

JUSTICE IN THEIR WORDS: EVALUATING VICTIM INPUT AT SENTENCING IN INDIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Victim Impact Statements (VIS) are a vital method of incorporating victim voices into criminal sentencing, securing procedural justice, and recognizing the multifaceted victims of crime. This paper assesses the possible integration of VIS in India's adversarial criminal justice system, where victims continue to be marginalized participants in the face of global progress in victim rights. Basing itself on comparative research (e.g., U.S., UK, Australia) and global standards such as the UN Declaration (1985), the paper contends that VIS maximizes victim dignity, yields therapeutic dividends, and promotes sentencing justice by exposing physical, emotional, and socioeconomic impacts of crime. Indian judicial trends acknowledge VIS's worth, but legislative loopholes remain—especially in the recently passed Bharatiya Nagarik Suraksha Sanhita (2023), which excludes victim participation at sentencing.

The article pinpoints different obstacles to VIS implementation in India viz., institutional restrictions, cultural barriers and procedural issues. Although VIS subscribes to restorative justice values such as focusing on conversation and redemption, the effectiveness of VIS in India requires culturally sensitive adjustments. Post-trial VIS delivery, victim support infrastructure, and judicial training are imperative to attain the effective implementation. Without such reforms, India's criminal justice system will continue to act as a horse with blinders on, with their sole focus on state-oriented retribution and not victim-oriented restoration, subverting just justice.

Keywords: Victim Impact Statements, Sentencing Reform, Indian Criminal Justice System, Victim Participation, Restorative Justice, Procedural Fairness

1. INTRODUCTION

In any crime, other than victim-less crimes, victim is the direct affected person in the act and even then, generally every criminal justice system treats victim as mere tool for information, witness statement etc. (Doak & Taylor, 2020). The criminal justice system always treats crime as an act by the offender and against the state or society at large resulting in victim being treated as an unimportant part of the criminal justice system.

The report of U.S. President's Task force on Victims of Crimes, 1982 (President's Task Force on Victims of Crime, 1982) proved to be a significant step for the victims' right movement. The report argued for enhanced victim participation and address the issues of secondary victimization (President's Task Force on Victims of Crime, 1982).

The agenda for victims' rights and victim justice at international level was set up by UN Declaration for Victim justice of 1985 (United Nations, 1985). It was adopted to help and guide the movement of victim rights at national and international level and help to secure the justice and assistance for victims of crime and victims of abuse of power (United Nations, 1985). The 1985 declaration categorises the rights for victims into four categories viz, access to justice and fair treatment, restitution, compensation, and assistance. Among all these categories, the right of Access to Justice and Fair Treatment encompassed the idea of Procedural justice to victim through participation as opposed to the idea of Distributive justice which focuses on the fairness of the outcomes of criminal trials (Wemmers, 2010; Orth, 2003). However with the development of the idea of restorative justice, the requirement of treating victims as an essential party to the criminal justice system arose (Orth, 2003).

Since the 1980s and continuing into the early 21st century, significant reforms have been implemented worldwide to enhance victims' rights. These reforms include programs for compensating victims, the creation of national support systems for victim assistance, requirements to keep victims updated on the progress of criminal cases involving their offenders, measures to ensure victims' safety and dignity, and opportunities for victims to actively participate in the legal process. A key component of these reforms is the use of Victim Impact Statements (VISs) (Doak, 2008).

1.1 Victim Impact Statements

Victim Impact Statement (VIS) [Hereinafter referred as 'VIS'] is a tool used by the victims or the family of the victims to address the world, especially the court and the offender, about the true impact of crime in terms of physical, mental, social, financial harm by the offender's act. These statements may also contain the details of secondary victimisation which the victim might have faced at the hands of officials of criminal justice system as VIS is generally delivered at the sentencing stage, which takes place at the conclusion of the trial.

The practice of VIS has been introduced in various countries around 1980s, following the demand of victim participation, such as USA, Canada, Australia and UK. The constitutionality of VIS has also been upheld by US Supreme Court in the landmark case of *Payne v. Tennessee* (1991) where the various advantages of VIS were laid down.

A Victim Impact Statement (VIS) does not describe the details of the crime itself or the events of that day but focuses on the impact the crime has had on the victim. It is prepared at the time of sentencing and gives the victim or survivor a chance to share their experience. This helps the court determine an appropriate sentence for the accused, considering whether the victim believes they would find closure through a longer prison term, community service, or another form of punishment.

