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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

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VICTIM IMPACT STATEMENT IN INDIA: RESTORING VOICE, BALANCING RIGHTS, AND BRIDGING DOCTRINAL GAPS IN RESTORATIVE JUSTICE

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ABSTRACT

This paper critically examines the role of Victim Impact Statement (VIS) in transforming India's state-centric criminal justice system into a victim-inclusive framework aligned with restorative justice principles. Crime shatters lives in ways the law often fails to see. This paper confronts the painful reality that victims of crime in India remain unheard, reduced to mere witnesses in a justice system fixated on punishing offenders. Their pain, emotional scars, and shattered sense of security fade into the background of courtrooms. The integration of VIS, where victims narrate the human cost of the crime in their own words, can transform this exclusion. VIS, rooted in restorative justice, recognises victims not as evidence but as people, offering them dignity and rightful place in proceedings. However, India's doctrinal ambiguity and institutional resistance pose significant hurdles. A comparative analysis of VIS in the US, Canada and South Africa highlights the need for structured implementation, judicial training and victim support in India. The paper proposes a recalibrated VIS model, separating it from sentencing, ensuring voluntariness, adopting a phased implementation and integrating psychological safeguards. VIS risks symbolic futility in the absence of professional drafting assistance, statutory clarity, and a monitoring mechanism. Ultimately, VIS must transcend symbolism to embed restorative justice within India's criminal jurisprudence, balancing victims' participatory rights with the accused's fair trial guarantees under Article 21.

Keywords: Victim, Criminal Justice System, Victim Assessment Statement, Restorative Justice.

I. INTRODUCTION

Crime is not merely a legal construct defined by the statutory elements of an offence. In a broader socio-legal context, it transcends formal statutory boundaries and encompasses the complex, multidimensional harms inflicted upon victims. The impact of crime extends beyond the letter of the law and manifests in the physical, psychological, emotional, economic and social domains of a person's life. However, these harms rarely receive full recognition within the conventional criminal process. The justice system's persistent failure to meaningfully acknowledge the harm and its impact often leads to re-victimisation and deepens their sense of exclusion.¹

A just and responsive legal system must move beyond the narrow confines of the law and reflect this broader conception of crime by adopting a framework that affirms victims' experiences. Restorative justice offers such a model by repositioning victims as integral participants in the criminal justice process, not merely a prosecution witness.² Ashworth contended that restorative justice centres on a collaborative process. In this, key stakeholders collectively discuss the incident's impact and determine how to address the harm caused and seek restoration for all involved. The core aim of the criminal process shifts from punishment towards restoration and reintegration.³

Traditionally, the adversarial system has centred on the binary relationship between the state and the accused, reducing the victim's role to that of a passive witness.⁴ This exclusion was starkly highlighted by The President's Task Force on Victims of Crime (1982) offered a strong critique of how the justice system, over time, gradually drifted away from its core commitment to fairness and public protection. Instead of catering to the needs of law-abiding citizens, the system began to serve institutional actors, leading victims to be marginalised and treated with systemic indifference.⁵

¹ In *State of Gujarat v. Hon'ble High Court of Gujarat* (1998) 7 SCC 392, the Supreme Court highlighted the necessity for inclusion of victims in the process to prevent them from being ignored as a "forgotten man".

² Howard Zehr, "Restorative Justice: The Concept" 59(7) *Corrections Today* 68 (1997).

³ Andrew Ashworth, "Responsibilities, Rights and Restorative Justice" 42(3) *The British Journal of Criminology* 578 (2002).

⁴ John William Stickels, *Victim Satisfaction: A Model of Criminal Justice System* (2003) (Unpublished Ph.D. Dissertation, University of Texas at Austin).

⁵ Lois Haight Herrington et al., "President's Task Force on Victims of Crime" (U.S. Government Printing Office, Washington, D.C., 1982).

In many justice systems, victims remain on the periphery, often unheard, under-informed, and emotionally sidelined.⁶ The victims remain excluded from important stages of the criminal process, such as bail, sentencing, compensation, parole, and remission, which deprives them of a meaningful sense of agency within the justice system.⁷ While certain legal reforms have attempted to address this imbalance, their scopes remain limited and fragmented. What is needed is not just formal recognition but a deeper shift that respects their place in the process and the harm they have endured.⁸ This calls for a transition towards a more inclusive, victim-centric approach that actively integrates the victim perspective and facilitates their meaningful participation at every stage. This paper examines the structural gaps within the Indian criminal justice system and argues for the integration of the Victim Impact Statement (a statement detailing the harm suffered by the victim, hereinafter mentioned as VIS) as a transformative tool to restore procedural fairness and advance the principles of restorative justice. In the Indian context, where victims often experience social and economic marginalisation, the inclusion of VIS offers a platform where victims may express the full impact of the crime and its physical, psychological, social and economic consequences. It adds a human dimension to otherwise abstract legal facts by placing the victim at the centre of the process. Such recognition affirms the victim's dignity, fosters emotional closure, and strengthens public confidence in the system. This process aids in incorporating restorative justice principles within the framework of mainstream criminal proceedings.

The integration of VIS into the Indian criminal justice system faces multiple difficulties. At present, VIS lack formal legal recognition and clear judicial guidelines on its admissibility and scope. This legal ambiguity requires the attention and efforts of legislators, the judiciary, prosecutors, and legal services authorities to ensure its effective incorporation into the justice process. One important question that still needs to be answered is whether VIS should be reviewed only by prosecutors and legal services authorities, or if judges should also consider them directly when deciding on a sentence.

⁶ Jonathan Doak, "Victims' Rights in Criminal Trials: Prospects for Participation" 32 *Journal of Law and Society* 294 (2005).

⁷ Government of India, "*Report of the Committee on Reforms of Criminal Justice System*" (Ministry of Home Affairs, 2003). Chapter 5 of this report addresses systemic exclusion of victims.

⁸ Mary Margaret Giannini, "Equal Rights for Equal Rites?: Victim Allocution, Defendant Allocution, and the Crime Victims' Rights Act," 26 *Yale Law and Policy Review* (2008). This paper discusses how recognition of the victim's voice and experience promotes victim participation.

In proceedings where judges review the VIS, a major concern arises about its potential impact on the gravity of punishment. This concern assumes special significance in a system that hears the accused before pronouncing the sentence and upholds uniformity and proportionality based on the offence rather than the subjective harm to the victim.⁹ Furthermore, in cases where the victim is deceased or incapacitated, ambiguity persists over who is entitled to submit a VIS and how its relevance should be evaluated. Moreover, the relevance of the VIS depends not only on the extent of harm suffered by the victim but also on the stage of the criminal process at which the harm is assessed. Different stages of the criminal process may reveal different dimensions of the harm, especially given the prolonged duration of proceedings and high case pendency in India. This paper critically explores these doctrinal and procedural challenges and offers constructive proposals to address these issues within the broader framework of restorative justice. Within a restorative framework, it explores the potential of VIS to contribute to procedural fairness, balance the interests of justice, and reaffirm victims' participatory role in the criminal process.

