

# Rights of Victims of Crime in India with international perspective

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## Abstract:

The rights of victims of Crime have been defined and declared by the United Nations General Assembly resolutions in the year 1985. These Basic Principles of Justice for Victims of Crime and Abuse of Power and the 2006 Basic Principles and Guidelines should be followed by every nation of the world. These declarations have been released on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. The United Kingdom has refined its principles on the rights of victims of crime in the year 2019 which could be the best in the world. The United Nations of America has defined the fairer principles on the rights of victims of crime. The government of India has established the criminal justice system from four predominant constitutional documents to safeguard the victims of crime with more noticeable facilities which includes all the declarations of General Assembly of United Nations and British criminal justice system. The focus of the rights of the victims of the crime on victims of domestic crimes, while that of the latter is on victims of international crimes; more particularly, gross violations of international human rights law and serious violations of international humanitarian law. This paper describes the rights of the victims of crime in India with the international perspective by describing the international law of justice and predominant countries like US and UK. This paper has given stress on implementation of predominant rights facilitated by the Indian Criminal Justice with fairer treatment to the Victims of crime.

**Keywords:** *Human Rights, International law, rights of victims of crime, Indian Constitution.*

## Introduction

The constitution of India is composed from several constitutional gist of several democratic countries.

The fundamental rights have been defined in the constitution is taken from only democratic countries in the world. Basically India is a nation with different cultures, religions, creeds and genders. The synchronization of different cultures followed by different religions of the country is complex and could be managed by the definitions incorporated in the constitution by the great minds led by Dr.B.R.Ambedkar.

Two decades ago The General Assembly of the United Nations declared the basic principles of Justice for Victims of Crime and Abuse of Power.

It has insisted all nations to adopt the principles as the basic standards of the national standards to be implemented for the protection of the victims of crime.

The criminal justice system prevail in India is configured with the specifications and minimum standards of International justice specifications. The latest amendments to encounter the latest sophisticated crimes of white color, terrorism and violence against the women are incorporated in Indian Criminal Justice system at par with the international standards specified by the International Law Commission [2].

The Indian Constitution and Criminal Justice System has been amended several time to

safeguard the victims of the crimes. The contemporary crimes are equipped with sophisticated techniques and the previous rules and regulations are not sufficient to punish the offenders and criminals. The amendments are made in Indian Criminal Justice System to give strong counter measure to the contemporary crimes. Most of the amendments are made with the resolutions made by the General Assembly of the United Nations and International Law Commission [2].

The recent amendments are made in Indian Constitution are related to the victims who happened to be women, children and also the victims of terrorists. The recent emerging trends in white color crimes also made the necessity to do the amendments to safeguard the victims of white color and tighten the regulations against the white color and political crimes. All these amendments are done to comply with the international standards of Justice and Law [3].

### **Relative study**

The research study on The right to reparation in International Law for Victims of Armed Conflict has focused on the state responsibility, the legal order and legal norms for victims of crime. It also stressed the recognition of human rights in customary law and international law of individuals as beneficiaries of reparations. It has stated that the right of victims of crime are defined in the basic principles on the international human rights law. This research work specially focused on the basic principles of reparation for victims [6].

The general Assembly resolution made on 1985 has described the basic principles of Justice for victims of crime. The victims of crime should have the access to justice and fair treatment. Offenders of third parties should made responsible for their behaviour. The victims of crime should be extended with the restitution. The government of every country should review their practices, regulations and laws to take into consideration of the restitution as available sentencing option in criminal cases. Victims should be provided with the additional compensation from the states when the offender is not compensated fully for the crime [7].

S.R.Aadhi Sree has done a research work on Victims and Victimology in India –Need for paradigm Shift. In this article he stated that most of the Indian Criminal Justice System is derived from the British Criminal Justice System. The control and prevention of crimes, punishment and rehabilitation to the criminals are taken from the British Criminal Justice environment. The contemporary crimes in India are need to be addressed with the new regulations in law enforcement, prosecution, defence attorney, courts and corrections [9].

The research article published by Ms.Donna Price (2019) has presented the global report on the rights of the victims of crime. In this article the definition of victims' rights with international and national perspective are presented. The report has demonstrated the right to information, right to supply, right to appeal charging decision, rights of court with international justice system. The article has presented the implementation delay and

loopholes of the criminal justice system in safeguarding the victims of the crime [10].