In any act of crime, it has been established that lives of victims gets affect in various form such as loss of trust in others, the onset of anxiety, depression, and post-traumatic symptoms, weakened social and family relationships, a diminished sense of safety, lower academic and professional performance, and other significant impacts (Shapland & Hall, 2007). Though the main purpose of criminal justice process is to punish the offender rather than healing the wounds of victims, the insensitive treatment of victims in the process leads to secondary victimisation which leads more trauma for victim (Wemmers, 2013). To reduce the effect of

trauma caused by crime and secondary victimisation to the victim, VIS can be used as a tool by victim to communicate the magnitude of the suffering, mental trauma and harm to the courts. Although it is not yet fully established empirically, but the procedural justice has been seen as a effective tool for victim mental and overall well-being (Lens et al., 2014).

However, the criminal law experts have raised various concerns regarding inclusion of VIS in the traditional criminal justice system procedure such as using VIS as an instrument for punitive results (Roach, 1999), VIS as a rhetoric of balance (Edwards, 2004), lack of empirical support for VIS (Lens et al., 2014), cultural difference in therapeutic experience (Ruparelia, 2012) being few of them.

The article in the next part argues for VIS to overcome various issues highlighted against the use of VIS and to lay the significance of practice of VIS.

2. JUSTIFICATIONS OF VICTIM IMPACT STATEMENT

The incorporation of VIS into the criminal justice system is not only a reform on procedural level but a normative shift that changes the focus from offender centric system. Advocates of VIS argue that enabling victims to express the impact of crime addresses deeper questions of dignity, agency, and justice. This section outlines the key justifications—moral, emotional, legal, and systemic—for integrating VIS at sentencing, and explores how such inclusion serves both individual healing and institutional fairness.



2.1 Moral Rationale

The very first thing VIS does to a victim is to provide them a 'formal victim status' (Strobl, 2010) in the criminal procedure which helps various measure such as victim rehabilitation, victim assistance and victim compensation among others. This formal recognition becomes more important in the light of the fact that it is the prosecutor who represents the victim on behalf of the 'state' and it is generally accept argument that the prosecutor is more concerned

with the real interests of the state rather than the interest of the victim and represents it only indirectly (Joh, 2000a). Therefore, by introducing VIS, the victims are being an active role in the criminal justice process and the chance of feeling them alienated reduces.

The moral rationale (Erez, 1990) for incorporating Victim Impact Statements (VIS) lies in recognizing the victim's dignity by acknowledging the harm they have endured due to the crime. This recognition is vital for fostering victim sensitivity and enhancing their involvement in the investigation and trial processes. While VIS may not directly influence judicial or executive decisions, it can help victims regain a sense of control and empowerment. Additionally, it offers victims a safe platform to address their offender, often providing them with psychological relief.

Involving the victim in the decision-making process regarding the offender's outcome is seen as a symbolic gesture, acknowledging the victim's "individual dignity" on a moral level (Henderson, 1985).

This increase in moral support to victims can be argued to result in increasing the faith of Victims in the criminal justice system and instances such as reporting of future crimes may see better results as it has been previously argued that victims who have suffered secondary victimisation are more likely to distance themselves from the criminal justice machinery (McLeod, 1986).

The sentencing stage participation of the victim is less stressful and relaxed event as there is no pressure of cross examination and other intricacies of legal proceedings.

So, at the least VIS provides a chance to victims a sense of dignity and self-respect which every human being deserves and, in some cases, relatively a higher chance to provide closure and comfort.

2.2 True Harm Of The Crime

The presence of Victim at the stage of sentencing in the form of VIS make the legal professional involved, such as judges, prosecutor, defence lawyer etc, aware of the fact that there is a person behind the 'state' who is the real sufferer of the crime and very much is involved in the outcome of the case.

It has been argued that because of VIS, the judges and the justice machinery in whole becomes more informed about the true harms suffered by the victim and help the criminal justice system in understanding the needs, interests and apprehension of the victims (Edwards, 2001) as VIS informs the court about the physical, financial, psychological, and various other dimensions of the crime.

This fact is very visible from the observation of an Australian judge, in a study which was conducted to study the effect of VIS on legal professionals (Erez, 1999), as:

"...if it was not for the VIS, I would have thought he (the victim) could just take a shower and get the whole thing behind him. The VIS makes us, in individual cases, more educated."