Research Methodology

This paper adopts a tripartite methodology to examine the legal, procedural, and practical dimensions of VIS in India's criminal justice system. First, there is a doctrinal analysis of key statutes (CrPC/BNSS), landmark judgments, and committee reports (Malimath Committee, Law Commission of India) to trace the evolution of victim rights and identify legislative gaps in VIS integration. This revealed tensions between restorative goals and adversarial procedural norms. Second, a comparative legal assessment reviewed the VIS frameworks of five common law jurisdictions: the United States, the United Kingdom, Canada, Australia, and South Africa. These models were examined through legislation, judicial decisions, and policy guidelines. This examination exposed divergent philosophical priorities from expressive victim agency (US) to trauma-informed flexibility (Canada) and contextualised India's institutional challenges. Third, the Criminal Law Amendment Bill, 2020, was deconstructed to assess its doctrinal soundness, scope, and constitutional alignment in the light of Articles 14 and 21. Victim rights literature supplemented this analysis, bridging theoretical critique with actionable reform pathways.

⁹ Edna Erez, "Who's Afraid of the Big Bad Victim? Victim Impact Statements as Victim Empowerment and Enhancement of Justice" *Criminal Law Review* 545 (1999)

II. VICTIM IMPACT STATEMENT IN INDIA

“Victimisation inflicts multifaceted harm, encompassing not only immediate shock, guilt, and physical injury, but also long-term financial loss, psychological trauma such as fear, anger, depression, and post-traumatic stress disorder (PTSD).”¹⁰ It further erodes interpersonal trust, disrupts daily life, and heightens the perceived risk of future victimisation.¹¹ This Section argues that India’s journey towards VIS implementation must confront a unique triad: doctrinal ambiguity (lack of statutory definition), procedural inertia (delays/ capacity gaps), and institutional resistance (prioritising expediency over victim voices). The Indian criminal justice system has long operated on the flawed premise that securing a conviction alone fulfils the needs of the victim, ignoring their broader emotional, financial and participatory interests.¹² In *Labh Singh v. State of Haryana*, the Supreme Court affirmed that a fair trial is not the exclusive right of the accused; it is a societal obligation that must also include the victim. The court cautioned against treating the victim as a bystander or outsider to the proceedings. It emphasised that modern criminal jurisprudence increasingly acknowledges victimology, which views trial not only through the lens of the accused but also through the lived reality of the victim within their social context.¹³ The 154th Report of the Law Commission of India recognised a long-standing imbalance in the criminal justice system, dedicating an entire chapter to “Victimology”. It observed that despite being the ones most directly affected by crime, victims often remain on the margins. They are treated more as incidental witnesses than as participants with a stake in the proceedings.¹⁴ The Report drew attention to the reality that victims of serious offences frequently suffer not only physical and emotional trauma but also social stigma and economic hardship, yet the justice system offers them little more than a peripheral role.¹⁵ Notably, the Commission underpinned the absence of meaningful participation for victims at key stages of the process, such as bail, plea bargaining, and appeals. The commission strongly recommended procedural reforms and observed the need to provide victims access to

¹⁰Joanna Shapland and Matthew Hall, “What Do We Know About the Effects of Crime on Victims?” 14(2) *International Review of Victimology* 175 (2007).

¹¹ *Ibid.*

¹² K.D. Gaur, “Justice to Victims of Crime: A Human Rights Perspective of the Criminal Justice Process in India” in K.L. Vibhute (ed.), *Criminal Justice: A Human Rights Perspective of the Victim's Position* 351 (Eastern Book Company, 2004).

¹³ *Labh Singh v. State of Haryana* (2012) 11 SCC 690, para 12.

¹⁴ Law Commission of India, “154th Report on the Code of Criminal Procedure, 1973” (Vol. I) pp. 45–60 (Government of India, 1996).

¹⁵ *Id.* at 52.

legal representation and a formal voice in proceedings that directly affect them.¹⁶ In *Jagjeet Singh v. Ashish Mishra*, the Supreme Court reaffirmed that the victim, as the direct sufferer of the offence, often remains procedurally excluded from the adjudicatory framework.¹⁷ The court noted that the current justice system, with its primary focus on prosecution and punishment, has marginalised those most affected by the crime. This exclusion deepens the structural imbalance within the criminal process. The judgment reaffirmed the need to restore the victim's voice as a legitimate and necessary part of the legal proceedings. Justice V.R. Krishna Iyer in the *Rattan Singh v. State of Punjab*¹⁸ case critically reflected on the Indian legal system's indifference to the suffering of victims and their families, lamenting that victim reparation remains the "vanishing point" of Indian criminal law. He called upon the legislature to rectify this deficiency in the system. The adoption of these reforms in India remains fragmented, particularly through piecemeal provisions within the Criminal Procedure Code (hereinafter referred to as CrPC). The introduction of Section 2 (wa) in the Criminal Procedure Code in 2009 was a significant development. It, for the first time, provided a statutory definition of the term 'victim' within Indian criminal law. Under the proviso to Section 372 of the CrPC, victims have a limited right to appeal against acquittals, convictions for lesser offences, or inadequate compensation. Sections 357, 357A, 357B, and 357C embody the principles of restorative justice by providing for compensation and support to victims. But, despite being important provisions, they continue to operate in isolation and lack the procedural integration necessary to address the deeper structural disparities between victims and the justice system. As a result, victims' voices have often gone unheard, and they remain silent spectators in proceedings that directly concern their sufferings.¹⁹ In the case of *Balasaheb Rangnath Khade v. State of Maharashtra*²⁰, the court observed that victims still don't have meaningful rights during the investigation stage and hold a weak position even at trial. It recognised the systemic neglect victims face, often entirely neglected or overlooked. The judgment acknowledged that victims were not only harmed by the crime but further victimised by a system that historically ignored their voices. The court reflected on the need for legal reform. This reform should act as a tool for social welfare. It must address the gaps in social and legal support. These

¹⁶ *Id.* at 53

¹⁷ *Jagjeet Singh v Ashish Mishra* (2022) 9 SCC 321, para 23.

¹⁸ *Rattan Singh v. State of Punjab* (1979) 4 SCC 719.

¹⁹ Vidya Shankar, "Victimology in India: Need for Victim-Oriented Laws" 3(5) *IJLMH* (2020).

²⁰ *Balasaheb Rangnath Khade v. State of Maharashtra*, 2012 SCC OnLine Bom 635.

gaps cause victims to suffer twice: first from the crime itself, and then from the legal process that follows. The Supreme Court of India pointed out how the rights of the accused continue to outweigh those of the victim in several aspects. It observed that the victim's suffering begins with the trauma of the crime and continues through the legal process. While the growing recognition of victims' rights marks a welcome shift, the court made clear that there is still a lot to do to ensure the real participation of victims in the justice system.²¹

While India tries for the inclusion of victims in the justice system, a comparative study regarding this offers helpful ideas, and it was also examined by the Malimath Committee. The Report of the Committee²² showed that the awareness of people around the world is growing increasingly that victims deserve a place at the heart of the justice process. Victims already hold a stronger voice, supported by clearer procedural rights, in many civil law countries. Even common law countries, which focused almost entirely on the accused for a long time, began to shift course in the late 20th century. The report points to the United States as a key example, where the Supreme Court in *the Payne case* upheld the right of courts to hear VIS. Also, it proposed the adoption of VIS with suitable modification for implementation in the Indian context, among other things introduced in the United Kingdom for reforming the criminal justice system. This global shift finds concrete expression in the United States in *Payne v. Tennessee*,²³ in which the US Supreme Court legitimised VIS and accepted its' admissibility, marking a departure from its earlier position in *the Booth case*. Revisiting the dissent in *Booth v. Maryland*, the Court highlighted that "sentencing must not disregard the victim's humanity."²⁴ It observed that, **"just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family."**²⁵ According to the United States Department of Justice, "Victim impact statements describe the emotional, physical, and financial impact you and others have suffered as a direct result of the crime."²⁶ It can be either written or

²¹ *Mallikarjun Kodagali v State of Karnataka* (2019) 2 SCC 752, 761.

