoming provisions, the right to participation and information newly inculcated through various provisions do not make it mandatory. With lack of enforcement mechanism and few other lacunaes mentioned above, the efficiency of the provisions is left to be tested practically.

V AN INTERNATIONAL COMPARATIVE PERSPECTIVE

Placing the reforms introduced under the BNSS within a wider international setting highlights both the progress made and the distance still to be covered in safeguarding victims' rights.

In the United Kingdom, the Victim's Code of 2020[59] embodies a distinctly victim-centred orientation. It confers on victims the right to be understood and to have their complaints recorded without undue delay. Information must be provided at every stage from the initial report, through investigation and trial, to the final outcome. Victims may also submit a personal statement, ensuring that their experiences influence judicial decisions.[60] Beyond procedural inclusion, the Code entitles victims to tailored support services, reimbursement of expenses, restitution of property, and updates concerning the offender even after conviction. A formal complaints process further guarantees that lapses in the enforcement of these rights can be challenged.

The European Union's Directive 2012/29/EU[61] adopts an equally expansive vision. It secures recognition, dignity, and respect for victims across all member states, along with consistent access to justice and information. It explicitly addresses protection from intimidation, secondary victimisation, and violations of privacy, while mandating timely safeguards for the victim's safety. Provisions for compensation, access to professional support services, and encouragement of restorative justice, subject to safeguards, add to its comprehensive character.

Measured against these frameworks, the BNSS signals an important transition in India's criminal process. By granting victims the right to timely updates, the opportunity to be heard at sentencing and parole hearings, and access to compensation, it acknowledges their role as

[59] Code of Practice for Victims of Crime (Victims' Code) 2020 (U.K.), Domestic Violence, Crime and Victims Act 2004 (Victims' Code of Practice) Order 2020, SI 2020/1314 (Eng.).
[60] *Id.* at s.7 (Victim Personal Statement).
[61] European Parliament and the Council "Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime", Directive No. 2012/29/EU, O.J. (L 315) 57 (2012).

participants in justice rather than passive spectators. However, the Indian approach differs in structure. Unlike the codified charter in the United Kingdom or the binding directive of the European Union, India's victim-related protection schemes at different stages of criminal proceedings do not have a very formal structure and has no dedicated mechanism to ensure enforcement.

VI POTENTIAL CHALLENGES IN BALANCING RIGHTS OF ACCUSED AND VICTIMS

Usually, it is deemed that the rights of accused stand against the rights of victim. The Indian Criminal Justice system so far has been arguably accused oriented owing to the fundamental rights guaranteed under the Constitution that guards due process of law. Even though there were several reforms in the rights of victims, the system was skewed towards observing due process to the accused that it often neglected the truly affected. The Hon'ble Supreme Court in *Mallikarjun Kodagali v. State (2018)*[62] observed that balance of concerns and rights between accused and victim is significant for a fair criminal proceeding.

Previously several blockades in the name of due process have been removed in special offences that impose stringent bail conditions, reverse burden of proof etc. But the BNSS as a general statute cannot violate due process of law and thus it often due to maladministration and inefficiency results in delays and errors ultimately affecting the victim. The BNSS also includes changes in provisions that grants certain rights to the accused such as the power to conduct preliminary enquiry before filing FIR and magistrate to hear the accused even before taking issue of process in case of private complaints. These changes, though intended to safeguard due process, may prove detrimental to the rights of victim with the potential to cause delays and complexities.

The new provision recognises preliminary enquiry which was explained and guided by the Hon'ble Supreme Court in *Lalitha Kumari* v. *State*[63]. Section 173 of BNSS states that preliminary enquiry can be conducted for any offence punishable with 3 to 7 years with the permission of DSP, to find out whether a prime facie case has been made out or not. However, there is a time period stipulated for the completion of preliminary enquiry which is 14 days after which the police has to mandatorily file the FIR.[64]

[62] *Mallikarjun Kodagali* v. *State of Karnataka* (2019) 2 SCC 752.
[63] *Lalita Kumari* v. *State of U.P.* (2014) 2 SCC 1.
[64] Bharatiya Nagarik Suraksha Sanhita, 2023, (Act No. 2 of 2023), s.173.

