

RIGHTS OF VICTIMS AND LAWS RELATING TO VICTIM COMPENSATION

*¹Soni Dwarampudi, ** Dr K Sita Manikyam,

1. ABSTRACT

The criminal justice system is a social control device that is used to prevent, discourage, and regulate crime, as well as to prosecute and punish offenders. Criminal acts are seen as an assault on humanity and societal order. The Indian criminal system is founded on the time-honoured ideas of "Let Hundred Guilty Be Acquitted, but Not One Innocent." and "innocent until proved guilty." Legislators have revised and constructed numerous rights, protections, and methods for offenders throughout the years in order to reform and rehabilitate them. However, the most vulnerable party to the crime, the victims, have been overlooked. Victims are not provided with enough support or aid. They have a bare minimum of rights and protections. Their rights have been explored in several legislative reports, such as the 154th Law Commission's and the Malimath Committee's, but to what extent have they been successful? Section 357A of the 1973 Criminal Procedure Code establishes a framework for compensating victims, which was amended in 2009 by the Code of Criminal Procedure Amendment Act, 2008. The same statute included a proviso to section 372 granting victims the right of appeal. This article deals with rights of victims, the policy measures, an analysis on Indian laws dealing with victim rights and compensation.

Keywords: Victim Rights, Criminal Justice System, Prevention, Abuse of Power.

2. INTRODUCTION

In contrast to criminologists, who typically focus on the characteristics of criminals, what causes their criminal proclivity, and what can be done to prevent crime, legal philosophers and lawyers have been concerned with the principles of criminal law, the criteria for criminalization, and the rights of the defendant for centuries. Their point of departure was always the criminal, and never the victim of the crime or the victim's family. The interest in victims of crime and their position in criminal process among academics began only relatively recently, in the 1940s, when they began to become more prevalent.²

During the year 2016, a total of 48,31,515 cases were recorded in India under the Indian Penal Code as well as Special and Local Laws, resulting in an incidence rate of roughly 380 cases per lakh of the population. There couldn't have been any victims in these crimes. It goes without saying that every single one of these crimes will inevitably have a victim who has pleaded with the State and its institutions to give justice to him or her.³ However, the fact that, out of the twenty chapters in the National Crime Records Bureau's 'Crime in India – 2016 Statistics,' not a single chapter was devoted to victims and the assistance provided to them, reflects the State's narrow mind-set in focusing on the crime while failing to recognise and document the plight of the victims, let alone the actions taken to redress their plight.

In its most basic definition, crime is an act or conduct that is harmful not just to a person, but also to society and humanity as a whole. It is seen as an attack on mankind as a whole, which is why the State is the one that takes the initiative in bringing legal action against the accused. Crimes, on the other hand, do not just inflict symbolic

**The Author is Associate Professor of Law, Dr BR Ambedkar College of Law, Andhra University, Visakhapatnam.

* The Author is Research Scholar Law, Dr BR Ambedkar College of Law, Andhra University, Visakhapatnam.

²Dube, D., *Victim Compensation Schemes in India: An Analysis* 13(2), INTERNATIONAL JOURNAL OF CRIMINAL JUSTICE SCIENCES 339, 354 (2018).

³Diaz, S.M., *Comprehensive Victim Assistance: Indian Situation* 15(2), INDIAN JOURNAL OF CRIMINOLOGY 84, 87 (1987).

damage to society and social order; they also bring real pain to the victims of crime. As a result, the notion of mankind as a whole as a victim overshadows and minimises the significance of the real victims of criminal activity. They are relegated to the status of silent spectators, as they sit on the side-lines and watch the Court procedures between the State and the accused take place on the inside. These individuals cannot guarantee that the crime is properly investigated, cannot challenge the release of an accused person, and many do not even have access to adequate legal assistance to defend their case. The Indian justice system revolves on the offender, including how he should be punished, when he should be punished, and where he should be punished. Despite the fact that the accused was the one who violated the supposed 'social order,' the accused is always given the benefit of the doubt.⁴

Victims' recompense, representation, and assistance—the people who have to live with the repercussions of the crime—are just given a passing consideration. The "forgotten individuals in the system" have long been a part of their identity. "Victim" is defined under Section 2(wa) of the Criminal Procedure Code of 1973, which was promulgated in India. A victim of a crime is defined as someone who has suffered any loss or harm as a consequence of the crime. However, it is frequently used in the context of the person who is suffering as a direct or proximate consequence of the crime, and does not exclude the person's guardian or legal heir.

