



# ANALYSIS OF VICTIMOLOGY IN INDIAN CRIMINAL JUSTICE SYSTEM: NEED SEPARATE LEGISLATION

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## ABSTRACT

The aim of criminal law is to promote peace and security among individuals. It provides protection to victim of crime. The term victim is defined under Cr.P.C. in very narrow sense. The term victim has wide meaning, one who directly or indirectly affected by the crime. Victim is main component of crime who suffers lot. The branch of victimology is part of criminology and for the reason it is necessary to understand the relationship between two streams of criminal law. The criminal justice system normally concern with punished the accused. There is need to take utmost attention of victim but in reality the victims sometime will not consider the part of crime. The Indian criminal justice system provides schemes for compensation to victims but it is quite inadequate. Mere providing compensation to victim will not serve the purpose of criminal administration. There is need to think in the context of complete justice with victims. No doubt the various landmark decision of apex court tries hard to provide protection to victims in terms of compensations, yet due concern need to understand the psychological, economic, social, emotional condition of victims. There is need to immediate changes in mechanism of criminal justice system and concept of victimology

In reality the Victims have no rights under the criminal justice system and the state undertakes the full responsibility to prosecute and punish the offenders by treating the victims as mere witnesses. Present article has attempted to analyse the 'the place of victim under criminal justice system.' The analysis is from legal point of view of victims whether really victim gets justice under the criminal law? This article also focused existing laws policies about victimology which is prominent area of understanding the problem of victims in real sense. Additionally, the researcher also focuses on various observation and opinion given by apex court for the protection of victims. With this, researcher wants to analysis and to verify the practical and real problem faced by the victims under administration of criminal justice.

**Key words:** - Criminal Justice system, victimology, Penal law, compensation of victims, human rights.

## I. INTRODUCTION

The provision of compensation to victim of crime is an old concept under the Indian criminal legal system. The state is bound to provide compensation to victims of crime. The aim of this scheme is to provide overall protection to victims of crime against the abuse of power where innocent people suffer the loss or injury. With the passage of time the concept of victim was gradually change. Now the victim is only remaining as witness for prosecution to prove the guilt against accused. Comparing with the rights of accused the victim has no place under the criminal justice system. The accused has bundle of rights guaranteed under constitution of India and allied laws. Whereas the victims try hard before the court to prove the loss and injury caused to him. The notion about victims is not clear under the criminal law. *"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.*"<sup>i</sup> The above principle considered as the 'Magna Carta' for victims, provides the basic framework of principles which in the last two decades have been vociferously debated and converted as victims' rights by some of the developed countries<sup>ii</sup>. The same principle is founded under the constitution of India where it provided various fundamental rights and directive principle of state policy to blossom the social and economic justice to all. Additionally the State shall make effective provisions for "securing the right to public assistance in cases of disablement and in other cases of undeserved want."<sup>iii</sup> at the same time it is fundamental duty of every Indian citizen, to have concern for living creatures' and to 'develop humanism'<sup>iv</sup>. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology<sup>v</sup>.

But in reality the situation is different; the entire court proceedings protect the rights and interest of the accused, neglecting the victims' interest. Excepting that the victims are summoned to tender evidence in courts, the various services and assistance to be rendered by the prosecution to victims are not practiced in the criminal courts in India. In a nutshell, victims are alien to the criminal proceedings as they have no rights excepting to be a witness when summoned by the court. With regard to the role of the judiciary in justice for victims, though judges are by and large sympathetic towards victims, on many of the requirements, such as separate waiting halls, information about the criminal proceedings, special services and support, ordering of restitution to victims, victim participation, victim protection etc. we have a long way to go to realize victim justice in India.

However, in the last decade, there is greater awareness on the part of the higher judiciary of the need for a better treatment of crime victims by the criminal justice agencies at different stages in India. The concern of court is to give justice to victim<sup>vi</sup> not only this court must endeavour to find the truth because there will be failure of justice not only by an unjust conviction but also by acquittal of the guilty for unjustified failure to produce available evidence.<sup>vii</sup> And this is reflected in the recommendations of the different committees and commissions calling for reforms in the criminal justice system to improve the existing conditions and situations of victims during the criminal justice process. The legislative efforts were made in 2009 by introduction of victim compensation scheme under Cr.P.C.<sup>viii</sup> Before introduction of

this legislative provision the apex court grant the compensation to victims through their landmark judgements.