²² Government of India, "Report of the Committee on Reforms of Criminal Justice System" 82-84 (Ministry of Home Affairs, 2003).

²³ *Payne v. Tennessee*, 501 US 808 (1991).

²⁴ *Booth v. Maryland*, 482 US 496 (1987).

²⁵ *Ibid.*

²⁶ "Victim Impact Statements" (September 27, 2023) available at: <<https://www.justice.gov/criminal/criminal-vns/victim-impact-statements>> (last visited on July 31, 2025).

oral statements. Hence, it is the narration of physical, psychological, emotional, financial and social harm or loss sustained by the victim as a result of the offence in his own words. Recently, in *Mallikarjun Kodagali v. State of Karnataka*²⁷, the Supreme Court observed that the court must give voice to victims at the sentencing stage to ensure their meaningful participation. The judgment emphasised the significance of a Victim Impact Statement or Victim Impact Assessment in enabling the court to impose proportionate punishment that reflects both the offence and its consequences. Thus, incorporation of a VIS after conviction can provide a formal platform for the victims to communicate the impact of the crime.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the CrPC, serves as the general code of criminal procedure in India and continues the mandate that the accused must be heard before the pronouncement of the sentence.²⁸ The intended objective of this provision is to enable the court to consider any mitigating circumstances in favour of the accused. However, the procedural law does not provide a corresponding mechanism for the victim to participate or be heard during the sentencing process, creating a structural imbalance. Section 258(2) of BNSS institutionalises accused-centric sentencing, rendering victims' voices procedurally absent. Justice Benjamin Cardozo's insistence on balancing the rights holds profound significance here. In *Snyder v. Massachusetts*, he cautioned, "**Justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament.**"²⁹ In India, where victims often remain unheard or sidelined, Cardozo's words underscore the urgency of recalibrating procedural fairness to reflect the realities and rights of those who suffer harm. There is a necessity for judicial sensitivity to transcend procedural rigidity, which compounds the victim's trauma.³⁰ The Supreme Court in *Jagjeet Singh v. Ashish Mishra*³¹, affirmed that crime victims possess inherent rights to participate at every stage of criminal proceedings, starting immediately after the offence occurs. It held that victims must be heard beyond formal trial processes, including investigation and appeals, rejecting their historical exclusion as mere

²⁷ *Mallikarjun Kodagali v. State of Karnataka* (2019) 2 SCC 752, 761.

²⁸ The Code of Criminal Procedure, 1973, S. 235(2): If the accused is convicted, the Judge shall, unless he proceeds by the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law. (Now, Section 258(2) of BNSS).

²⁹ *Snyder v. Commonwealth of Massachusetts*, 291 U.S. 97, 122 (1934).

³⁰ Gary Low, "Emphatic Plea for the Empathic Judge" 30 *SINGAPORE ACAD. OF L. JOUR.* (2018).

³¹ *Jagjeet Singh v. Ashish Mishra* (2022) 9 SCC 321.

bystanders. The judgment declared the victim's participatory rights "unbridled", challenging the state's monopoly over justice processes.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime & Abuse of Power, 1985, emphasises the importance of fair treatment, participation, restitution, compensation and rehabilitation to ensure access to justice and uphold the dignity of victims.³² Aligned with these principles, the VIS can assist courts and legal services authorities in determining appropriate compensation based on the actual harm suffered. Also, it can guide the development of rehabilitative and protective measures aimed at preventing future victimisation.³³ Moreover, a VIS enables the court to understand the subjective realities of crime, particularly in India, where victims often come from socially and economically marginalised communities. This helps in humanising the legal process by bridging the gap between legal formalism and the lived realities of victims. The VIS statement is submitted after conviction; hence, the victim is not submitted to the process of cross-examination, which reduces the risk of secondary victimisation. In an empirical study, Moghe and Saxena conclude that Indian legal professionals acknowledge VIS's therapeutic value for victims but highlight systemic barriers and how court workloads prioritise "managerial justice"³⁴ leading to depersonalisation of VIS to maintain objectivity. Most agree that VIS is feasible only for grave offences (e.g., murder, sexual assault) with standardised formats to avoid trial delays. The VIS is instrumental in informing compensation but symbolic for sentencing.³⁵ While the need for victim participation in the criminal justice process is undeniable, determining the form, scope, and extent of such engagement must be rooted in the doctrinal traditions and socio-political context of each jurisdiction.

³² OHCHR, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>> (last visited on July 30, 2025).

³³ Priyanka Prasanth, "The Importance of Victim Impact Statements in Criminal Law" *Bar and Bench*, October 21, 2023, available at: <<https://www.barandbench.com/columns/victim-impact-statement>> (last visited on July 11, 2025).

³⁴ Andrew Ashworth, "Responsibilities, Rights and Restorative Justice" 42(3) *The British Journal of Criminology* 579 (2002).

³⁵ Sunishtha Moghe and Niti Nipuna Saxena, "Should Victims be Heard During Sentencing? Empirical Assessment of the Victim Impact Assessment in India" SSRN (April 20, 2025). available at: <<https://ssrn.com/abstract=5227345>> or <<http://dx.doi.org/10.2139/ssrn.5227345>> (last visited on July 29, 2025).

III. CRITICAL EXAMINATION OF THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 2020

This bill was introduced on 13th March 2020, in the Rajya Sabha with the intended aim of integrating the VIS mechanism into India's State-centric criminal justice system. The bill proposed three key amendments to the Code of Criminal Procedure, 1973. First, it sought to define the category of individuals eligible to submit a VIS by inserting Section 2(ia)³⁶, which defines "kin of deceased victim". Second, it added Section 173(2)(i),³⁷ which requires the investigating officer to annexe the VIS as a part of the police report. Third, it introduced Section 235(3)³⁸, which recognises the right of the kin of the deceased victim to be heard at the sentencing stage and mandates judicial consideration of VIS before passing the final order. The bill provides a format for VIS³⁹ and also a provision for multiple VIS. These amendments attempt to align Indian Criminal Law with global practices where victims or their families play a more participatory role in the sentencing process. However, despite these progressive intentions, the bill's operational framework reveals three critical flaws.

A. Evidentiary Prejudice: Police Report Inclusion

The proposed inclusion of the VIS within the police report (Section 173(2)(i)) raises serious concerns regarding evidentiary fairness. The incorporation of subjective and emotionally charged accounts of grief and pain into the formal investigation violates the Supreme Court mandate in *State of Gujarat v. Kishanbai*⁴⁰, where the court emphasised that the investigation must remain objective and free from extraneous influences. The court affirmed that the judges are required to

³⁶ In Section 2 of the Code of Criminal Procedure, 1973, (hereinafter referred to as the principal Act), after clause (i), the following clause shall be inserted, namely—

"(ia) "kin of deceased victim" means closest living family members of a deceased victim, and includes the mother, father, brother, sister, son, daughter and spouse of such victim."