The use of VIS makes the legal professions, especially judges, more aware and sensitive to the intersectionality of effect of crime on the victim's mental health, well-being and overall effect on the day-to-day life of victims (Erez, 1999).

One of the glaring examples of this argument is the case of *Laary Nasar (People v. Nassar, 2020)*, where a former doctor for USA Gymnastics and Michigan State Athletics was accused

of sexually assaulting former gymnasts. At the beginning two former gymnasts had accused Larry Nassar for sexual assault but during the course of trial over next few months more than 150 victims came forward sharing their experience about the crimes committed by Larry Nassar and more than 156 victims delivered the victim impact statement at the sentence hearing, the effect of which can be seen in the following words by Judge Rosemarie: "...shaken [her] to [her] core" (Gibson, 2021).

Apart from the legal professionals, it has been shown that the offender itself has become more sensitive about the acts committed by him against the victim as is evident in the case of *R v. EGK* (*R. v. EGK*, 2001) in the following words:

"...although he [the offender] knew he had caused [the victims] harm, he did not realize how much until he read the [impact] statements." (*R. v. EGK*, 2001)

2.3 Therapeutic and Emotional Reason

The most important reason for including VIS in criminal justice process is to provide them an opportunity for closure, recovery and mental well-being (Sullivan, 1998). VIS helps the victims to overcome the impact of crime on their personal lives and provide a chance to narrate the 'pain, suffering and victimhood' (Bandes, 1996).

At this point it is also important to note the difference between the 'statement' given by victim during trial, which is treated as 'a piece of evidence' and the actual account of crime in form of VIS. While in former there are various legal constrains such as cross examination etc., in the latter there is an unhindered and original narrative of the account of crime. VIS also helps the victims to inform the courts their version of crime and its impact as the statement during trial is generally constrained and controlled by defence for various reasons such as to establish guilt of the accused etc. (Joh, 2000b).

VIS helps the victims to gain a sense of equal status with the offender which may help in eliminating the future mental harm caused by the criminal justice process itself and lack of such participation has resulted in a sense of inequity as opposed to the offender in a criminal justice process which is highly accused oriented (Kilpatrick & Otto, 1987).

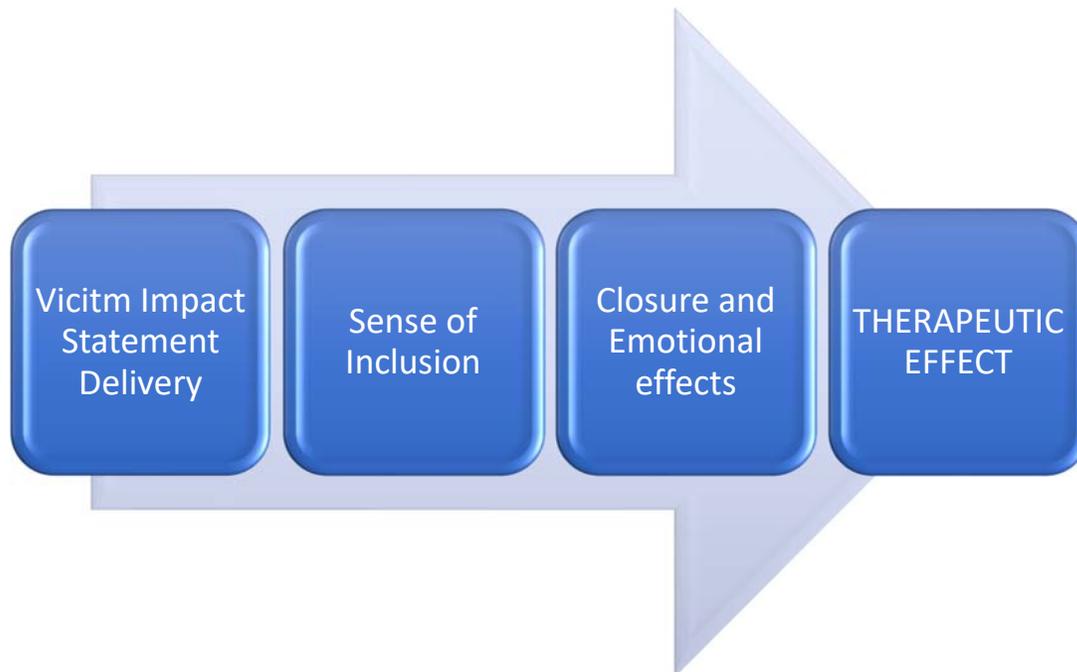
The therapeutic effect of VIS has been widely discussed by experts in 'Therapeutic jurisprudence', which is a type of interdisciplinary inquiry which "proposes the exploration of ways in which, consistent with principles of justice, the knowledge, theories, and insights of the mental health and related disciplines can help shape the law" (Rottman, 1999).

