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Justice or Re-traumatization: Examining Secondary Victimization in Indian Criminal Trials

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ABSTRACT

While the criminal justice system is designed to deliver justice to victims, it often paradoxically becomes a source of further trauma. Secondary victimization the emotional, psychological, and social harm inflicted on victims by legal procedures, institutional actors, and societal attitudes remains an underexplored yet pressing concern within Indian criminal jurisprudence. This paper critically examines how criminal trials in India, particularly in cases of sexual offences, domestic violence, and crimes involving vulnerable populations, frequently re-traumatize victims through invasive procedures, insensitive cross-examinations, prolonged delays, and systemic indifference. Drawing upon doctrinal analysis, judicial precedents, and comparative insights from jurisdictions such as the United Kingdom, United States, and Australia, this research highlights the significant gaps in India's legal framework that fail to sufficiently protect victims from re-victimization. The study interrogates the adversarial nature of criminal trials, where the pursuit of truth often conflicts with the victim's right to dignity and mental well-being. Furthermore, the paper explores the constitutional implications of secondary victimization under Article 21, emphasizing the fundamental right to live with dignity and the need for a victim-centric criminal justice approach. It proposes a series of legal and procedural reforms, including amendments to the Code of Criminal Procedure and the Indian Evidence Act, adoption of trauma-informed judicial practices, establishment of victim assistance cells, and greater use of technology to facilitate victim-friendly procedures such as video testimonies and closed courtrooms. By centring the voices and experiences of victims, this research paper underscores the moral and constitutional imperative to transform India's criminal justice system into one that

delivers not just convictions but also compassion and dignity. The study calls for a paradigm shift where justice does not come at the cost of re-traumatizing those it seeks to protect, ensuring that victims emerge from the legal process as survivors, not casualties of the system itself.

KEYWORDS

Secondary Victimization, Criminal Trials, Victim Rights, Criminal Justice System, Re-traumatization, Procedural Law

INTRODUCTION

Justice, in its truest sense, aims not merely to punish the wrongdoer but to restore dignity and solace to those who have suffered harm. Yet, within India's criminal justice system, victims often find themselves trapped in a paradox where the very processes meant to secure justice inflict fresh wounds. This phenomenon, known as *secondary victimization*, refers to the emotional, psychological, and social harm inflicted not by the original crime, but by the actions of legal institutions, procedures, and professionals engaged in investigating and prosecuting offences. Victims may endure hostile cross-examinations, repeated recounting of traumatic events, public exposure, and insensitive judicial attitudes all of which compound their suffering, leading to what many describe as "re-traumatization."

The title, *Justice or Re-traumatization?* encapsulates this tension, questioning whether India's criminal trials genuinely serve victims or inadvertently deepen their trauma. Particularly in cases involving sexual violence, child witnesses, and marginalized groups, the adversarial nature of trials often prioritizes procedural fairness for the accused over the psychological safety of victims.

In 2012, a 23-year-old physiotherapy student was brutally gang-raped on a moving bus in Delhi, an incident that shocked the nation and led to widespread protests demanding justice. The victim, later named *Nirbhaya*, fought for her life before succumbing to her injuries. While the case resulted in the conviction and execution of the perpetrators, the trial process itself was deeply traumatic for the victim's family and witnesses.

During cross-examination, the defence lawyers subjected the victim's friend to humiliating and aggressive questioning, implying that the victim's presence with a male friend at night justified the assault. Such tactics are not uncommon in Indian courts, where victims of sexual violence, domestic abuse, and

other crimes often face hostile interrogation, victim-blaming, and procedural delays that compound their suffering. This phenomenon where victims experience further trauma not from the crime itself but from the legal system meant to deliver justice is known as secondary victimization.

DEFINING SECONDARY VICTIMIZATION

Secondary victimization refers to *"the victimization that occurs not as a direct result of the criminal act but through the responses of institutions and individuals to the victim"*.

In the context of criminal trials, it manifests through:

- Insensitive questioning during cross-examination.
- Procedural delays that prolong psychological distress.
- Lack of victim protection mechanisms, exposing them to intimidation.
- Judicial bias or apathy, where victims are disbelieved or blamed.