³⁷ In Section 173 of the principal Act, in sub-Section (2), in clause (i) after sub-clause (h), the following sub-clause shall be inserted, namely: —

"(i) whether the Victim Impact Statement of the kin of the deceased victim in the form prescribed as per Schedule III of the Act has been attached, where the investigation relates to a deceased victim:

Provided that at least one Victim Impact Statement shall be recorded as part of the report wherever applicable."

³⁸ In Section 235 of the principal Act, after sub-Section (2), the following sub-Section shall be inserted, namely: —

"(3) If the accused is convicted in a case where the victim is deceased as a consequence of the offence, the Judge shall, hear the kin of the deceased victim on the question of sentence, have due regard to the Victim Impact Statement submitted under sub-Section (2) of Section 173, and then pass the sentence according to law.

³⁹ Propose insertion of the third schedule, which contains the Format of the Victim Impact Statement.

⁴⁰ *State of Gujarat v. Kishanbai* (2014) 5 SCC 108 at page 136.

adjudicate based on well-drawn parameters without taking sides and by applying principles of law. The court cautioned that adjudication should not be swayed by mercy or compassion, but the unverified emotional narrative could implicitly sway a magistrate while taking cognizance under Section 190 Criminal Procedure Code (Now Section 210, BNSS). Magistrates reviewing these hybrid police-VIS reports during cognizance (Section 190, CrPC/ Section 210, BNSS) are confronted with a conflict between emotional content and legal neutrality. How does one unsee a mother's anguish over a murdered child when deciding whether to summon the accused? The Bill's architects seem oblivious to this contamination risk; it has the potential to undermine the neutrality, which may inadvertently prejudice the trial process against the accused. The recognition of the kin of the deceased victim's right to be heard during sentencing is indeed an empowering measure and aims to place the victim on a more equal footing with the accused. As per the mandate of the bill, investigators collect VIS at the commencement of the investigation when emotions run highest (often recorded within days of the crime), but its use is deferred to sentencing (Section 235(3) of the proposed bill). Courts use it months or years later at sentencing. What does happen in between? This temporal gap raises serious concerns regarding procedural influence during the trial. That visceral account sits in the case file, potentially warping witness examinations and interim rulings. Moreover, this raises serious concern under Section 148 of the Bharatiya Sakshya Adhiniyam, 2023 (earlier Section 145 of the Indian Evidence Act, 1872), which provides for the cross-examination as to a previous statement. Since the VIS is recorded in writing, it raises the question of whether it qualifies as a previous statement under Section 148 of BSA, 2023. This framework blurs critical evidentiary boundaries since the bill is silent on whether VIS is subject to cross-examination. Consequently, without any procedural safeguards in the bill to test the veracity of VIS, it occupies a grey zone between fact and opinion. In line with this concern, it is important to consider the rules of evidence which mandate that a witness must depose to facts and not opinions.⁴¹ This concern is amplified by the possibility of intermingling of the examination of the victim and VIS, as both are recorded simultaneously during the investigation. The inclusion of VIS within police reports creates an evidentiary incompatibility. On paper, it amplifies victim voices, a noble intent. But in practice, it institutionalises evidentiary contamination by inviting unvetted emotional narratives into what should be unbiased and neutral investigative territory. This

⁴¹ *Mobarik Ali Ahmed v. State of Bombay* (1948) SCR 232.

jurisprudential position was reaffirmed in *Paramjeet Singh @ Pamma v State of Uttarakhand*, the Supreme Court observed that, “A criminal trial is not a fairy tale wherein one is free to give flight to one’s imagination or fantasy.”⁴² The court reaffirmed that criminal proceedings must be grounded in a rational assessment of factual evidence, not speculative or fanciful reasoning. Overall, raw grief documented early into investigations inevitably bleeds into judicial consciousness, however unintentionally. This could create pre-emptive bias and undermine Article 21 by violating the principles of procedural fairness, which mandate an unprejudiced trial⁴³.

B. Procedural Vagueness: Ambiguous interpretation

The proviso to Section 173(2)(i) requires that at least one VIS be recorded as part of the police report. This raises the implication that multiple VIS may be submitted, since “kin” includes more than one person. However, the Bill is silent on how such multiple statements will be harmonised, especially if they present conflicting narratives or recommendations. This creates a significant lacuna in terms of evidentiary treatment and legal coherence. Determining the evidentiary value of each statement and reconciling inconsistencies could become a complex legal challenge. This concern is further compounded by the fact that police officers and magistrates, who are tasked with collecting and reviewing these statements, may lack the necessary training to properly collect, interpret, or weigh such subjective materials according to legal standards. The absence of clarity regarding who is responsible for preparing the VIS further complicates the matter. The Bill remains silent on whether the victims or their families will receive any legal, psychological, or any other assistance in preparation for these statements. The bill does not contemplate any form of medical or psychological assessment either before or after the submission of the VIS, raising concerns about re-traumatisation and the evidentiary reliability of statements made under emotional distress. These procedural ambiguities convert a therapeutic tool into a legally ambiguous and prejudicial instrument.

C. Exclusionary Scope: Article 14 Violation

The bill allows the inclusion of VIS only in cases in which the victim is deceased. It unjustifiably excludes surviving victims of heinous crimes such as sexual assault or grievous bodily harm from

⁴² *Paramjeet Singh @ Pamma v State of Uttarakhand* (2010) 10 SCC 439

⁴³ *Zahira Habibullah Sheikh v. State of Gujarat* (2006) 3 SCC 374

availing the same participatory rights, thereby violating Article 14 of the Constitution by creating an unreasonable classification without an intelligible differentia or nexus.⁴⁴ There is no intelligible differentia, as victims of acid attack, sexual assault, etc., may suffer greater life trauma than the kin of the deceased. The participatory rights of each victim must correlate with harm suffered and not with victim mortality, which has no nexus with the restorative purpose intended by the bill.

While the Bill aspires to introduce a more victim-inclusive approach through the institutionalisation of the VIS, its current form is fraught with doctrinal ambiguities and procedural gaps. The bill stops short of granting VIS a clear statutory status within the trial framework. It leaves unanswered critical questions: Will the VIS serve as an aggravating or mitigating factor in sentencing? Can it be subjected to cross-examination? Will it influence decisions related to bail, parole or remission? Will it be integrated with the victim compensation scheme? The absence of clarity on these issues risks destabilising foundational sentencing principles, particularly the doctrines of proportionality, judicial discretion, and equality before law. To ensure the VIS framework has a meaningful impact, the proposed provisions must be re-evaluated and strengthened. Comprehensive guidelines are necessary to provide for evidentiary weight, procedural admissibility, and to define their role in sentencing, compensation, and other proceedings under criminal law. The incorporation of the VIS within the police report requires reconsideration to avoid prejudice to investigation and trial integrity. Moreover, the scope of applicability should be expanded beyond cases of deceased victims to include surviving victims of grievous offences, upholding the principles of substantive equality under Article 14. Furthermore, support mechanisms, including trained legal aid, psychological assessment, and protection against secondary trauma, are essential to avoid symbolic implementation. Policymakers must recognise that victim inclusion is not merely about participation, but about integrating that participation within a fair, balanced and constitutionally sound criminal justice framework. Without clear procedural safeguards, defined roles for assistance, and adequate training for law enforcement and judicial officers, the reform remains symbolically progressive but normatively fragile. Despite its intent to empower victims, the 2020 Bill lapsed without implementation, and subsequent new criminal law codes conspicuously omitted VIS provisions.