The research in this field has shown that despite the outcome not being impacted by their statement, victims and their families, close relatives have preferred to voice their opinion in form of 'impact statements' (Wemmers & Cyr, 2004).

The concern that there may possible enhanced psychological harm to the victims form the victim participation itself has been refuted by studies which have assed the effect of level of participation and it has been shown that there is no negative impact on the victim's mental well being dur to enhance participation in the criminal justice system (Forst & Hernon, 1985).

Apart from the therapeutic benefit of VIS, it helps the victim to attain increased satisfaction with the criminal justice system as opposed to the victims who are not provided with an opportunity to deliver VIS (Braithwaite, 1999). This finding shows that the participation itself is enough motivating factor for victims to accept the outcomes and witness the proceedings

with more involvement. This idea has been studied empirically by scholars who have established that by allowing VIS to be delivered, there is increase in the sense of procedural justice among victims and which helps in reducing the anguish and concerns of victims and their families, closer relatives and loved ones (Lens et al., 2014).



However, these studies and established benefits of VIS must be considered with caution in Indian criminal justice system because of cultural differences which may affect the therapeutic benefits of VIS. For example, the association of social stigma and victim's character assassination in case of rape victims in India can majorly impact the proposed benefits offered by VIS. The aim of VIS to provide the victim with dignity, voice and status may be hampered by various cultural and social values prevailing in the Indian society.

The criminal justice system machinery in India has been developed with the major aim of identifying and punishing the offender after establishing the guilt and in this very formal process of trial, the idea of victim or the family of victim to present moment of 'personal grief' may prove to be counterproductive (Bandes, 2009). The court officials, judges, defence lawyer who have been trained to help the justice machinery in securing justice for 'state' may not be enough sensitive about the anger, anxiety, pain and suffering expressed by victims in their delivery of VIS which may subsequently result in secondary victimisation.

Nevertheless, it can be safe to argue that these are the institutional and infrastructural lacunas in the criminal justice system which can be overcome by pro active legislature and judicial mechanism and Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 being one the best examples for victim justice.

2.4 Fairness in Sentencing

Since the main aim of sentencing is the public denunciation of the crime, it has been argued that it would be more effective to have this denunciation by involving the victim itself who is the personal sufferer of the act crime (Rubel, 1992).

The inclusion of VIS during sentencing helps in creating an idea of fairness as it recognizes the presence of victim in a rather offender focused system (Mulholland, 1995). Victims' rights proponents have used VIS to counterbalance the overtaking of criminal justice system in the favour of the offender (Hill, 2005). Therefore, the VIS grants victims a new voice and serve as a reminder for the judges that there is a person apart from the offender with an interest in the outcome of the proceedings.

Apart from the sense of fairness to victim, the victim participation also helps the criminal justice system in various forms such as retribution, efficiency of the process etc. The retribution may be achieved in the punishment meted out to the offender by weighing the harm suffered by the victim, disclosed in the process of victim participation either in VIS or some other form. However, there have been various concerns raised regarding introduction of VIS such as influence on judges of unnecessary public voice in form of VIS which may result in enhanced and strict punishment as opposed to the philosophy of criminal rehabilitation (Hall, 1975).

These objections were rejected by U.S. A. Supreme Court, at least in capital punishment cases, while deciding the issue of inclusion statement by the mother's victim in the case of *Payne v. Tennessee* (*Payne v. Tennessee*, 1991). The majority decision in the Supreme Court held that: *"...there is nothing unfair about allowing the jury to bear in mind that harm at the same time as it considers the mitigating evidence introduced by the defendant."* (*Payne v. Tennessee*, 1991)

The supreme court categorically rejected the argument that statement from victims' mother may influence the objectivity of jury and would result in introducing irrelevant factors such as race, class, gender etc. of the victim.