The new provision relating to examination of private complaints by magistrate states that *"no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard"*[65] Earlier the accused had no locus standi till the issue of process, however, as per section 223 of BNSS, no cognizance can be taken by the magistrate without giving the accused an Opportunity to be heard. This is not that much of a reasonable or welcoming change, since this will affect both individuals and authorities in the process. This additional proceeding may cause a delay if not judiciously exercised by the Magistrate.

Hence, we cannot neglect the fact that a complete transition from due process – oriented to victim – centric is not possible. We can just improve or modify the early procedures to speeden up the proceedings without cutting short the rights of the accused. Hence the success of victim justice rests solely upon administrative efficiency and capability rather than substantive or procedural rights.

VII ANALYSING THE REALITY THROUGH CASE STUDIES

The author's previous statement on the need for administrative efficiency rather than textual reformation can be substantiated on a much better level owing to recent Judgements and its facts. True that there have been several reforms in the criminal justice system. Whether or not it is successful or preferable is a moot question by itself. Now, if we turn back and if we question if everything is alright and sufficient, definitely the answer is no. As a matter of fact, textual reality and practical reality are at different extremes.

Very recently, the order from the Madurai Bench of Madras High Court, in Cont.P.(MD) No.1600/2025 in Crl.OP.(MD) No.2157/2024, dated 04.07.2025[66], which directed the SP of Kanyakumari District to pay a cost of Rs.10,000/- to the victim/complainant for not registering the FIR in spite of repeated directions, made us realise the ill fate of selective victims. Here, definitely, CrPC can't be blamed for. In this matter, the complaint was originally filed on 27.02.2023. Since the concerned police station failed to register the FIR, the victim approached the Superintendent of Police of the concerned district. Again, since no action was taken, the victim was constrained to approach the concerned Magistrate Court and sought for issuance of direction to register the FIR, under Section 156(3) of CrPC. Since the Magistrate Court passed a favourable direction, for the very first time the victim found some hope in the criminal justice

[65] *Id.* at s.223.

[66] Decision in Crl. O.P.(MD) No.2157 of 2024 (Madras High Court, order dated July 4, 2025). The author was involved in drafting petitions for this case.

system. However, in spite of being directed by the Magistrate Court, the police officials refrained from registering the FIR, for reasons which anyone could visualise.

Hence, the victim was constrained to approach the Madurai Bench of Madras High Court, seeking direction to direct the police officials for complying with the order of the Magistrate Court, and favourable orders were also passed in favour of the victim. However, even thereafter, the police refrained from registering the FIR. Thereby, having no other go, the victim was constrained to initiate contempt proceedings. When the matter came up for hearing, since the Hon'ble High Court cornered the officer concerned, having no other go, finally, FIR was registered on 03.07.2025 for a criminal complaint which was given way back on 27.02.2023. Of course, all through this battle, we had both CrPC as well as BNSS, but the reforms failed to alter outcomes in practice.

Of course, in a way, justice is served, but definitely, delayed justice is denied justice. Moreover, there is literally no provision in both CrPC and BNSS for addressing such wanton acts of the police officials. Now that the Hon'ble High Court had directed the SP to pay cost of Rs.10,000/- to the victim, at least this would be a precedent, and we can hope that such incidents do not happen in future.

Till date, the practice of closing the criminal cases against influential persons, as a mistake of fact, is very much widely prevalent. Of course, we do have statutory safeguards, but reality hits hard and makes us realise that even those so-called stringent safeguards at times prove to be of no good. It is apposite to take note of an incident which took place in Kanyakumari District. On 20.02.2024, due to a dispute over property, the de facto complainant, Mr. K, and his father were stripped off completely and were brutally assaulted by the de facto complainant's only brother, who was politically very much influential.