A crime is considered to be an offence against the general public. It is by this assumption that one of the most significant irregularities in our criminal justice system gets introduced inadvertently, that somewhere down the line of dehumanised process, the victim comes to be equated with any other piece of evidence. With the State firmly in control of the vehicle on the road to 'justice', victims are inevitably left without a voice or access to rapid remedy through the legal system. For better or worse, the State guarantees to victims only retributive justice through its institutions. If we use the language of John Stuart Mill, the Leviathan disappoints the victims twice: first, by failing to protect their lives and property from the crimes of others, and second, by failing to entirely and completely restore the victims to their rightful place.

3. ANALYSING RIGHTS OF VICTIMS

The pro-victim movement began in 1985, when the United Nations approved the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power, which was accepted by numerous nations, including India. This proclamation provided a thorough definition of "victim," and the significance of their rights was recognised worldwide. It helped people realise that, despite numerous attempts to understand the psyches of criminals via Criminology, the victims were often the neglected. According to the preamble of the Council of Europe Statute, "It must be a core duty of criminal justice to address the requirements and protect the interests of the victim."⁵

The drafters of the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power liberally defined the word "victim" in order to assure maximum coverage. Two important consequences of this term's broad connotation are that, first, regardless of the stage of the trial – apprehension, prosecution, or conviction of the perpetrator, or even the perpetrator's relationship to the victim – the victim continues to be treated as a victim; and, second, in appropriate circumstances, it treats as victims all persons, including the victim's family, who suffer harm in the process of intervention to assist the victim or stop the perpetrator. For the reasons stated above, as well as the aim of this text, we accept the declaration's definition verbatim: "Victims" are defined as "persons who have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, as a result of acts or omissions that violate criminal laws in force within Member States, including those prohibiting criminal abuse of power."⁶

i. Indian Domain of Law

Under Indian law, the term "victim" is defined as "any person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged," and "victim" includes the accused person's guardian or legal heir, according to Section 2(wa) of the Criminal Procedure Code, 1973. Although this definition is accurate, it has many significant flaws. First and foremost, the loss or harm is not clearly stated and is thus upto judicial interpretation.⁷ Two points are worth noting. First, the phrase "act or omission of the

⁴Supra Note 1.

⁵Ota, T., THE DEVELOPMENT OF VICTIM SUPPORT AND VICTIM RIGHTS IN ASIA. IN SUPPORT FOR VICTIMS OF CRIME IN ASIA ROUTLEDGE 125, 160 (2007).

⁶Sundaram, G., Sivakumar, R. and Xavier, L., *Dalit Rape victims: An analysis of victim justice in India*, In Second international conference of the SOUTH ASIAN SOCIETY OF CRIMINOLOGY AND VICTIMOLOGY (SASCV) pp. 150, 153 (2013).

⁷Id.

accused person" reveals a compartmentalised mentality that fails to take into account the secondary victimisation that occurs when victims find it difficult or impossible to access justice in the senses of compensatory, distributive, social, and restorative justice. Finally, the definition fails to protect the rights of all those who are harmed while providing aid or preventing a crime from occurring.

In contrast to the Indian definition, the European Union's Directive 2012/29/EU defines a victim as a natural person who has suffered harm, including physical, mental, or emotional harm, or economic loss, as a result of a criminal offence that was committed with the intent of committing another crime.⁸ The term also includes the family members of the individual whose death was a direct consequence of the criminal offence and who have experienced suffering as a result of that death, if any. In this definition, family members include the victim's spouse, the person with whom the victim was in a committed personal relationship, family members in direct line, and the victim's children and dependents. The definition of victim under the United Kingdom Code of Practice for Victims of Crime is identical to the term under the European Union Directive.

A person who has experienced bodily or mental suffering as well as property damage or economic loss as a consequence of the act or suspected commission of a crime is defined as a victim under the Canadian Victims Bill Of Rights (CBVBR). In the event that the victim is deceased or incapable of exercising his or her rights, the act authorises the victim's spouse, any person cohabiting with the victim in a conjugal relationship, a relative or dependent, as well as the victim's legal or factual guardian, to act on his or her behalf and exercise the rights granted by the act in the victim's absence.⁹

ii. The aftermath of discussions

After decades of debates and discussions, academics and practitioners from all associated fields have agreed on key principles ensuring victim justice as a sine qua non for a genuinely fair criminal justice system that respects the perpetrator's rights. These ideals achieved universal acceptance in 1985, when the United Nations General Assembly approved the UN Declaration. The statement specified four such guiding principles, the language of which, while outlining member nations' obligations, hints to the acknowledgment of specific victim rights:

- Access to Justice and Equal Treatment

This concept covers, but is not limited to, the rights listed below:

- i. The right to be treated compassionately and with dignity.
- ii. The right to seek justice.
- iii. The right to be informed about one's rights.
- iv. Right to know about proceedings and their involvement in them.
- v. The right to be heard and considered during procedures, if applicable.
- vi. The right to be heard and considered in all processes regarding release, parole, plea, or sentence.
- vii. The right to submit a Victim Impact Statement and have it heard and evaluated in Court, if appropriate.
- viii. The right to appropriate legal aid.
- ix. The right to hire a private counsel.
- x. The right to the least amount of discomfort.
- xi. Privacy right.
- xii. The right to be secure and appropriately safeguarded against the accused.
- xiii. The right to prompt justice.
- xiv. The right to conciliation/mediation/arbitration, where needed.
- xv. The right to immediate remedy.

- Restitution Principle

- i. The right to get full and prompt reparation from the accused party.
- ii. The right to restitution from the accused comprises the return of property, the payment of damages or losses, the reimbursement of expenditures, the supply of services, and the restoration of legal rights.
- iii. Restoration of the environment, repair of infrastructure, replacement of community amenities, and reimbursement of relocation fees are all included in this entitlement in the event of serious environmental damage (wherever appropriate).
- iv. If the offender is a public worker operating in his official or quasi-official position, the right to reparation includes the right to receive recompense from the State in which the perpetration occurred.

⁸Supra Note 2.

⁹Kumar, V. and Dwivedi, K., *Sociology of disability in India: A victim of disciplinary apathy* 47(3), SOCIAL CHANGE373, 386 (2017).

- Compensation Principle

This concept grants victims who have suffered serious bodily harm or impairment of physical or mental health, as well as their families, the right to compensation from the State in the event that reimbursement from the offender is not entirely accessible or recoverable. The government should support the creation of national funds for this purpose.¹⁰

Section 357 divides compensation into two categories: a) when the fine is part of the punishment and b) where the fine is not part of the sentence. Compensation for litigation fees and any damage or harm caused by the crime may be given if the fine is part of the punishment. However, such payment is not required until the appeal deadline has expired or the result of the appeal, if an appeal has been filed. Where a fine is not imposed as part of the punishment, the Court may compel the accused to make compensation for any loss or harm caused by the offence. However, all of the aforementioned sources of compensation are subject to conviction upon the completion of a trial, which, in our experience with the workings of our Court system, might take years. Furthermore, this clause does not take into consideration the offender's capacity to pay such restitution.

In such a circumstance, the State is obligated to pay the victims for any loss, damage, or suffering incurred, since the State failed to protect them in the first place. Section 357A of the CrPC was introduced in response to this responsibility, requiring State Governments to create victim compensation systems in collaboration with the National Government. When the Court issues a recommendation for compensation, it is upto the District or State Legal Services Authority to decide the amount. If the criminal cannot be found or recognised, the victim may apply for compensation to the DLSA/SLSA, and suitable compensation must be awarded within two months.

On the certificate of a police officer or a Magistrate, the DLSA/SLSA may further order that emergency first-aid or medical benefits be made available to the victim at no cost, or any other temporary relief may be provided. Section 357C requires all hospitals, public or private, to promptly give free first-aid or medical care to victims of crimes specified by the provisions for acid attack or rape. Section 357B of the Criminal Law Amendment Act of 2013 implements legislatively, the concept that the Hon'ble Supreme Court has established that compensation shall be in addition to fine. However, although the Hon'ble Supreme Court addressed the issue in the context of all crimes and victims, the provision stipulates compensation exclusively for the purposes of Sections 326A and 376D of the IPC, while neglecting victims of other offences.¹¹

- Assistance Principle

- i. Right to aid: Victims have a legal right to get the required material, physical, psychological and social support via a variety of channels including Government, volunteer, community-based and indigenous organisations.
- ii. Right to get information about health and social services that are available.
- iii. Access to health and social services is a fundamental human right.
- iv. The right to be assisted and managed by professionals who have been sensitised and trained.
- v. Depending on the extent of the damage experienced, they have the right to receive help with respect to their specific requirements.