⁴⁴ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75

This legislative inertia perpetuates systemic exclusion. Urgent statutory integration remains imperative to transform restorative justice from aspiration to reality.

IV. VICTIM IMPACT STATEMENT ACROSS LEGAL SYSTEMS: A CROSS-JURISDICTIONAL ANALYSIS

It is essential to examine how various jurisdictions have integrated into their legal processes to contextualise the application of VIS within a broader legal framework. The following table presents a comparative overview of selected common law jurisdictions and examines key aspects such as legal recognition, permissible format, institutional facilitation, reviewing authorities, scope of content, and procedural stage at which VIS is considered in the criminal proceedings. This cross-jurisdictional analysis offers valuable insight into how VIS can be operationalised effectively and suggests potential reforms to strengthen victim participation in the criminal justice system.

Country	Legal Recognition	Procedural Phase	Reviewed By	Format	Scope of Content
United States ⁴⁵	Recognised in capital offences at the federal and state levels. (e.g.- Crime Victim's right Act, 2004). In the Payne case	Post-conviction (at sentencing phase)	Judge and Jury	Oral or written (it can be in a variety of different formats). Can read during the sentencing process	Emotional, financial, physical, and psychological impact, the family's suffering also included

⁴⁵ Victim Impact Statement, available at: <https://search.justice.gov/search?utf8=%E2%9C%93&affiliate=justice&query=victim+impact+statement> (last visited on July 29, 2025).

Canada ⁴⁶	Codified in Criminal Code (Section 722)	In the sentencing phase and discharge under Section 730.	Judge	Section 722(4) and form 34.2 (Also, Drawing, poem, letter, and photographs allowed)	Emotional, physical, economic impact, and Fears for personal security
United Kingdom ⁴⁷	Code of practice for Victims of crime (Victims 'code) as Victim Personal Statement(VPS)	Sentencing and parole review	Judge and Parole Board	Written (with the aid of police officers). May be read in court with permission.	Physical, psychological, emotional, financial or any other effect of the crime on the victim and their family.
Australia ⁴⁸	Recognised in all states (e.g., Victims Rights and Support Act 2013 in NSW)	Sentencing and Parole consideration	Judge and Parole Authorities	Primarily written, but court may permit oral presentation and can seek clarification if needed.	Details of the full effect of the crime- economic, physical, mental, social, etc.

⁴⁶ Legislative Services Branch, "Consolidated Federal Laws of Canada, Criminal Code" *Justice Laws Website*, available at: <<https://laws-lois.justice.gc.ca/eng/acts/C-46/Section-722.html>> (last visited on July 28, 2025).

⁴⁷ UK Government, "Making a Victim Impact Statement" *Ministry of Justice*, available at: <<https://assets.publishing.service.gov.uk/media/5a7cd21040f0b6629523c02e/victims-vps-guidance.pdf>> (last visited on July 30, 2025).

⁴⁸ Victims' Rights and Support Act, 2013, No. 37 (NSW Legislation), available at: <<https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2013-037>> (last visited on July 30, 2025).

South Africa⁴⁹	Recognised in the Victim's Charter and through pilot restorative justice programs	Sentencing (limited use)	Judicial discretion	Usually written, submitted through the prosecutor. Some oral delivery permitted in pilot programs.	Personal consequences, community impact, sometimes supplemented by community views.
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A comparative analysis of VIS across jurisdictions reveals divergent normative philosophies and procedural architectures shaping victim participation in sentencing. While the common law systems embrace VIS flexibility, civil law jurisdictions deliberately limit emotional narratives. In the United States, VIS is constitutionally recognised, especially in capital offences, where they are presented either orally or in writing before judges and juries, capturing emotional, physical, financial and familial harm.⁵⁰ While facilitating expressive justice and validating victim suffering, this model has drawn criticism for potentially undermining due process through emotional prejudice and disparities arising from victims' socio-economic or racial backgrounds.⁵¹ In contrast, England and Wales follow a restrained approach where the Victim Personal statement, under the Victims' Code, is typically written with the police assistance and may be read aloud with judicial permission, but its influence is subordinated to the overriding principle of proportionality.⁵² Canada, under Section 722 of its Criminal Code, adopts a trauma-informed model. It allows not only written submissions but also alternative expressive forms such as drawings, poems, and photographs, a recognition of diversity in how victims articulate harm.⁵³ This expressive flexibility

⁴⁹Department of Justice and Constitutional Development & BS Mabandla, "Service Charter for Victims of Crime: National Implementation Plan" (South African Government, 2007).

⁵⁰*Payne v Tennessee*, 501 US 808 (1991); Crime Victims' Rights Act 2004.

⁵¹Susan A. Bandes, "Victims, 'Closure', and the Sociology of Emotion" *Law and Contemporary Problems* 72 (2008).

⁵²*R v. Perks* [2001] 1 Cr App R (S) 66; Government of UK, "Code of Practice for Victims of Crime in England and Wales" (Ministry of Justice, 2020).

⁵³Criminal Code, RSC 1985, c C-46, s 722; Department of Justice, Canada, *Victim Impact Statement Guidelines* (Form 34.2).

is supplemented by formalised templates (e.g., Form 34.2)⁵⁴, but tempered by judicial balancing, especially under Gladue principles⁵⁵ considerations for Indigenous offenders. Australia's fragmented structure has led to varied VIS practices across states: primarily written, they may be orally presented upon court approval, combining therapeutic purposes with judicial utility.⁵⁶ South Africa, rooted in a restorative justice framework informed by Ubuntu⁵⁷, recognises VIS through its Victims' Charter, generally as written submissions routed via prosecutors, although some pilot programmes permit oral statements to reflect community sentiment and personal harm. Civil law systems such as France and Germany maintain procedural distance from emotional victim narratives within the main trial, relegating such expression to ancillary civil proceedings or the sentencing phase, thereby preserving adjudicatory objectivity and truth-finding.⁵⁸ At the international level, the International Criminal Court cautiously integrates victims' "views and concerns" under Article 68(3) of the Rome Statute, guided by the imperative of not compromising the accused's fair trial rights.⁵⁹ This comparative framework underscores how VIS formats, from oral to multimedia and from individual to communal expression, are as much reflections of administrative pragmatism as they are of deeper jurisprudential priorities.