Luckily, the victims survived, and due to the pressure being intimation from the hospital, the police officially formally filed an FIR for the offences alleged under Sections 147, 294(b), 342, 355, 323, 379, and 506(1) of IPC. Herein, after the registration of the FIR, the victims of the said incident relied and hoped that investigation was in progress. Since even after the expiration of one year neither the statements of the victims/witnesses were recorded nor a final report was filed, the victims approached the author, enquiring about the matter. When checked, it came to light that the aforementioned FIR was closed as a mistake of fact long back. Aggrieved by this incident, Mr. K has filed Crl.OP.(MD) No.12143/2025, before the Madurai Bench of Madras

High Court, and the same is pending for adjudication.[67] So, we are constrained to wait for the outcome.

Herein, notwithstanding the fact that the FIR was registered during the regime of CrPC, the complaint of the de facto complainant was closed as a mistake of fact during the regime of BNSS. This makes us feel that despite bringing in so-called reforms, there has been low outcomes in practice and the reforms seem not to have fully served its purpose. This brings us to the brutal reality that no matter how the laws change, it is the administration that has to step up and be pro-victim.

VIII CONCLUSION

The purpose of introduction of the New Criminal Laws has been canvased to bring in reformative measures for the victims, ensure speedy justice, and to chuck out the traces of colonialism from our Criminal Laws. Our Prime Minister had emphasized that these New Criminal Laws which has brought in dynamic change in justice delivery system would be boosting India's Image across the globe.[68] He also commented that, so as to envision this development, Police must be adapting to become a modern force. Moreover, the former Home Minister highlighted that for the first time post-independence, these New Criminal Laws had helped in liberating us from the colonial reflections. It is pivotal to note that so as to cope with this transition additional modern approach, and significant focus on human rights will be adopted. Undoubtedly, these victim-centric reforms are the stepping stones for the India's justice-centric reforms.

This study has demonstrated the gaps between the textual rights granted to victims under the BNSS and their practical implementation. It has offered a victim-centred metric to evaluate criminal procedure reforms, concluding that administrative accountability is the real solution. However, it is essential that sufficient attention is paid to the stage of implementation and victims are treated as participators. Further it is significant to address the lacunas in the structural functional part rather than amending textual documents. With proper training and education given to stakeholders involved in Criminal Justice Administration, the textual reforms to a victim-centric system is to be realised.

The following suggestions are being proposed for the purpose of ensuring that the afore-identified issues with the implementation of BNSS are addressed:

[67] Crl. O.P.(MD) No.12143 of 2025 (Madras High Court, Pending). The Author was involved in drafting the petition for this case.

[68] Press Information Bureau, "PM attends All India Conference of Director Generals/ Inspector Generals of Police" (2024), *available at:* Pib.gov.in. (last visited on May 7, 2025).

1. **Mandatory Training for Police and Public Prosecutors:** Since Police Officials and the Public Prosecutors who are representing the State/ Victim are having very close nexus with the victim and operation of BNSS, it is very much essential to familiarise them with the victim-centric provisions of the BNSS. Prime focus ought to be given for sensitisation about victim trauma, and further strict adherence to protocols, with penalties for non-compliance ought to be done.
2. **Effective Legal Aid support for the Victim:** Of course, we do have come space for Legal Aid in most of the court complex. However, if we are to count how many of them are effectively functioning, only a handful number would be there. Apart from providing a blanket legal aid, it is also pretty much important to have an exclusive cell which would train and assist the victims for adducing their evidences before the court of law. Further, guidance should also be given for the victims throughout the proceedings, most importantly by explaining their rights, and entitlements.
3. **Monitoring and Accountability:** Apart from having abstract rules and regulations in relation to the victim rights, efforts are to be made for ensuring the victims actually enjoy their rights. In this regard, a digital dashboard can be introduced for ensuring compliance with victim rights, including supply of FIR copies, investigation updates, and filing of chargesheets, etc. Moreover, data-based audits at police stations and courts will ensure their accountability.
4. **Digital Victim Portal:** The State can also consider the introduction of a secure online portal wherein the victims could directly access the case status, and other important documents related to their case. This will ensure that their dependency on police would reduce.