4. POLICY MEASURES

According to the 154th Law Commission Report, "Crimes often result in serious injury to persons, not only symbolic harm to society". As a result, victims' needs and rights should take precedence in the overall response to crime. Rehabilitation of crime victims is critical, just as it is for criminal rehabilitation. Crime victims experience trauma, stress, loss of dignity and respect, and loss of livelihood, among other consequences. The system must offer them with enough care, support, and help in order to re-integrate them into society. Victims must be handled with compassion, decency, and respect. Victims should get adequate medical treatment for their physical injuries, mental health care for the trauma, stress, and other effects of the crime, community aid to assist them in overcoming challenges created by the crime, and lastly, recompense for the resulting losses. It is just as critical to rehabilitate a victim as it is to punish an offender. Even when a crime goes unpunished due to a lack of proof, the victim's situation cannot be overlooked. The Hon'ble Supreme Court remarked in Olga Tellis

¹⁰Jaishankar, K., *Implementing victim rights in newly industrialized countries. Justice for Victims: Perspectives on Rights, Transition and Reconciliation*, LONDON AND NEW YORK: ROUTLEDGE, TAYLOR AND FRANCIS GROUP, p.66 (2014).

¹¹*Supra Note 4.*

vs. Bombay Municipal Corporation¹² that a breach of the right to livelihood might undermine the right to life guaranteed by Article 21. One of the most important and successful methods of rehabilitating victims of crime is to compensate them financially.¹³

The 154th Law Commission Report on the Code of Criminal Procedure dedicated a full chapter to 'Victimology,' which emphasised the importance of victim rights in criminal proceedings. It interpreted Article 41 (which contains the right to public aid in specific circumstances) and Article 51-A (which states that every citizen is responsible for the development of humanism, the spirit of inquiry, and reform) to establish the constitutional basis for victimology. Additionally, it was argued that compensation should not be restricted to recouping actual fines, penalties, and forfeitures. In 2003, the Malimath Committee on Reforms in the Indian Criminal Justice System recommended that the United Kingdom's ideas for improving victim treatment be explored for implementation in India. It said that States are required to compensate victims in all significant crimes, regardless of whether the culprit is captured or not, convicted or acquitted. It proposed, in its report, that the Legal Services Authority establish a victim compensation fund. This resulted in the enactment of Section 357A of the Code of Criminal Procedure, which was a watershed moment in the Indian Criminal Justice system's history of victim rehabilitation. Section 357A of the Code of Criminal Procedure authorises the Victim Compensation Scheme. The victim may petition the State or District Legal Service Authority for compensation for loss or harm inflicted by the perpetrator, as well as for rehabilitation, under this clause.¹⁴

5. FLAWS AND WAYS TO AMEND

The fundamental objective of a victim of crime is to put the painful occurrence behind him and go on with his life. Although this seems to be clear, the criminal justice system is so defective that it may be difficult, if not impossible, to do so. The Preamble to the Council of Europe Statute emphasises the need of fostering victim cooperation and increasing victim trust in the criminal justice system. According to the Malimath Committee report on improvements in India's Criminal Justice System, published in 2003, a lack of legal rights and protection for victims leads to their indifference in criminal procedures. When it comes to preserving victim rights, the Indian Criminal Justice System falls short in many respects.¹⁵ The following are some of the numerous flaws: The notion of "delayed justice" is widely established and serves as the foundation for the right to a fast and efficient trial. However, this is not the situation in India. There is a massive backlog of cases in the Courts, and it may take years for victims or their families to get any type of redress or justice.

In the case of State of Rajasthan vs. Manohar Singh, a prison sentence could not be imposed on the accused since it had already been 35 years after the crime, but the Hon'ble Supreme Court ruled that compensation be granted to the victim by the accused or the State. According to the Apex Court, "Despite legislative amendments and rulings of this Court, this issue (victim rehabilitation) often escapes notice. The Court must consider not only the nature of the crime, required punishments, mitigating and aggravating factors in order to strike a fair balance between the demands of society and fairness to the accused, but also the necessity to provide justice to the victim of crime.... We conclude that the Court of Sessions and the High Court have not adequately focused on the necessity to recompense the victim, which may today be considered an essential component of fair sentence." By the time the verdict was delivered, the victim and their family should have moved on.¹⁶ For more than three decades, the victim and her family had to relive the pain and stress of the occurrence. Another problem in the system would be a lack of training and sensitization for cops, judges, and other officials that deal with victims. They get significant instruction on how to deal with the accused, but less attention is paid to how victims of crime and their families must be treated.

Advocates and public prosecutors, as officials of the Court, have a specific and special obligation towards the victims of their cases. Victims almost always have to depend on the support of advocates and public prosecutors in their pursuit of justice. Consequently, the job of advocates is not confined to legal representation alone, but also includes offering victim support and advocacy on behalf of the victims. Even if the Indian judiciary's conception of the function of public prosecutor respects the ideals of justice, candour, impartiality, and propriety, when considered from the view point of the victim, there is much that is lacking.