Systems such as the US and South Africa foreground expressive victim agency, while jurisdictions like the UK and Canada emphasise proportionality or restorative equilibrium. Yet across models, the effectiveness of VIS hinges not merely on formal recognition but on systemic investment in implementation, access and procedural fairness. As quasi-legal instruments oscillating between therapeutic tools and sentencing inputs, VIS may become symbolic gestures unless supported by institutional integrity, training and adequate victim support. The evolving landscape affirms the victim's voice as indispensable, but cautions that inclusion must not supplant fairness; instead,

⁵⁴ Government of Canada, Electronic Communications, "Victim Impact Statement - Canadian Victims Bill of Rights" (Department of Justice, November 8, 2024), available at: <<https://www.justice.gc.ca/eng/cj-jp/victims-victimes/sentencing-peine/vis-dv.html>> (last visited August 3, 2025).

⁵⁵ Anna Ndegwa, Laura Gallant, et. al., "Applying R. v. Gladue: The Use of Gladue Reports and Principles" (Department of Justice, 2023).

⁵⁶ Victims' Rights and Support Act 2013 No. 37 (NSW Legislation).

⁵⁷ Marelize Schoeman, "The African Concept of Ubuntu and Restorative Justice" in Theo Gavrielides and Vasso Artinopoulou (eds.), *Reconstructing Restorative Justice Philosophy* 291-310 (Ashgate Publishing Limited, 2013).

⁵⁸ Kerstin Braun, "Giving Victims a Voice: On the Problems of Introducing Victim Impact Statements in German Criminal Procedure" 14(9) *German Law Journal* 1889 (2013).

⁵⁹ IHL Treaties, Statute of the International Criminal Court, 1998, Article 68.

substantiate it. These comparative frameworks demonstrate that while VIS have evolved to reflect varying philosophical and procedural commitments, their legitimacy and utility depend on structured implementation, evidential clarity, and alignment with constitutional guarantees of due process and procedural fairness.

V. DOCTRINAL CRITIQUE OF VICTIM IMPACT STATEMENT

A. Penal Rationality Reexamined: Reconciling Classical Doctrine with Victim Impact Statement

Modern criminal jurisprudence shapes VIS through foundational punishment theories. From a Kantian retributivist perspective, the principle of equality requires that the scale of justice remain perfectly balanced and that punishment be imposed as a moral necessity to uphold justice and restore the moral balance disrupted by the offence.⁶⁰ The inclusion of the VIS, when properly regulated within the bounds of legal principles, does not compromise the principles of impartiality and proportionality. Rather, it aligns with the categorical imperative by recognising the consequences of the harm inflicted, which ensures a proportionate response and affirms the dignity of both victim and accused without disrupting the scale of justice. In the words of utilitarian Jeremy Bentham, “punishment must promote the greatest happiness of the greatest number”⁶¹, and it gains legitimacy only when it produces benefits for society, such as deterrence, incapacitation, and rehabilitation. This aligns with the Supreme Court observation in *State of Karnataka v. Krishnappa*, where the court affirmed that, “protection of society and deterring the criminal is the avowed object of the law and that is required to be achieved by imposing an appropriate sentence”.⁶² The court’s awareness of the harm caused by the offence allows the court to evaluate the social consequences of the crime and impose a sentence that reflects both the offence and its broader effects. While Kant prioritises moral balance, Bentham links VIS to societal utility, a duality reflected in Indian jurisprudence. In *Gopal Singh v State of Uttarakhand*⁶³, the court affirmed that punishment must echo the collective conscience of society, while respecting the principle of proportionality between the offence and the punishment. When the legal process

⁶⁰Immanuel Kant, *The Metaphysics of Morals* 141 (Mary Gregor tr., Cambridge University Press 1991).

⁶¹Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (first published 1789, Oxford: Clarendon Press, 1907).

⁶² *State of Karnataka v. Krishnappa* (2000) 4 SCC 75, 83.

⁶³ *Gopal Singh v. State of Uttarakhand* (2013) 7 SCC 545, 556.

recognises the victim's suffering, it strengthens the community's collective conscience and reasserts the boundaries of lawful conduct. In this way, it serves as a symbolic reaffirmation of shared societal values. Durkheim asserted that, "punishment serves above all to maintain social cohesion by sustaining the common conscience"⁶⁴. Further, the Apex court in *Shyam Narain v State (NCT of Delhi)*⁶⁵ stated that sentencing must carry a social objective. The court noted that "a crime creates not only a dent in the life of the accused, but also a concavity in the social fabric, which the sentence must address"⁶⁶. VIS establishes a justice framework that serves both victims and society, as it guides courts to impose punishments that discourage repetition of the offence, protect the public, and lead the offender toward moral reflection. Greater victim engagement provides an opportunity to express the impact of the crime and reinforces the legitimacy of the system through their direct participation. The Malimath Committee report⁶⁷ observed that victim involvement in the process (though noted in the context of plea bargaining) aligns with broader participatory principles, fosters perception of fairness, reduces feelings of vengeance, and strengthens trust in the justice system. This participatory approach fosters victim satisfaction, which ultimately strengthens the legitimacy and effectiveness of criminal justice institutions.

B. Victim Impact Statement and Compensatory Jurisprudence

The conceptual overlap between VIS and compensatory jurisprudence in India finds coherence in their shared objectives of recognising and addressing the subjective suffering of crime victims within the formal criminal process. VIS, though not formally recognised in India, serves a latent role. It is critical in compensation determination under various compensation schemes, particularly those arising from Section 357A⁶⁸ of the Code of Criminal Procedure (now Section 396 of BNSS). In a landmark decision, the Delhi High Court in *Karan v. State (NCT of Delhi)*⁶⁹ brought doctrinal clarity and procedural innovation by formally linking VIS with victim compensation, thereby foregrounding the "impact factor" as a substantive input in sentencing and reparative justice. The bench emphasised: "justice cannot be complete without adequate and just compensation to the

⁶⁴ Emile Durkheim, *The Division of Labour in Society* 108 (WD Halls tr, Macmillan 1984).

⁶⁵ *Shyam Narain v. State (NCT of Delhi)* (2013) 7 SCC 77, 86 [12].

⁶⁶ *Ibid.*

⁶⁷ Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, 2003) 90.

⁶⁸ The Code of Criminal Procedure 1973, s. 357A (inserted by the Criminal Law Amendment Act 2008).

⁶⁹ *Karan v. State (NCT of Delhi)* 277(2021) DLT 195 (FB)

victim or their family”⁷⁰ and proposed a Victim Impact Report (hereinafter referred to as VIR) to be prepared by the Delhi State Legal Services Authority (DSLSA) in consultation with the victim’s kin. The VIR was intended to detail the psychological, financial, and emotional harm caused, as well as the family’s social and economic condition, to assist the court in determining an appropriate amount of compensation. The VIR offers a structured summary prepared by someone other than the victims. It outlines the harm, the convict’s ability to pay, and suggests compensation. In contrast, the Victim Impact Statement gives the victim a chance to speak in their own words, sharing pain, loss and the human cost of the crime. VIR quantifies harm for compensation, whereas VIS prioritises victims’ agency in the criminal process. Though the compensation schemes do not explicitly call for VIS, the DLSAs often rely on the victim affidavits, counselling reports and victim or family representations, which functionally serve as informal VIS. Further, the judiciary and legal services authorities consider the gravity of harm, psychological trauma, emotional and physical trauma, not just economic loss, but also “loss of future” prospects reflecting elements akin to victim narratives, dimensions which are traditionally considered by VIS in comparative jurisdictions to decide the quantum of compensation. The reparation should be the ultimate goal of law to rehabilitate victims, and in order to recognise and redress the nature and extent of victimisation of each victim has to be assessed. The 154th Report of the Law Commission of India urged a structure for impact-based reparation. Similarly, the Justice Malimath Committee Report emphasised victim participation akin to VIS in compensation and sentencing hearings, noting that such procedural reform would harmonise punitive and reparative dimensions of justice.