Clarification through Rules: The Union Government may consider the framing of model rules for the purpose of clarification of phrases such as "informant or victim" in Sections 173(3) and 230. Thereby, it will ensure that these rights vest primarily in the victim, especially when the victim and the informant are different persons.

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THE PANDORA'S BOX OF VICTIM COMPENSATION IN POCSO CASES: AN ETHICAL AND ECONOMIC ANALYSIS OF *X* v. *STATE OF NCT OF DELHI*

- ***Surya Jain****

Abstract

This article critically examines the Delhi High Court's ruling in X v. State of NCT of Delhi, which redefined victim compensation under the POCSO Act, in conjunction with the Delhi Victim Compensation Scheme 2018. The High Court has interpreted the maximum compensation in the Scheme as the minimum compensation payable to child victims, thereby raising concerns of judicial activism. Though the object of such an interpretation is to ensure rehabilitation of child victims, it has important ethical and economic consequences. The analysis contends that the High Court's purposive interpretation of the law, intended to align with the beneficial aims of the POCSO Act, oversteps legislative intent, thereby venturing into the domain of law-making. It further critiques the Court's reasoning for granting compensation in cases of acquittal, arguing that such a precedent undermines the foundational principles of criminal jurisprudence. Finally, the article discusses the possible influx of false litigation in greed of compensation, thereby opening a Pandora's Box. The piece highlights this judgment within the broader perspective of judicial activism, emphasizing the ethical dilemmas judges face in balancing activism with judicial restraint. The discussion concludes with reflections on the importance of judicial ethics in maintaining the delicate separation of powers and ensuring equitable justice without disrupting the legislative framework.

Keywords: POCSO Act, Delhi Victim Compensation Scheme, Judicial Activism, Victim Compensation, Purposive Interpretation.

I INTRODUCTION

Judicial restraint and judicial activism are two facets of judicial ethics which need to be balanced by every judge in the country. Activism is necessary to fill in important gaps in law, but at the same time restraint is to be exercised to not get into the shoes of the legislature and blur the separation of powers. This poses a challenge to judges as they are faced with the question of restraint and activism on a daily basis. If not exercised carefully, excessive activism can lead to far-reaching and unintended consequences.

The present case involved a question of compensation to be paid to child victims in the Protection of Children from Sexual Offences Act 2012 ("POCSO Act") cases with respect to the Delhi Victim Compensation Scheme 2018 ("DVC Scheme"). The High Court of Delhi[1] pronounced that the maximum compensation in the DVC Scheme should be read as the minimum compensation in cases of child victim to provide them with the maximum benefit for their rehabilitation. This ruling results in a precedent that puts heavy burden on the state exchequer, as will be explained in the following sections.

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[1] *X* v. *State of NCT of Delhi (Acting Through Its Secretary),* Crl Appeal 63/2022, High Court of Delhi.

This is a classic example of how judges should refrain from arbitrary rule making or refrain from excessive judicial activism. Creativity is a duty when it is used to fill in gaps in law or when it is used to prevent an unreasonable outcome, furthering the pre-existing principles of law.[2] Such as in *Independent Thought* v. *Union of India,*[3] where the Supreme Court read down the marital rape exception to rape under IPC and held that a sexual intercourse with a wife below 18 years of age is rape. This was possible by applying the harmonious rule of construction to various enactments which were inconsistent with each other.

Though judicial activism and restraint are both necessary judicial attitudes, the present case demonstrates an approach that focuses on only one view and therefore exercises great zeal in supporting and furthering the outcome of that single view. It is argued that the High Court's zeal in providing the maximum possible compensation to child victims is beyond what it ought to do and therefore it is incorrect in exercising such an extent of judicial activism so as to effectively re-write the law.