## II. ROLL OF JUDICIARY

Despite the absence of any special legislation to render justice to victims in India, the Supreme Court has taken a practical role and resorted to affirmative action to protect the rights of victims of crime and abuse of power. The court has adopted the concept of restorative justice and awarded compensation or restitution or enhanced the amount of compensation to victims, beginning from the 1980s<sup>ix</sup>.

In *Bodhisattwa Gautam vs . Subhra Chakraborty*<sup>x</sup>, the Supreme Court held that, if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. The court, having satisfied the prima facie culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985:

- The complainants of sexual assault cases should be provided with a victim's Advocate who is well acquainted and explain to the victim about proceedings, and to assist her in the police station and in Court and to guide her as to how to avail of psychological counselling or medical assistance from other agencies;
- Legal assistance at the police station while she is being questioned;
- The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed;
- A list of Advocates willing to act in these cases should be kept at the police station for victims who need a lawyer;
- The Advocate shall be appointed by the Court, in order to ensure that victims are questioned without undue delay;
- In all rape trials, anonymity of the victims must be maintained;
- It is necessary, having regard to the Directive Principles contained under Art. 38 (1) of the Constitution of India, to set up a Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment;
- Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of the rape.

As early as 1983, the Supreme Court recognized the need for state compensation in cases of abuse of power by the State machinery. In the landmark case of *Rudul Sah vs . State of Bihar*<sup>xi</sup> the Supreme Court ordered the Government of Bihar to pay to *Rudul Sah* a further sum of Rs.30,000 as compensation, which

according to the court was of a “*palliative nature*”, in addition to a sum of Rs.5,000, in a case of illegal incarceration of the victim for long years.

Similarly in *Women’s Resources Centre through Mrs. Nalini Bhanot vs. Commissioner of Police, Delhi Police*<sup>xii</sup> the Court awarded a sum of Rs.75, 000 as state compensation to the victim’s mother, holding that the victim died due to beating by the police. In another landmark case of *D. K. Basu vs . State of West Bengal*<sup>xiii</sup> the Supreme Court held that state compensation is mandatory in cases of abuse of power and said that “To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience”.

### III. RECOMMENDATIONS OF COMMISSIONS AND COMMITTEES ON JUSTICE TO VICTIMS IN INDIA

During the last decade, there has been significant change in the thinking of the judiciary about the human rights of victims. The judicial interpretation of victim compensation scheme was taken seriously by various legislative agencies and they make changes and amendments accordingly in existing laws and policy.

#### 1. The Law Commission of India, 2009

- Expenses actually and reasonably incurred or to be incurred as a result of the victims injury or death;
- Pecuniary loss or damages incurred by the victim as a result of total or partial disability affecting the victims capacity for work;
- Pecuniary loss or damages incurred by the dependants as a result of the victim’s death; d) Pain and suffering ;
- Maintenance of a child born as a result of sexual assault;
- Other pecuniary loss or damages resulting from the victims injury and any expense that in the opinion of the board it is reasonable to incur.<sup>xiv</sup>

#### 2. The Justice Malimath Committee Report on Reforms of Criminal Justice System<sup>xv</sup>

The Justice V. S. Malimath Committee has made many recommendations of extensive implication to improve the position of victims of crime in the Criminal Justice System, including the victim’s right to participate in cases and to suitable compensation. Some of the significant recommendations include:

- If the victim is dead, his or her legal representative, shall have the right to be party in every criminal proceeding where the offence is punishable with seven years’ imprisonment or more;
- With the permission court voluntary organization shall also have the right to implead in court proceedings;
- The victim has a right to be represented by an advocate and the same shall be provided at the cost of the State if the victim cannot afford a lawyer;
- The victim’s right to participate in criminal trial shall include the right: to produce evidence; to ask questions of the witnesses; to be informed of the status of investigation and to move the court to issue directions for further investigation; to be heard on issues relating to bail and withdrawal of prosecution; and to advance arguments after the submission of the prosecutor’s arguments;

- The right to prefer an appeal against any adverse order of acquittal of the accused,
- Legal services to victims may be extended to include psychiatric and medical help, interim compensation, and protection against secondary victimization;
- Victim compensation is a State obligation in all serious crimes.
- The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority.