Apart from judicial and legislative incorporation of VIS, scholars have defended VIS against these arguments by showing that use VIS is not resulting in enhanced or arbitrary punishments towards offender (Erez & Laster, 1999).

In addition to the benefit of fairness in sentencing, VIS may help in reducing the chances of future crime being committed by the same offender as through VIS, it is the victim itself who conveys to the offender the physical and emotional harm suffered on the hand of offender rather than the 'proxy' in form of prosecution. Further it has been argued that VIS can serve the purpose of sensitizing the offender about the real consequences of crime, which may result in increased chances of rehabilitation (Cassell, 2009).

2.5 Restorative Justice

The significant shift from traditional retributive models of criminal justice system introduced by restorative justice brought victims in the main process of delivering justice. Restorative justice as opposed to traditional criminal justice theories, which focuses on using punishment as a deterrent tool, talks about including all the parties to the crime and emphasises dialogue, accountability, and healing (Zehr, 2005).

The goals of restorative justice and VIS align on the idea of giving opportunity to the victims to express the emotional, physical, and social consequences which the crime have had on the victim (Strang & Braithwaite, 2001). These engagement in forms of mediation, counselling and even VISs serve as a powerful tool for the victims to get recognised in the justice process, achieve emotional closure and feel a sense of control on the justice process (Daly, 2002). Moreover, restorative justice complements the objectives of Victim Impact Statements (VIS) by reinforcing the victim's participatory role and enhancing the perception of procedural justice in sentencing (Hoyle, 2012). By focusing on restoring relationships and addressing the specific needs of those affected, restorative justice aligns with a more humane and inclusive vision of justice---one that seeks not only to sanction wrongdoing but also to heal and reconcile.

3. INTERNATIONAL PERSPECTIVE

The rise of Victim-rights movement in 1970s made the victims a focus point in criminal justice system across the world, especially adversarial justice system (Young & Stein, 1985).

In 1966, US conducted its' first state sponsored victimization survey by President's Commission on Law Enforcement and the Administration of Justice by the name of "National Crime Survey" (Jaquier, 2010). The introduction of VISs in US criminal justice system as recommended by 1982 President's Task force on Victims of Crime (President's Task Force on Victims of Crime, 1982), led the victims' right movement to its height in USA. The state of California first introduced VIS and then VISs were introduced in all US jurisdictions. The issue of admissibility was decided by US Supreme Court in the case of *Booth v. Maryland* (*Booth v. Maryland*, 1987), where the use of VIS in criminal trial was held unconstitutional. However, in the case of *Payne v. Tennessee* (*Payne v. Tennessee*, 1991), the decision of Booth was overruled and the VIS was allowed to be admissible in criminal trials.

However, in most of the European countries, victims' right movement became a major initiative only after passing of UN Declaration 1985 (United Nations, 1985). The declaration lays down Basic Principles divided into four categories of Victims' rights for the member states to adopt and enact in the national jurisdictions.

Section 6(b) of the declaration provides for providing an opportunity for victim voices to be included in the criminal justice system. Section 6(b) lays down:

"The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system." (United Nations, 1985)

While the declaration was being drafted, some of the member states objected heavily to the idea of including victim participation in the form of VIS due to the procedural prejudice which might happen against the defendants if victims were given participatory roles in the criminal justice system (Aldana-Pinell, 2004).

Apart from the UN Declaration, International Criminal Court (ICC) is the first international tribunal to recognise Victim rights through Rome Statute of ICC, 2002 (International Criminal

Court, 2002), where Article 68 (3) of the Rome Statute defines and provides for Victim participation including the right of victim to present their views at appropriate stages.

4. VIS IN INDIAN CRIMINAL JUSTICE SYSTEM: LEGISLATIVE AND JUDICIAL TRENDS

Although the adversarial system in India has limited the role of victim in trial, victims have not been provided with any right to participate in the sentence hearing unlike other adversarial systems such as Australia, USA etc where victims have been provided 'voice' at sentence hearing in the form of VISs or VPSs.

Section 271 (2) of BNSS, 2023 provides for pre-sentence hearing to be held and the accused must be given the chance to present his case on the question of quantum of punishment but there is no provision in BNSS, 2023 for providing an opportunity to victim to present his/her view to the court regarding the quantum of punishment.