John P.J.Dussich has presented an article on the evolution of international victimology and its current status of today. In this article he depicted the sophisticated techniques in criminology and new trends implementation in the crimes are not covered by the existing basic principles of justice for victims of crime and abuse of power. Victimology has grown up with the dynamic cultural changes. The evolution of victimology is need to be addressed with the contemporary regulations and innovative practices of victim assistance. The new regulations should be amended by every country in association with the United Nations' Instruments, laws for the rights of the victims and victim's assistance programs [12].

## Methodology

The research methodology followed to do this work with distinct data related to the topic. The research works published in the international journals have been collected. The articles related to the criminal justice system especially on the rights of victims of crimes and abuse of Power have been collected. The research articles from international journals and predominant international magazines have been collected on International law and criminal justice and International Law Commission special focus on the rights of Victims of crime.

The research is done to generate the secondary data from the data collection. The contemporary conditions prevail in India have been obtained from the data collection. The admeasures are

searched from the secondary data which have been stated by the international law and Justice system. The research work has enlisted the related work. The Indian criminal justice systems is demonstrated with significant basic principles framed towards the rights of victims of crime. The research methodology used in this research work is qualitative research methodology. The evaluation of the criminology is presented to support the arguments of the research work.

To support this research the research work is developed with the step by step presentation of rights of victims of India in comparison with the international laws of crime. In this process The victims' rights in India, Victimology in India, Criminology in India, Victim's rights at UNO and evaluation is presented to exemplify the concept of the rights of the victims of crime.

## Victims' rights in India

The rights of victim of crime are defined in Criminal Procedure Code 1973 section 2(wa).

The rights of victims of crime are elaborately defined in Indian Criminal Justice System. The right of the victim of crime can access the justice to have the availability of relief to the victim by various judicial or non judicial institutions in India. When the victim approaches the police station it is the primary duty of the inspector to accept the complaint and register the complaint. If the station house officer is refused to register the complaint then the victim can complain this matter to the superintendent of police. The victim can also demand the FIR copy from the police station at free of cost from the police station [15].

Under section 24(8) of Criminal Penal Code (Cr.P.C) the victim can engage an advocate to assist the prosecution. Section 301(2) of Cr.P.C mandates that any advocate appointed by the victim can act under the directions of the prosecutor and with the permission of the court. Section 157 of Cr.P.C is facilitating the lady police constable can visit the house of women victim in case of rape or serious violent retaliations against women [7].

Restitution to the victims of crime is the right specified in the Cr.P.C. It means the restoring to a original position or returning the stolen good to the real owner. The courts of law in India are not serious about the restitution. The police department is not restoring the stolen goods to the original owner with originality. It is obvious that the restitution can be done partially or semi partially to the original owner [15].

Right of the victim of crime is compensation. It is also well recognized in the Cr.P.C. It is well available only where a substantive sentence of the fine was imposed and was limited to the amount of the actually realized. Section 357(3) of Cr.P.C has reserved the right to magistrate to impose fine. The fine is not a compensation to the victim of crime. It goes to the pocket of the judiciary system. The right of the victim of crime to get the relief or compensation from the offenders is within the writ jurisdiction and explicitly recognized [15].

In Indian courts of justice providing the assistance to the victims of crime is limited to the books and constitution only. It is observed in the real criminal courts of justice with nominal presence and

practice but not effectively serving the poor victims of crime [2].

When the criminal justice system is implemented in proper manner according to the rule of law, democracy, development and human rights by the government reveals the success. The protection of victims of crime is the one of the main objective of the criminal justice system. It is the primary responsibility to implement the Cr.P.C with good motive and objectives.

Though the law and order was well defined the punishment to the culprit of rape with severe punishments, the law response to the needs of the victims of rape is in shifting the burden of proof. The law fails to address the needs of victims of rape to be treated with dignity and in providing the protection from intimidation. This has been announced by the Delhi Domestic Working Women's Forum.