In an adversarial system, the Judge is a decision-maker who is impartial and non-partisan in his or her decisions. A significant portion of our legal structure is devoted to the protection of the rights of those who have been

¹² AIR 1986 SC 180

¹³ *Supra* Note 9.

¹⁴ Mohan, V., *Revisiting Victim Compensation in India*, *INDIAN JL & PUB. POL'Y*, 4, p.88 (2017).

¹⁵ *Id.*

¹⁶ Singh, R., *Victim Justice: A Paradigm Shift in Criminal Justice System in India* (2016)

accused, which must be preserved by the judicial system. As a result, it is critical to remember, while preserving the rule of law, that the victim himself or herself should be provided with all conceivable support in their path toward closure and, ultimately, recovery. The manner in which proceedings are conducted, the assessment of the evidence presented, and the interpretation of the law all have a significant and profound impact on the victim's experience. In this setting, the control that a Judge maintains over the Court procedures becomes critical in ensuring that the victim's experience is a pleasant one that assists and complements their recovery rather than being detrimental to it.

All medical and health care practitioners owe a fiduciary duty to their patients. Their occupation uniquely qualifies them to aid victims not just with medical care but also with fostering a feeling of security and catalysing the process of recovery. Additionally, a considerable deal of weight is often put on the medical report produced by the physicians, which may significantly affect the result of the case. NGO's play a variety of roles in the criminal justice system by providing assistance to individuals directly impacted by an offence, including victims, witnesses and defendants. The NGO's services include, but are not limited to, counselling, mediation, supervision, public awareness, legal education and aid, as well as housing and rehabilitation. With such a varied spectrum of services, non-governmental organisations may fill in where the State falls short.

6. CONCLUSION

The accused has always been at the core of the Indian justice system. Their rights, protections, and jail laws are continually altering to keep up with the trends. However, the victim's rights and rehabilitation, as the person who must live with the repercussions of the crime, have been woefully disregarded. Victims must be handled with compassion and respect as individuals, not as cases. The victim must be questioned with appropriate regard for his personal position, rights, and dignity, as required by the Statute of Europe. Police officers and other law enforcement professionals should be educated to interact sympathetically and reassuringly with victims, just as they are taught to deal with offenders.¹⁷

Victim restitution should be more than simply monetary. They must get mental and medical assistance, protection against secondary victimisation, and moral and social support in order to live in society and guarantee that their life is not defined by the crime. Clear laws and procedures must be established to guarantee that victims, particularly illiterate victims, are aware of their rights in seeking remedy. The emphasis of the Indian justice system must change from punishing the criminal to safeguarding the rights of the victim. Priority should be given to their representation, remuneration, and support. The imposition of hefty jail terms on the perpetrator is insufficient. Reparative efforts must also change over time in order to decrease the victim's hurts and losses when fresh offences are discovered. Despite the fact that victimology has been acknowledged and sought to be applied in the Indian Criminal Justice System, we still have a long way to go on the route from retribution to rehabilitation.

When it comes to the concept of human rights in India, the rights in regard to the right to life and the right to dignity are included, which are protected by the Constitution of India or reflected in international treaties that are enforceable by Indian Courts. International Human Rights Norms are changing, and Indian Courts are amenable to these developments in international human rights norms. The Indian Constitution, in its preamble, basic rights, and directive principles, acknowledges the right to protection, the right to access to justice, and the right to a fair inquiry for victims of crime. The right to life, among other essential rights, is protected under the Constitution of India. Nonetheless, legislative initiatives do not provide a clear image and merely give a blurry picture of victims' human rights in the context of crime. Certain legislative provisions, as interpreted by the Courts, have contributed to the development of the notion of human rights for victims of crime in India. The reports of different committees and commissions established in connection to the criminal justice system in India are also in favour of victim protection measures. It is very regrettable for victims of crime that, despite the existence of a favourable constitutional and legislative framework, they are unable to obtain the appropriate treatment from the criminal justice system as a result of the State's inability to fulfil its positive commitments. These actions, whether international or national in nature, do little to alleviate the pain of victims since substantive laws that are not properly implemented are of no help. Even if there are international and national measures, such as constitutional, legislative, and judicial protections, victims of crime remain in a bad condition of affairs despite the existence of international and national measures.

¹⁷Supra Note 2.

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