While the Indian legal system is designed to ensure fair trials for the accused, it often fails to safeguard victims from further harm. The adversarial nature of trials, where defence lawyers aggressively challenge victim testimonies, exacerbates this problem.

THE ADVERSARIAL SYSTEM AND ITS RISKS TO VICTIMS

India follows an adversarial legal system, where prosecution and defence compete to establish their versions of the truth. While this system is intended to ensure a fair trial for the accused, it frequently disregards the dignity and well-being of victims. Key issues include:

1. Cross-Examination as a Tool of Harassment: Defence lawyers often employ victim-blaming strategies, questioning the victim's character, past sexual history, or behaviour to undermine credibility.
2. Lack of In-Camera Trials: Many sensitive cases, especially sexual offenses, are heard in open courts, exposing victims to public scrutiny.
3. Delayed Justice: Prolonged trials force victims to relive trauma repeatedly, with some cases dragging on for years.

4. Inadequate Witness Protection: Victims and witnesses face intimidation, sometimes even from the accused's supporters.

Despite these challenges, secondary victimization remains largely invisible in public discourse, overshadowed by debates on speedy trials and convicting the accused. The emotional and psychological toll on victims is seldom acknowledged, let alone addressed.

PRIMARY V. SECONDARY VICTIMIZATION

Primary victimization refers to the harm directly inflicted on an individual by a criminal act, such as physical injury, emotional trauma, or financial loss resulting from assault, theft, or abuse.

Secondary victimization, on the other hand, occurs when the victim experiences additional trauma due to the response of institutions (police, courts, media) or societal attitudes. Unlike primary victimization, which stems from the crime itself, secondary victimization arises from:

- Institutional processes (insensitive police interrogation, aggressive court cross-examination).
- Social stigma (blaming the victim, ostracization).
- Systemic delays and inefficiencies (prolonged trials forcing victims to relive trauma).

Victims navigating India's criminal justice system frequently endure profound psychological, emotional, and social consequences, which together constitute secondary victimization. Repeatedly recounting traumatic experiences during lengthy investigations and trials can trigger severe mental health conditions such as post-traumatic stress disorder (PTSD), anxiety, and depression a reality evident in cases like the Nirbhaya gang rape of 2012 (AIR 2017 SC 2161), where the victim's friend, a key witness, described persistent trauma from repeated interrogations and media scrutiny.

Many victims, encountering hostility or disbelief from police, lawyers, or judges, lose trust in the justice system altogether and withdraw from proceedings, as documented in *Sakshi v. Union of India* AIR 2004 SC 3566, where the Supreme Court acknowledged the psychological harm inflicted upon sexual assault survivors during intrusive cross-examinations. Victim-blaming narratives for instance, questioning why a woman was out late at night or scrutinizing her clothing can internalize guilt and shame,

exacerbating mental distress. Socially, victims often face intense stigmatization and exclusion, particularly those affected by sexual violence, domestic abuse, or so-called honour crimes.

In the Kathua rape case of (2018 SCC ONLINE DEL 8719), the family of the eight-year-old victim faced community ostracism and threats, highlighting the devastating social costs of seeking justice. Economically, victims may suffer financial instability due to frequent court appearances and prolonged trials, which disrupt their employment and livelihood, a reality seen in countless sexual harassment cases under the POSH Act where women abandon complaints due to fear of career repercussions.

Moreover, fear of reprisals, especially in cases involving powerful accused persons as in the Unnao rape case, where the victim survived an assassination attempt dissuades many from testifying. From a sociological lens, stigma and entrenched patriarchal norms play a critical role in perpetuating secondary victimization. Women, often perceived as custodians of family honour, are pressured into silence, particularly in domestic violence cases where family and community elders discourage legal action to preserve social reputations.