II FACTUAL BACKGROUND

The appeal to the High Court came against the order of the Additional Sessions Judge who convicted the accused under relevant sections of the POCSO Act and IPC for a period of 12 years rigorous imprisonment and awarded Rs. 50,000 as the compensation amount to the child victim in lieu of the mental trauma and bodily injury suffered. The mother of the child victim filed the appeal, praying for an enhanced compensation.

In light of the appeal, the High Court broadly divided the points of consideration into two heads – Micro-level and Macro-level. At the micro level, he is to decide the merits of the case where the Addl. Sessions Judge convicted the accused and awarded a compensation of Rs. 50,000. At the macro-level, he decided to answer the following questions: -

1. Under the DVC Scheme and POCSO Act, what is the adequate amount of compensation to be paid to the child victim?
2. Which all authorities are competent to quantify the amount of compensation to be paid?
3. Which all authorities can the child victim approach for compensation?

It is these macro-level questions that bring in the judicial attitude of activism and raises the question of how much to exercise it in the interests of the society and of justice. For the sake

[2] Saptarshi Mandal, "The Difference Method Makes: Judicial Restraint and Judicial Creativity in Rana Nahid v. Sahidul Chisti" 17(1) *National Law School Journal* 49 (2023).
[3] AIR 2017 SC 4904.

of brevity and purpose of this article, the above-mentioned questions were answered by the High Court in short as follows: -

1. The minimum amount of compensation to be paid in POCSO cases as per DVC Scheme should be 10.5 lakhs.
2. Only the POCSO Special Court can quantify the amount of compensation to be paid and forward the same to the DLSA/DSLSA for disbursal.
3. The child victim can simultaneously approach both the Special Court and DLSA/DSLSA for compensation, and both of them are competent to award 25% of the maximum compensation as interim compensation. The compensation awarded by both these authorities will be adjusted from the final compensation.

III THE OPENING OF PANDORA'S BOX

In Greek mythology, the Pandora's Box is a container which releases curse on humankind. It releases many evils into the world which bring death and sorrow. The Box also contains Hope, which is also to be released into the world. In modern times, it is seen as an idiom meaning a present which seems valuable but in reality, is a curse, or a metaphor meaning something that holds great trouble but also holds hope.

It is argued that this judgment of the High Court can be described as the Pandora's Box since it will open a floodgate of false litigation in greed of compensation, but also contains hope for better rehabilitation of child victims through maximum compensation. The following sub-sections elucidate my stance.

Regarding Minimum Compensation in POCSO Cases

The High Court states, *"When the Act provides two spectrum one minimum one maximum, the leaning must be towards the maximum"*.[4] Moreover, *"In any beneficial scheme/ legislation, there cannot be a concept of maximumin"*.[5] The Court cites certain cases which reiterate the point that the compensation that is paid should be in order to further the object of the statute and each beneficial statute must be interpreted liberally. However, no case cited by the Court states that there can be no concept of a maximum compensation in a beneficial statute.

Based on this discussion, the Court argued that the statute or the scheme should not prescribe the maximum limit. Courts have the power to reduce it or enhance it. In the current situation, it is necessary for courts to enhance the compensation amount. With this, the Court has used purposive interpretation to a beneficial legislation, and stated that the maximum compensation

[4] *Supra* note 1, para. 42.
[5] *Supra* note 1, para 43.

for rape, i.e., Rs. 7 lakhs should be read as the minimum compensation in POCSO cases.[6] This interpretation means that the minimum amount of compensation to be paid to POCSO victims is Rs. 10.5 lakhs (7 lakh + 3.5 lakh added as 50% of 7 lakh in POCSO case as provided in the DVC Scheme).[7]