### 3. The National Commission to Review the Working of the Constitution<sup>xvi</sup>

The Commission to review the working of the Constitution has advocated a victim-orientation to criminal justice administration, with greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes.

## IV. RECENT LAWS TO CARE FOR AND PROTECT SPECIAL CATEGORIES OF VICTIMS

There are also significant developments in the form of new laws to promote the cause of victims and to alleviate the pains of possible victims of susceptible sections of the population such as women, children and elders. The recent enactments passed by the Parliament have a significant bearing on preventing victimization and giving relief to victims:

### A. The Protection of Women from Domestic Violence Act, 2005

“The Protection of Women from Domestic Violence Act, 2005” is a major legislation for the protection of women’s movement against the misuse and cruelty in domestic affairs. This Act aims to provide for more effective protection of the rights of women guaranteed under the Constitution<sup>xvii</sup>. The definition of domestic violence is wide enough to include physical, sexual, verbal and emotional abuse. The unique feature of the Act is to prohibit denying the victim “continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household<sup>xviii</sup>”. A police officer, protection officer or a magistrate who has received a complaint of domestic violence has a mandatory duty to inform the victim of her right to obtain a protection order or an order of monetary relief, a custody order, a residence order, a compensation order or more than one such order and the availability of the services of service providers, protection officers, and the right to free legal services under this Act. A violation of the protection order by the respondent is an offence which can result in imprisonment for one year or a fine up to Rs.20, 000 or both. If the protection officer refuses to discharge his duties, he shall be punished with imprisonment for one year or with a fine of 20,000 rupees or with both.

### B. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

This is also an advanced law aiming to protect elders and prevent elder abuse and victimization, which is a growing problem in India. Under this law, an obligation is created of the children or adult legal heirs to maintain their parents, or senior citizens above the age of 60 years who are unable to maintain themselves out of their own earnings, to enable them to lead a normal life. If children or legal heirs neglect or refuse to maintain the senior citizen, the Tribunal can pass an order asking the children or legal heirs to make a monthly allowance for their maintenance.

### C. Prevention of Child Abuse and Victim Protection

Empowering the child is the road to prevention from abuse and victimization. To empower the child, education is the tool. Therefore, primary education for children has been made a fundamental right by the order of Supreme Court of India<sup>xix</sup>. Article 21-A of the Constitution states that “*The State shall provide free and compulsory education to all children of the age 6-14 years in such manner as the State may by law determine*”.

#### 1. The National Commission for Protection of Child Rights<sup>xx</sup> (NCPCR)

This Commission was set up in March 2007 and its mandate is to protect all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child<sup>xxi</sup>. India ratified the United Nations Convention on the Rights of the Child in 1992 and this Act was passed as one of the necessary steps to protect the rights of children in the country. The National Commission for Protection of Child Rights has been taking up various issues brought forth in the area of child abuse. After inquiry, the National Commission can recommend initiation of proceedings for prosecution or any other action it may deem fit.

### D. Prevention of Caste-Based Victimization and Protection for Victims: The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

This is an act to prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes. Under this Act, compensation to victims is mandatory, besides several other reliefs depending on the type of atrocity. The victims are entitled to receive monetary compensation ranging from Rs. 25,000 to 200,000 depending on the gravity of the offence.