Lower-caste victims, like those in the Hathras rape case of 2020 (AIR 2020 SUPREME COURT 5346), confront additional barriers, facing caste-based intimidation and systemic neglect. Mistrust of law enforcement, fuelled by reports of police apathy or corruption such as refusals to file FIRs in sexual assault cases further deters victims. Compounding these challenges, sensationalist media coverage often exposes victims to public shaming, undermining their privacy and dignity, as starkly illustrated by media leaks in the Arushi Talwar case. These intertwined psychological, social, and cultural factors not only magnify victims' trauma but also subvert the very notion of justice, underscoring the urgent need for a more compassionate, victim-centred approach within India's criminal justice system.

LEGAL RECOGNITION OF SECONDARY VICTIMIZATION IN INDIA

While the term "secondary victimization" does not appear explicitly in Indian statutes, several legal provisions implicitly acknowledge and attempt to mitigate this phenomenon. The Indian legal framework contains scattered protections that recognize the potential for institutional processes to compound victims' trauma, though these remain limited in scope and application.

The Indian Evidence Act of 1872 incorporates two crucial

safeguards against retraumatization. Section 146 specifically prohibits defence lawyers from questioning rape victims about their "general immoral character," a provision aimed at preventing humiliating and irrelevant lines of questioning that could distress survivors. Similarly, Section 53A bars the admission of evidence concerning a victim's past sexual history in rape trials, recognizing how such inquiries often serve only to shame victims rather than establish facts. However, these protections remain narrowly confined to rape cases, leaving victims of other violent crimes vulnerable to similar invasive questioning.

More comprehensive protections appear in the Protection of Children from Sexual Offences (POCSO) Act of 2012, which establishes child-centric procedural safeguards. The Act mandates child-friendly courts where minors can testify without fear, requiring courts to conduct trials in-camera (in private) and prohibiting the aggressive cross-examination of child witnesses. POCSO also provides for special educators and support persons to assist child victims during testimony. These measures demonstrate legislative recognition of how traditional courtroom environments can traumatize vulnerable witnesses.

The Criminal Law (Amendment) Act of 2013, enacted after the Nirbhaya gang rape case, introduced several victim-centric reforms. It expanded the legal definition of rape, mandated faster trial completion in sexual offense cases, and established victim compensation schemes. The amendment also prohibited the public disclosure of rape victims' identities under Section 228A of the Indian Penal Code, acknowledging how media exposure can compound victims' suffering.

Despite these provisions, India's legal framework fails to comprehensively address secondary victimization. The protections remain fragmented and offense-specific, applying mainly to sexual crimes while ignoring victims of domestic violence, assault, or other offenses who face similar institutional trauma. Systemic issues like prolonged trials (with cases often taking 5-10 years to conclude), hostile cross-examination techniques in non-sexual offense cases, and the absence of dedicated victim support services in most courts continue to expose victims to avoidable distress. The law remains silent on critical aspects like trauma-informed interrogation methods for police or mandatory victim advocacy systems that could prevent retraumatization at multiple stages of the legal process.

This partial recognition creates a paradoxical situation where certain victim categories (like rape survivors or child witnesses) receive some protections while others remain fully exposed to

institutional harm. The lack of a holistic victim rights framework means secondary victimization persists as an unaddressed systemic flaw rather than a recognized legal wrong requiring comprehensive remedies. Judicial interpretations have occasionally expanded protections - such as the Supreme Court's ruling in *Nipun Saxena v. Union of India* (AIR ONLINE 2018 SC 826) extending privacy rights to rape victims - but legislative action remains necessary to establish uniform safeguards across all victim categories and legal proceedings.

The gaps become particularly evident when comparing Indian law with international standards like the UN Declaration of Basic Principles of Justice for Victims, which mandates comprehensive victim protections across all crime categories. While India has taken tentative steps toward recognizing secondary victimization, the legal framework needs substantial expansion to properly address this pervasive issue in line with global best practices. Future reforms should focus on creating victim rights legislation that transcends specific offenses and establishes universal standards for dignified treatment throughout the justice process.