The article will now proceed to argue how this interpretation itself is incorrect. The POCSO Act was enacted to protect children from sexual offences. Adequate compensation in such cases is necessary, as is established by the various reports and statistics cited in the judgment of the High Court itself. However, saying that the object of the POCSO Act or the DVC Scheme is not being fulfilled by providing a maximum compensation limit is not true. The DVC Scheme recognizes that child victims need special care and protection which translates to more pecuniary compensation for them, which is why it provides for an additional 50% compensation than what is already provided in the Scheme.[8] The legislature in its wisdom has provided for an additional 50% compensation keeping in view the vulnerability of child victims, and in its wisdom, the object of the POCSO Act and DVC Scheme will be well-fulfilled with this additional compensation of 50%. By reading the law in such a manner that the maximum compensation will be considered the minimum in spite of an additional compensation being already provided by the legislature, it would be stepping into the shoes of the legislature and an erroneous act of judicial activism.

The object of the DVC Scheme would not have been fulfilled if the prescribed amount was not being paid in reality or if there was no additional amount prescribed having regard to the special vulnerability of child victims. At least the second is not true at present. Therefore, though vulnerability of child victims is a reality, it does not call for the judiciary to step in and prescribe additional compensation using purposive interpretation in addition of additional compensation already given by the legislature. Purposive interpretation, also called the mischief rule of interpretation, focuses on finding the true object of law through answering four questions:[9]

> What was the common law before the making of the Act? What was the mischief and defect for which the common law did not provide? What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth? The true reason of the remedy?

[6] *Supra* note 1, para 46.
[7] *Supra* note 1, para 47.
[8] Note Attached to Schedule of Delhi Victims Compensation Scheme, 2018.
[9] *Heydon* v. *Ottery College*, (1584) 76 ER 637.

In the present case, all the four questions are being adequately answered by the DVC Scheme. Specifically for question 3, the legislature had provided for 50% additional compensation to child victims than what is already provided, thereby providing a "remedy to cure the disease". Therefore, the purpose of the law is being fulfilled by providing an additional compensation of 50% to the child victim. There seems no reason why the High Court had to resort to purposive interpretation when the interpretation of the purpose of the statute was already very clear.

Regarding Compensation in Cases of Acquittal

The Court has acknowledged that it is common for victims and survivors to turn hostile in court, owing to the social stigma attached to sexual offences cases. Poor investigation and weak prosecution are also a reality, all of which result in a number of acquittals.[10] It does not see acquittal for such reason a ground to deny compensation to a child victim. It states that if a victim has turned hostile or for any other reason if conviction cannot be secured and compensation is not given, it will be a failure of the state in protecting survivors of sexual abuse.[11] The Court went on to state,[12]

> … After the conclusion of trial, even if the order of acquittal is passed, but if the factum of rape / injury is substantiated, the Special Court is obligated to grant maximum permissible compensation, less the interim compensation awarded earlier by the special court and the DSLSA/DLSA.

The reasoning of the Court is disagreed with, keeping in mind the tenets of criminal jurisprudence. Though it is known that acquittals are common due to hostile victims, poor investigations, and weak prosecutions, it cannot be said that compensation has to be awarded in all acquittals. In criminal jurisprudence, conviction is done when the guilt of the accused is proved beyond reasonable doubt. An acquittal necessarily implies that the accused has no guilt, or in order words, he did not commit the alleged offence. If no offence has been committed by the accused, then the victim cannot suffer any harm and he cannot even be termed a victim. Awarding compensation in cases of acquittal will mean that conviction or acquittal of an accused will have no impact on the case from the point of view of victim compensation. This will lead to questioning the very functioning of criminal jurisprudence, as to how can a victim (or person) be rehabilitated (or receive compensation) without a crime being committed on him?

[10] *Supra* note 1, para. 53.
[11] *Supra* note 1, para. 54.
[12] *Supra* note 1, para. 62.

The Court has even said that if the factum of rape or injury is substantiated, the court must grant maximum compensation irrespective of an acquittal. This statement is fundamentally incorrect in how a case is decided. If the factum of rape is substantiated, then surely the accused must be convicted by logical sense. However, even after the factum of rape being substantiated if the accused is being acquitted, then we must question how the Special Court has decided the case. If rape is substantiated as a fact, then it should not be a possibility that the accused is acquitted. The High Court has thus raised a logical fallacy in its judgment where an accused can be acquitted in spite of rape being substantiated as a fact.