## V. CONCLUSION AND SUGGESTIONS

The term victim and victimology has great importance under the criminal legal system. The concept of victimology is flourished and shaped in modern dimension through judicial contribution and legal provisions in India. It is needed to give utmost important in Indian legal system equally to accused. The legislative efforts are very new and need to expand its horizons for the equal benefit of victim of various crimes. Merely providing legislation will not serve the purpose of protection to victims unless it implemented seriously. The victim is only class who suffer the irreparable loss due to commission of crime. The accused will release on particular day but the loss caused to victims particularly in serious offences will cause irreparable and everlasting loss to family and other peer groups. And therefor there is necessity to provide more enhancements in existing law and implementation policies in Indian criminal justice system. It is clear that, legislation and judicial decision changed the preview of victim and victimology yet due weightage and importance are not heeded to victims. The continuous efforts by courts and legislature try to rescue victims against traditional and new crimes but the battle of victims for getting justice is not over. The complicated procedure of court and delayed in deciding the cases cause sometime injustice to victims. The existing scenario proved battle for justice to victims. The pendency of cases constantly rise leading constraint in the trouble of victims and sometime it implicit as justice delayed is

justice denied in real sense. Considering the overall situation it is necessary to make special legislation about the same then the purpose will be achieved.

## END NOTES AND REFERENCES

- <sup>i</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly resolution 40/34
- <sup>ii</sup> UN Handbook on Justice for Victims (United Nations Office for Drugs and Crimes, 1999, chapter III, pp.56-76)
- <sup>iii</sup> Article 41 of constitution of India, 1950
- <sup>iv</sup> Article 51 A of constitution of India, 1950
- <sup>v</sup> Jivrajbhai Bababhai Rabari vs State Of Gujarat, R/CR.A/811/2019 decided on 24<sup>th</sup> April, 2019
- <sup>vi</sup> State of Maharashtra vs Dr. Praful B. Desai, 2003, 4 SCC 601
- <sup>vii</sup> Nageshwar Shri Krishna Ghobe vs State of Maharashtra, AIR 1973 SC 165
- <sup>viii</sup> Section 357-A Victim compensation scheme where central and state government directed to provide fund through district legal service authority and make arrangement for grant of compensation for victims.
- <sup>ix</sup> (Sukhdev Singh vs . State of Punjab (1982 SCC (Cr) 467), Balraj vs . State of U. P. (1994 SCC (Cr) 823), Giani Ram vs . State of Haryana (AIR 1995 SC 2452), Baldev Singh vs . State of Punjab (AIR 1996 SC 372).
- <sup>x</sup> (AIR 1996 SC 922)
- <sup>xi</sup> (AIR 1983 SC 1086),
- <sup>xii</sup> (AIR 1990 SC 513),
- <sup>xiii</sup> (AIR 1997 SC 610),
- <sup>xiv</sup> Law Commission of India Report, Report No. 226, 2009. Soft copy available at <https://lawcommissionofindia.nic.in/reports/report226.pdf>
- <sup>xv</sup> Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, Submitted by Dr. Justice V.S. Malimath, Formerly, Chief Justice of Karnataka and Kerala High Courts  
Submitted on : 28.03.2003 report is available at [https://www.mha.gov.in/sites/default/files/criminal\\_justice\\_system.pdf](https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf)
- <sup>xvi</sup> The National Commission to Review the Working of the Constitution was set up by Government Resolution dated 22 February, 2000 under the Chairmanship of Justice M.N. Venkatachaliah. The terms of reference stated that the Commission shall examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features. The Commission submitted its report in two volumes to the Government on 31st March, 2002. <http://interstatecouncil.nic.in/ncrwc/>
- <sup>xvii</sup> See the preamble of The Protection Of Women From Domestic Violence Act, 2005
- <sup>xviii</sup> Section 3 (d) (iv) (c) of The Protection Of Women From Domestic Violence Act, 2005
- <sup>xix</sup> J P Unnikrishnan vs. State of Andhra Pradesh, 1993 SCC (1) 645
- <sup>xx</sup> The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005, an Act of Parliament (December 2005). National Commission for Protection of Child Rights (NCPCR) is a statutory body under the Commissions for Protection of Child Rights (CPCR) Act, 2005 under the administrative control of the Ministry of Women & Child Development, Government of India. The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. <https://ncpcr.gov.in/>
- <sup>xxi</sup> <https://ncpcr.gov.in/>
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