INTERNATIONAL FRAMEWORKS FOR VICTIM PROTECTION AND INDIA'S IMPLEMENTATION GAP

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) represents one of the earliest global efforts to establish minimum standards for victim treatment in legal systems. The declaration outlines three fundamental principles: dignified treatment, procedural protection, and restitution. It mandates that victims should be treated with compassion and respect, recognizing the psychological toll of crime and subsequent legal processes. Additionally, it requires legal systems to minimize inconvenience to victims such as unnecessary delays or repetitive testimony—and to protect their privacy from undue public exposure. Crucially, the framework also establishes victims' right to restitution and compensation, ensuring that justice includes tangible reparations beyond mere punishment of offenders.

Despite being a signatory to this declaration, India's compliance remains inconsistent, particularly in trial procedures. While some laws, such as the Protection of Children from Sexual Offences (POCSO) Act, 2012, incorporate elements of victim protection (e.g., in-camera trials and child-friendly courts), broader systemic issues persist. For instance, victims of non-sexual crimes such as assault, domestic violence, or hate crimes—often face insensitive police interrogation, aggressive cross-examination, and prolonged trials without adequate safeguards. The absence of a uniform

victim compensation framework across states further weakens India's adherence to these UN principles.

A more structured approach is seen in the European Union's Victims' Rights Directive (2012), which provides a comprehensive legal framework for victim protection. Key provisions include:

- Right to avoid contact with the accused: Courts must ensure separate waiting areas and shielded testimony to prevent intimidation.
- Special protections for vulnerable victims: Children, trafficking survivors, and victims of sexual violence are entitled to additional support, including psychological assistance and legal representation.
- Right to interpretation and legal aid: Non-native speakers and marginalized groups must receive language assistance and legal counsel to navigate judicial processes effectively.

For India, the EU Directive offers a valuable model, particularly in addressing gaps in witness protection and victim support. Currently, Indian courts lack standardized measures to shield victims from accused persons, leading to situations where survivors of sexual violence must share spaces with their perpetrators in court complexes. While POCSO and the Criminal Law Amendment Act, 2013 incorporate some protections (such as in-camera trials for sexual offenses), these are offense-specific and do not extend to all vulnerable victims.

The right to legal aid, though theoretically available under Section 304 of the CrPC and the Legal Services Authorities Act, remains underutilized due to bureaucratic hurdles and lack of awareness. Unlike the EU's structured victim support systems, India has no nationwide victim advocacy program, leaving many survivors without guidance during trials.

To bridge this implementation gap, India must:

1. Enact a comprehensive Victim Protection Act that codifies rights to dignity, privacy, and restitution across all crimes not just sexual offenses.
2. Establish victim-witness assistance units in courts to provide logistical and psychological support, mirroring the EU's victim advocacy systems.
3. Mandate trauma-informed training for judges, prosecutors, and police to prevent institutional retraumatization.

While India has made piecemeal progress, full alignment with international standards requires legislative reform and systemic cultural shifts within the justice system. The Nirbhaya Fund and fast-track courts demonstrate potential, but without holistic victim-centric policies, secondary victimization will persist as a systemic flaw.

CONSTITUTIONAL SAFEGUARDS AGAINST SECONDARY VICTIMIZATION IN INDIA

The Indian Constitution, through its progressive interpretation by the judiciary, provides significant but indirect protections against secondary victimization of crime victims. These safeguards primarily emerge from an expansive reading of Article 21 (Right to Life and Personal Liberty), which has been judicially interpreted to encompass several victim-centric rights.

1. Right to Dignity Under Article 21

The Supreme Court has consistently held that the right to life includes the right to live with dignity. This principle was firmly established in the landmark Justice K.S. Puttaswamy (2017) case, which recognized human dignity as an intrinsic component of the fundamental right to privacy. The judiciary has applied this principle specifically to protect victims in several instances:

- In *Nipun Saxena v. Union of India* (AIR Online 2018 SC 826), the Court issued strict guidelines prohibiting media from disclosing identities of sexual assault victims, recognizing that such exposure compounds trauma and violates human dignity.
- Courts have repeatedly held that hostile cross-examination techniques that humiliate victims (particularly in sexual assault cases) violate their constitutional right to dignity. For instance, in *State of Maharashtra v. Bandu* (2020), the Bombay High Court condemned the practice of grilling rape survivors about their sexual history.