In 2018, the three-judge bench of Supreme Court in the case of *Mallikarjun Kodagil v State of Karnataka (Mallikarjun Kodagil v. State of Karnataka, 2019)* while dealing with the victim's right to appeal observed that:

"Among the steps that need to be taken to provide meaningful rights to the victims of an offence, it is necessary to seriously consider giving a hearing to the victim while awarding the sentence to a convict. A victim impact statement or a victim impact assessment must be given due recognition so that an appropriate punishment is awarded to the convict. In addition, the need for psychosocial support and counselling to a victim may also become necessary, depending upon the nature of the offence." (*Mallikarjun Kodagil v. State of Karnataka, 2019*)

In 2021, a Full judge bench of Delhi High Court in the case of *Karan v. NCT of Delhi (Karan v. NCT of Delhi, 2021)* used a different form of VIS i.e., Victim Impact Report (VIR) in order to decide the quantum of compensation. The court laid down guidelines for trial court to decide the quantum of punishment by using the VIR which is to be prepared by DSLSA by conducting a summary inquiry into the 'impact of crime on the victim', 'expenses incurred by the victim' and 'paying capacity of the accused'.

VIS is a method for active participation of victim in criminal process as it provides an opportunity to victims to address the court either orally or in written form and it provides an assurance to victims that their voice is being heard by the court. So, the judgement of the Delhi High Court furthers the victims' movement to have active participation in criminal process.

The limited role of victim in trial stage also raises the importance of introducing VIS as a policy which can balance the non-participation of victim as done in other adversarial jurisdictions.

In the recent judgment of *Jaswinder Singh v. Navjot Singh Sidhu (Jaswinder Singh v. Navjot Singh Sidhu, 2022)*, the division bench of Supreme Court highlighted the importance of Victim participation at the stage of sentencing and observed that the victim participation can help in ensuring the principal of proportionality between the Crime and the punishment. The court further observed that the victim being the 'de-facto' sufferer of a crime still has no participation in criminal justice machinery and also referred to the observation of Three judge bench in *Jagjeet Singh v. Ashish Misra (Jagjeet Singh v. Ashish Misra, 2022)* which had earlier held that:

"...The presence of "State" in the proceedings, therefore, does not tantamount to according a hearing to a "victim" of the crime." (Jagjeet Singh v. Ashish Misra, 2022)

However, the Supreme Court missed the opportunity of addressing the issue of Victim Participation at the stage of sentence hearing by not laying down any guideline regarding this nor specifying the form of possible victim participation at the stage of sentence hearing.

Apart from these judicial decisions at front of legislative action, there has been little to no effort on the issue of making victim a participating party at stage of sentence hearing. The lack of intent on the behalf of legislature is visible from the fact that even though there has been an overhaul of Indian Criminal Justice system by introducing three new Criminal Laws (Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Sakshya Adhinyam, 2023), there has been no changes brought to incorporate the idea of VIS or any other form of VIS in Criminal justice machinery. Although the 'Committee for Reforms in Criminal Law' did consider introduction of VIS at stage of sentencing hearing and asked for suggestions from the public through a questionnaire (Committee for Reforms in Criminal Laws, 2020), but VIS did not find any place neither in the draft bill nor in the BNSS, 2023.

5. CONCLUSION

While Victim Impact Statements (VIS) have been globally recognised as a valuable means of enhancing victim participation and restoring their dignity within the criminal justice process, their adoption in the Indian context requires a nuanced and context-sensitive approach. The original intention behind VIS---as a communicative and therapeutic tool---must be preserved rather than subordinated to punitive or sentencing purposes. However, in India, the absence of legislative intent and statutory provisions, coupled with institutional and infrastructural limitations, significantly hinders the practical implementation of VIS.

Given these challenges, India could explore alternative models in alignment with restorative justice frameworks, wherein VIS are introduced post-trial to avoid procedural complications while still allowing victims a voice. Nonetheless, any such integration must be approached with caution. The deeply rooted cultural, social, caste, and class distinctions prevalent in Indian society pose significant risks of misuse, re-victimisation, or marginalisation, especially for vulnerable groups. Therefore, the successful introduction of VIS within India's criminal justice system demands not only legal reform but also the development of a culturally sensitive, victim-centric infrastructure that recognises and addresses the lived realities of diverse victims of crime.

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