Nevertheless, let us assume that though rape is substantiated as a fact, an order of acquittal is passed. In such a case if the Special Court grants compensation, it will be an order of compensation against set principles of law. As is discussed above, compensation can be given to a victim only if the accused is convicted. In case of no conviction, there is no offence, and hence no victim. But if compensation is given in spite of acquittal, it will be a contradictory order by the same court. On one hand the court has passed an order stating that no offence has been committed (i.e., an order of acquittal), and on the other hand the court has passed an order stating that the person needs to be rehabilitated and hence requires compensation.

The Chain Reaction of Compensation Seekers and a Broken Treasury

The above two sections discuss majorly two things – an enhanced compensation than what is already provided; and compensation to be given in all cases irrespective of acquittal. It can be well understood that such a precedent will open gates to false POCSO cases being filed, where child victims (or their parents) will flood courts to get compensation irrespective of the outcome of the case. Thus, for each case that is filed in Delhi, the state exchequer will have to shell out Rs. 10.5 lakh minimum irrespective of the outcome of case. This is a major loophole in the law which needs to be fixed.

IV CONCLUSION: ETHICAL CONSIDERATIONS OF JUDICIAL ACTIVISM

Judicial activism is when the judiciary crosses its traditional role of adjudicating disputes and lays down policies, guidelines, and programmes to protect the rights of people, which is ordinarily the work of the executive and legislature. It originates when there are apathy and inactivity by the legislature and executive.[13] Judicial activism can be both negative and positive. When it makes the relations between two sections of the society equitable, it is termed positive. On the other hand, if it is conservative, it is negative.[14] Judicial activism also breaches

[13] MM Semwal and Sunil Khosla, "Judicial Activism" 69(1) *The Indian Journal of Political Science* 114 (2008).
[14] Ravi P Bhatia, "Evolution of Judicial Activism in India" 45(2) *Journal of the Indian Law Institute* 264 (2003).

separation of powers and raises social costs.[15] In the Indian context, Indian courts have transformed from practicing restraint by interpreting Fundamental Rights in a static fashion[16] to being the pioneers of protecting civil rights through activism.[17]

The present case fits well within judicial activism. The High Court has crossed its traditional role of adjudicating disputes, and formed macro level questions to lay down precedents beyond the statutory provisions. It was possible for the Court to let it remain as it is and decide the dispute at hand only, however it chose to do otherwise. The Court was not triggered by any inactivity of the legislature as the latter had already provided for enhanced compensation in the DVC Scheme. It is hard to understand the need for such activism in deciding the quantum of compensation and reading the law beyond its statutory purview.

This brings us back to the question of ethical dilemma of judges: how much judicial activism to exercise? Though it is easy to criticize the judgment of the High Court, it must also be admitted that this article is not capable of answering the question that is posed. Judicial activism and restraint require strong and multi-faceted considerations. In the present case, had the economic angle of the precedent be considered, the judgment may not have been given. Nevertheless, this article would end by reminding its audience what HM Seervai had said – that there is a limited sense in which the Judge may interpret the law to evolve a new principle, but he must not write his own theories, likes and dislikes, into the law.[18] This statement possibly summarizes the answer to the ethical questions relating to judicial activism and judicial restraint.

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[15] SP Sathe, *Judicial Activism in India – Transgressing Borders and Enforcing Limits* 5 (Oxford India Paperback, 2nd edn., 2002).
[16] *ADM Jabalpur* v. *Shivkant Shukla*, AIR 1976 SC 1207.
[17] *Justice K. S. Puttaswamy (Retd.)* v. *Union of India*, AIR 2017 SC 4161.
[18] HM Seervai, III *Constitutional Law of India* 1878 (Law and Justice Publishing Company, 2nd edn., 1979).