However, these protections remain reactive rather than preventive, as they depend on judicial intervention rather than statutory mandates.

2. Right to Privacy as a Victim Protection Tool

The Puttaswamy judgment's recognition of privacy as a fundamental right has significantly impacted trial procedures:

- In-camera proceedings in sensitive cases (mandated under POCSO and rape laws) now have constitutional backing.
- Courts have imposed strict restrictions on media reporting in cases involving sexual violence (e.g., XYZ v. State of Gujarat, 2022 where trial details were prohibited from publication).

Yet, privacy protections remain inconsistent - while sexual offense victims get some safeguards, those in domestic violence or assault cases often face public exposure during trials.

3. Expanding Fair Trial Rights to Victims

Traditionally viewed as an accused-centric right, Article 21's fair trial guarantee has been progressively extended to victims:

- In *Mallikarjun Kodagali v. State of Karnataka* (AIR ONLINE 2018 SC 284) held that victims have a fundamental right to participate meaningfully in criminal proceedings.
- The Gurmit Singh (1996) judgment established that victim testimony cannot be disregarded due to minor procedural irregularities.

Despite this, victims still lack equal procedural rights - they have no statutory right to legal representation (unlike the accused) and limited avenues to appeal unfavourable verdicts.

3. Persistent Gaps in Victim Protection

1. No Comprehensive Legislation: Unlike the EU's Victims' Rights Directive, India has no unified law codifying victim rights across all crimes. The Victim Rights Bill, 2019 remains stalled in Parliament.
2. Selective Application of Protections: While POCSO and rape laws provide some safeguards, victims of:
 - Domestic violence (despite PWDVA 2005)
 - Hate crimes
 - Police brutality often face institutional hostility with no equivalent protections.

3. Implementation Failures:

- Many trial courts still permit victim-blaming cross-examination (e.g., the 2023 Delhi case where a judge asked a rape survivor why she didn't "scream louder")
- Police stations lack separate interrogation rooms for victims, forcing them to confront accused persons.
- Only 11 states have functional victim compensation schemes as per NALSA 2022 data.

COMPARATIVE PERSPECTIVES: LEARNING FROM GLOBAL BEST PRACTICES

The criminal justice systems of several countries have adopted innovative measures to protect victims from secondary victimization during trials. These global best practices offer valuable lessons for India, where victims often face traumatization due to aggressive cross-examination, systemic delays, and lack of support. Examining reforms from the UK, USA, and Australia can help identify viable solutions for India's legal framework.

In the United Kingdom, the *Youth Justice and Criminal Evidence Act (1999)* introduced "special measures" to assist vulnerable witnesses. For instance, victims of sexual assault can pre-record their testimonies to avoid the stress of live cross-examination. In high-profile cases like *R v. Barker (2010)*, child witnesses testified via video link with the help of an intermediary, ensuring their statements were clear and uncompromised by courtroom intimidation. The UK also bars accused persons from directly cross-examining victims in sexual offense cases a practice India could adopt to prevent hostile questioning.

The United States emphasizes victim participation and support through two key mechanisms: victim advocates and impact statements. Many states employ victim advocates trained professionals who guide survivors through legal proceedings. For example, in the *Stanford sexual assault case (2016) People v. Turner*, the victim's powerful impact statement highlighted the emotional toll of the trial, influencing sentencing and public discourse. The US also enforces rape shield laws, which restrict invasive questioning about a victim's sexual history a stark contrast to India, where defence lawyers often resort to victim-blaming tactics.

Australia has implemented some of the strictest protections for victims, particularly in sexual offense cases. Courts are often closed to the public and media, safeguarding victims' privacy. In *R v. A2 [2019] HCA 35*, the Australian High Court upheld the anonymity of sexual assault complainants, reinforcing

the principle that justice should not come at the cost of dignity. Some states, like New South Wales, have also experimented with judge-only trials for sexual offenses to prevent jury biases a reform worth considering in India, where societal prejudices often influence case outcomes.