Judicial pronouncements have promoted this approach by linking compensatory claims with the recognition of victim harm. These developments reflect a gradual but meaningful convergence between VIS inspired recognition of harm and the doctrinal evolution of compensatory jurisprudence in India. The trajectory indicates that while VIS as a standalone procedural tool is absent, its philosophical premises, such as victim voice, trauma validation and restorative redressal, are being substantively realised through the evolving landscape of victim compensation. In this sense, compensatory jurisprudence in India operates not only as a fiscal mechanism but as a juridical proxy for the absence of formal VIS.

⁷⁰ *Ibid.*

C. Conflict with Adversarial Trial Structure

VIS introduces an unverifiable emotive narrative, blurring the line between legal principles and moral persuasion (emotional appeal). This emotive narrative consequently undermines adversarial neutrality. Galloway⁷¹ raises concerns; he argues that emotional intensity may lead to sentencing disparities and affect the principles of equality before the law when different victims express harm differently. As not subject to cross-examination, it takes away from the defendant, who will be affected by it, an opportunity to question and challenge it. It can cause unjust prejudice against the accused and bias on the part of the court in sentencing. There is the risk of over-penalisation driven by media narratives and public pressure, which may amplify the voice of certain victims.⁷² In the Indian context, the *Nirbhaya Case*⁷³ is a glaring example of populist justice wherein public sentiment can influence judicial discretion and override legal norms. A similar concern was raised in the *Booth case* as to the unequal outcomes based on the perceived worth of the victim. But in *Payne*, the court clarified that this allows for assessing the offender's moral culpability in the light of both mitigating factors and the real consequence of the offence, which recognises each victim as a unique individual. Furthermore, doctrinal clarity is lacking regarding the evidentiary status of VIS, whether it constitutes a factual supplement or merely an expressive gesture. Indian criminal law does not yet have a clear procedural doctrine that reconciles these tensions.

D. Triadic Criminal Justice System

The introduction of VIS has the potential to recast the victim as a quasi-party in a conventional binary structure between the State and the accused, which may shift the theoretical foundation to a triadic structure between "State, Accused and Victim".⁷⁴ The adversarial system prioritises the accused's rights, leaving victims feeling marginalised. The Supreme Court has firmly rejected this marginalisation by holding that victims' rights under the amended Criminal Procedure Code are not merely procedural conveniences but substantive and enforceable, forming a distinct facet of human rights. The court clarified that the State's representation in a case does not substitute the

⁷¹Gail Galloway, 'Victim Impact Statements and the Sentencing Process: Enhancing Justice or Undermining Fairness?' 3 *Australian and New Zealand journal of criminology* 5271 (2000).

⁷² *Ibid.*

⁷³ 20 (2017) 6 SCC 1

⁷⁴ Marie Manikis, "Victim Impact Statements at sentencing: Towards a Clearer Understanding of their Aims" 65(2) *University of Toronto Law Journal* 85-123(2015).

victim's right to be heard. Their rights are neither derivative of the State's role nor auxiliary to it.⁷⁵ They stand as independent and indispensable components of a just adjudicatory process. The Justice Verma committee echoed this sentiment by affirming that crime reflects victims as individuals, not merely as representatives of the community, and called for legal processes to treat them as persons rather than passive symbols.⁷⁶ This shift toward inclusivity mirrors Manikis Triadic Model,⁷⁷ where the trial is viewed not solely from the standpoint of the accused but also from the perspective of the victim. Though the inclusion of VIS aligns with restorative justice, its doctrinal coherence within the dyadic framework remains contested.

E. Therapeutic Justice and Risk of Secondary Victimisation

David Wexler and Bruce Winick, pioneers of the Therapeutic approach, contend that the legal system must examine its impact on mental health while maintaining procedural integrity and fairness.⁷⁸ VIS is often advocated as instruments that align with the objectives of therapeutic justice. They enable the victims to narrate the personal and social consequences of the offence, thus providing psychological closure and symbolic justice.⁷⁹ Scholars argue that this recognition of suffering enhances perceived legitimacy of the system, reduces feelings of marginalisation, and facilitates emotional validation.⁸⁰ However, the therapeutic value of VIS remains contested. Several Studies indicate that the process of recounting traumatic events, especially in open court, can re-traumatise victims, a phenomenon referred to as re-traumatisation (secondary victimisation).⁸¹ This arises not merely from the repetition of distressing details but also from cross-examination risks, public scrutiny, or judicial indifference.⁸² In India's adversarial system, where legal literacy is low and courtroom procedures are often intimidating, these risks are

⁷⁵ *Rattiram v. State of M.P.* (2012)4 SCC 516.

⁷⁶ Committee on Amendments to Criminal Law, "Report of the Committee on Amendments to Criminal Law" (Government of India 2013), ch. 3, paras 38-39.

⁷⁷ Marie Manikis, "Victim Impact Statements at sentencing: Towards a Clearer Understanding of their Aims" 65(2) *University of Toronto Law Journal* 85-123 (2015).

⁷⁸ D.Wexler and B. Winick, "Essays in Therapeutic Jurisprudence" 16(2) *Mental and Physical Disability Law Reporter* 225-231 (Carolina Academic Press, 1991).

⁷⁹ Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice* 116 (Bloomsbury Publishing, 2008).

⁸⁰ Kathleen Daly, "Revisiting the relationship between retributive and restorative justice" in Heather Strang and John Braithwaite(eds.) *Restorative Justice: Philosophy to Practice* 33-54 (Ashgate/ Dartmouth Publishing, 2000).

⁸¹ Joanna Shapland and Matthew Hall, "What Do We Know About the Effects of Crime on Victims?" 14 *International Review of Victimology* 175 (2007).

⁸² Ibid.

amplified. The Malimath Committee had acknowledged this challenge, noting that the victim often emerges from the trial more aggrieved than before due to institutional insensitivity.⁸³ While proponents argue that VIS provides therapeutic value, its disregard in sentencing may cause victims to feel ignored or disillusioned with the justice system. Concretely, VIS fosters agency and recognition, but risks institutional re-traumatisation. VIS may either contribute to psychological restoration or risk reinforcing a victim identity that hinders recovery. Instead of aiding in overcoming trauma, such interventions may inadvertently extend the victim's psychological association.⁸⁴

F. The Right-Realisation Divide: Structural and Systemic Barriers

The path from legal recognition of VIS to its actual use in court remains inaccessible due to structural and institutional barriers. Judges, magistrates, and prosecutors often don't receive enough special training to truly understand and handle victims' problems in a sensitive way. Because of this unpreparedness, VIS tend to be treated like just another formality rather than a meaningful part of the process. This means that the pain and experiences of victims sometimes don't get the attention or respect they deserve. VIS is technically a part of the system, but it is rarely taken seriously or given enough weight. What makes it worse is that there is very little support available to help victims in drafting these statements. The drafting of such statements requires aid and assistance from legal, medical, and psychological experts who understand both the legal and emotional aspects. While legal aid is supposed to be available, in practice, it often does not provide much assistance with VIS. The burden of drafting such statements falls entirely on victims who are already struggling with trauma. Further, there is no institutional monitoring mechanism to ensure whether the VIS has been submitted, recorded or considered in the criminal proceeding. Barriers to accessing resources worsen these institutional failings. Victims from marginalised communities face intersecting disadvantages such as illiteracy, lack of awareness, language barriers, and social stigma,⁸⁵ which makes drafting and submitting a VIS nearly

⁸³ Government of India, *Report of the Committee on Reforms of Criminal Justice System* (Ministry of Home Affairs, 2003), Ch. 3.

⁸⁴ Markus Dirk Dubber, "Victims in the War on Crime: The Use and Abuse of Victims' Rights" 335-342 (New York University Press, 2002).

⁸⁵ Geetanjali Gangoli, Aisha K Gill and Martin Rew, "Shifting Feminist Activisms: Indian Feminism and Critical Events of Rape" 21 *Journal of International Women's Studies* 38 (2020).

impossible. Survivors of sexual violence and caste-based atrocities often remain silent due to fear of reprisal or societal shame. The New Criminal Laws incorporate audio-video electronic means and intend to digitise the system, but the technological divide⁸⁶ excludes large Sections of rural and economically weaker populations. These conditions create a justice system where the right to speak exists in theory, but is silenced in practice. VIS becomes another hollow promise in the victim's pursuit of justice without structural reform and sustained institutional commitment,

VI. SUGGESTIONS AND RECOMMENDATIONS

Although the VIS carries a strong moral and constitutional promise, its effective implementation requires deliberate reforms. These reforms must be made in the legal system's structure, procedures, and legal principles. The suggestions come from constitutional values, comparative best practices, and important criminal justice principles like presumption of innocence, fairness, and proportionality. Together, these reforms can make sure that victims' voices are heard during criminal proceedings.

A. Separation of VIS from Sentencing

VIS should serve as a means to narrate harm and not a tool for retribution. The court must treat VIS as a distinct element in criminal proceedings. A structured and template-based submission format with guidance on legally relevant content should be adopted to curb prejudicial influence.

B. Optional Nature as VIS: Voluntariness as Core Principle

The VIS must remain optional and consider the victim's choice. Some victims may seek expression, and others prefer silence; VIS must respect both. Imposing it as a procedural requirement risks re-traumatisation and undermines its very ethos. Victims must not be compelled to relive the trauma. The emotional readiness and voluntariness are necessary to respect the diversity of victims' needs.

⁸⁶Government of India, Ministry of Statistics and Programme Implementation, and National Statistics Office, "NSS Report No. 593: CMS: Telecom, 2025" (2025).

C. Phased and Context-Specific Implementation

In India's diverse legal cultures and resource disparities, a Pan-India implementation of VIS must follow a phased approach. Pilot projects such as implementation in sexual offences cases, Acid attack cases, domestic violence cases, etc., could test efficacy and allow refinement of processes. Lessons from these trials should inform nationwide adaptations. This aligns with the Law Commission's 154th report and the Malimath Committee report, which called for step-wise victim-centric reforms. This phased implementation addresses resource disparities that exist in India.

D. Therapeutic Integration and Psychological Safeguards

VIS should act as a medium for therapeutic justice. There should be Pre-submission and post-submission assessment of emotional readiness to prevent emotional fallout with the aid and assistance of trained professionals.

E. Training for Judges, Prosecutors, and Police: From Formalism to Empathy

Judges, prosecutors, and police officers need special training to understand and respond to trauma when dealing with VIS. They should make sure that VIS is not used for revenge by noticing harmful or unfair content. They must stop people from using VIS to emotionally manipulate others. In this way, they can guide victims constructively to serve restorative goals.

F. Professional Assistance in Drafting VIS

Victims often lack the legal terms or emotional clarity to express themselves in formats that the legal system requires. It creates the possibility that their problems may remain properly unheard. If the law directs trained legal professionals to help victims in drafting their VIS, they can be heard fairly during the proceedings. It makes the process more inclusive and just for everyone.

G. Accessibility across Divides

VIS must reflect the plural voices of India to be meaningful for all victims equally, irrespective of their subjective backgrounds. The criminal justice system must accommodate linguistic, physical and digital diversity. A multilingual format should be made available to take the first action in this direction. Statements should be accepted in any regional language. Remote filing through audio-

video platforms should be enabled to include rural, disabled and socio-economically disadvantaged victims.

H. Monitoring, Feedback, and Research- Based Reform

A feedback mechanism must track how courts are using VIS and its influence on sentencing, Bail and other proceedings. An annual study must be conducted to examine how victims experience the VIS process, what systemic barriers and challenges exist, and whether any disparities exist across various regions or among different judges. The guidelines can be refined on the basis of this informed research and feedback.

I. Codification of Uniform Guidelines

Finally, India must adopt a clear, uniform framework for VIS. A model VIS code should be drafted, which must outline the format, timing, nature of cases, procedural safeguards, and judicial discretion and limits. Also, proper guidelines should be provided to judges on how to factor in VIS and proceedings in which it should be considered.

VII. CONCLUSION

Comparative jurisprudence underscores that successful VIS frameworks such as Canada's trauma-informed model, accommodating diverse expressions of harm, or South Africa's Ubuntu-grounded restorative approach prioritise structured implementation, judicial training, and victim support. Conversely, unregulated emotional narratives, as seen in U.S. jurisdictions, risk sentencing disparities and procedural inequity. The lapsed CrPC Amendment Bill, 2020, despite its progressive intent, exposed critical flaws. The provisions in the bill violate the objectivity principle; its restriction to deceased victims contravenes the right to equality guaranteed under Article 14, and procedural vagueness regarding cross-examination, evidentiary value, psychological safeguards, and multi-statement reconciliation renders it doctrinally fragile and procedurally ambiguous. For India, bridging these doctrinal gaps demands statutory clarity under the Bharatiya Nagarik Suraksha Sanhita, insulating VIS from sentencing influence while extending it universally to victims of grave offence. Phased implementation through pilot programs focused on sexual assault, acid attacks, and domestic violence must be coupled with professional legal and

psychological assistance during statement drafting, trauma-sensitive judicial training, and rigorous monitoring mechanisms to address disparities. Without these reforms, VIS risks perpetuating symbolic gestures in a system historically indifferent to victimhood. By restoring voice through restorative justice, balancing constitutional rights, and embedding procedural equity, India can transform its criminal process into one that recognises not only the accused's liberties but the victim's humanity. As one of the victims expressed, *"the Victim Impact Statement allowed me to construct what had happened in my mind. I could read my thoughts.... It helped me to know that I could deal with this terrible thing."*⁸⁷



⁸⁷ Ellen K. Alexander and Janice Harris Lord, *Impact Statements: A Victim's Right to Speak, A Nation's Responsibility to Listen* (Office for Victims of Crime, 1994) 22, cited in Paul G. Cassell, 'In Defense of Victim Impact Statements' 6 *Ohio St J Crim L* 611, 622 (1999).