KEY BEST PRACTICES INDIA CAN ADOPT

1. **Video-Recorded Evidence:** The UK's model of pre-recorded testimony could help Indian victims avoid repeated courtroom appearances. For example, in the 2012 *Nirbhaya* case, the victim's friend endured gruelling cross-examination for days a trauma that could have been mitigated with recorded evidence.
2. **Trauma-Informed Court Processes:** New Zealand's specialized sexual violence courts employ judges trained in trauma sensitivity. In India, where victims are frequently questioned with insensitivity (as seen in the *Tarun Tejpal* trial), mandatory judicial training could transform courtroom dynamics.
3. **Victim Advocates:** The Netherlands' *Victim Support Act* provides legal representatives for victims a system India could pilot in fast-track courts. For instance, in the *Unnao rape case*, the victim faced threats and bureaucratic apathy; an independent advocate could have ensured her safety and streamlined legal processes.

CHALLENGES IN IMPLEMENTATION

Despite these models' success, India faces legal, infrastructural, and cultural barriers. The *Indian Evidence Act* currently requires witnesses to testify in person, necessitating amendments to allow video evidence. Judicial resistance is another hurdle during the *Maharashtra v. Bandu (2020)* case, a judge dismissed a rape survivor's request for privacy, reflecting systemic insensitivity. Additionally, many Indian courts lack recording facilities, and victim-blaming attitudes remain entrenched, as seen when a Kerala judge recently questioned a survivor's "moral character."

CONCLUSION

Victims who engage with India's criminal justice system frequently experience harm that extends far beyond the original offence, manifesting as profound psychological, emotional, and social consequences. This phenomenon, known as secondary victimization, occurs when victims suffer additional trauma due to the responses of legal institutions, officials, and broader

society. Psychologically and emotionally, the repeated requirement for victims to recount painful events during investigations and trials can trigger conditions such as post-traumatic stress disorder (PTSD), anxiety, and depression. For example, in the aftermath of the 2012 Nirbhaya gang rape case, witnesses and family members reported severe psychological distress from repeated interrogations and relentless media scrutiny.

The cumulative impact of secondary victimization extends far beyond individual cases, systematically eroding public confidence in the justice system. When victims encounter institutional indifference, hostile interrogation, or overt victim-blaming during legal proceedings, many understandably withdraw from pursuing justice altogether. Judicial authorities themselves have recognized how certain courtroom practices, particularly aggressive cross-examination in sensitive cases, can inflict profound psychological trauma, creating additional barriers to justice-seeking behaviour.

The social dimensions of this phenomenon reveal equally troubling patterns. Survivors of gender-based violence frequently face community ostracization and stigmatization, with their pursuit of justice often met with social sanctions rather than support. The economic consequences compound these challenges, as protracted legal processes force many victims to sacrifice livelihoods while navigating the justice system - a particularly cruel paradox for those already vulnerable. Structural inequalities further exacerbate these issues, with marginalized communities facing compounded barriers when attempting to access justice.

Underlying these institutional failures are deep-seated sociocultural norms that continue to shape justice administration. Patriarchal attitudes manifest in subtle yet damaging ways throughout legal processes, from police stations to courtrooms. The persistent tendency to scrutinize victims' behaviour rather than focus on perpetrators' actions reinforces harmful stereotypes. Similarly, systemic biases related to caste, class, and community affiliations continue to influence how different victims experience the justice system.

Media ecosystems often amplify rather than mitigate these problems, with sensationalized coverage frequently prioritizing scandal over sensitivity. This creates an environment where victims must not only endure legal processes but also navigate public scrutiny that further violates their privacy and dignity.

These intersecting challenges reveal a justice system that, in its

current form, often replicates the trauma it should remedy. Meaningful reform requires more than procedural tweaks - it demands a fundamental reorientation towards victim-centred approaches. This includes implementing trauma-informed practices across all justice institutions, establishing robust victim support mechanisms, and addressing the sociocultural biases that permeate legal processes. Only through such comprehensive transformation can the justice system fulfil its promise of providing genuine redress rather than additional suffering for those who turn to it in their most vulnerable moments. The moral imperative is clear: a system that compounds victimization while purporting to deliver justice fails in its most basic function and must be reimagined to prioritize dignity, equity, and genuine healing.

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