### **Victimology in India**

Victimization is classified into four types. These are Primary victimization, Second victimization, Re-Victimization and Self Victimization. The primary victimization can be caused to the victim by the direct commission of a crime by the offender or criminal. The secondary victimization can be known as the post crime victimization or double victimization. This can be done due to imbalances in the perception of state agencies or instrumentalities. Re-victimization can be caused when the victim is being victimized repeatedly. Self-victimization can be done by using a variety of reasons to justify abuse [7].

The victims of crime can be compensated under the acts of The constitutional Remedies for Human Rights Violation, The criminal Procedure Code of 1973, The Fatal Accidents Act of 1855, The Probation of Offenders Act of 1958 and the Motor Vehicles Act of 1988 [15].

## **Criminology in India**

Criminology is regarded as the scientific study of non-legal aspects of crime and delinquency. It is the study to find the causes of crime, correction of crime and prevention of crime in the society. Criminology describes the act of crime from the deviant behavior which violates existing norms and cultural standards. The crime is an act that is instigated by the abnormal behaviour of human beings in the society. Crime is generated by the weakness, anger, greed, jealousy in human being. The weakness of mind is common in human. So Crime is common in human society. It needs regulation and control with the specific mechanism in the human society [16].

The Indian Criminal Justice System is predominantly governed by the Constitution of India of 1950, The Indian Penal Code of 1860, the code of Criminal Procedure of 1973 and The Indian Evidence Act of 1870.

Victims have not reserved with the right to take the control of criminal justice system into their hands. The states of judiciary system should undertakes the full responsibility to prosecute and punish the offenders with the help of the witness given by the victims or family members or friends or who presented at the time of crime. The victims should not punish the offenders and prosecute the

offenders even though the crime affects the victims [15].

## **Victims' rights UNO**

The general Assembly of the United Nations Organisation declared the basic principles of Justice for Victims of Crime in its 96<sup>th</sup> plenary on November 29<sup>th</sup> 1985. The predominant components of the rights of victims of crime are access to justice and fair treatment, establishment of restitution for the victims of crime, fair and reasonable compensation to the victims of crime and Legal assistance to the victims of crime until they are justified [1].

The international norms for the human rights is developed a mandate to support the victims of torture and related crimes. This mandate is made compulsory for all nations to follow to safeguard the rights of victims of crime by the International Law Commission. The international norms have been headed by the topic 'Crimes against humanity' and they have focused on the rights of victims of crime in May 2017. The United Nations of Organisation has established the International Criminal Courts and Tribunals to implement the statutes and regulations and array of measures to positively engage victims in the criminal justice progress. These International criminal courts are facilitating the direct participation to deliver the reparation to the victims of crime [2].

The International Law Commission has well designed and developed a special Rapporteur on the crimes against humanity. This regulations are mandatory for all criminal justice systems of the countries in the world. Article 31(1) of the

International Law Commission has stated the internationally wrongful acts that the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act. It also stated in the section 14 this law that the victims of gross violations of human rights law are entitled to reparation whoever the perpetrator [5].

The United Nations of Organisation has established the Permanent Court of International Justice, International Court of Justice, United Nations Human Rights treaty bodies and Individual communications Human rights committee to establish the protection to the victims of crime and to take action against the humanitarian law violations. These international criminal justice systems are working to assess the degree of practical implementation of the basic principles and regulations to safeguard the victims of crime at the national level through case studies on post-conflict. These committees are enforcing the international law of justice with the help of transitional justice measures [11].

According to the statistics released by the World Health Organisation nearly 1.35 million of people have killed in the year 2018 in crashes. It has launched a global plan for the decade action for Road Safety. It has released a manifesto on Victims' Rights. The manifesto has stated that the victims are deserved recognition, should be provided with information and support. It also stated that every country should establish a separate criminal justice system to take care of only road crashes casualties. The victims of road crashes should be assisted with needed information on the

legal procedures, their rights and role in the proceedings. The victims should be informed with the progress of the investigation and the prosecution. In addition to that it has made declarations to recognize the victims of road crashes should be treated as the victims of crime. The governments of respective countries should provide the information guides on the legal procedures. The governments should also provide the compensation to the victims of the road crashes to provide immediate medical aid and support to help them cope. The governments of all nations should reserve a fund to safeguard the victims. The fund also can be collected from the offenders and violators of the road rules. [10].

The General Assembly of United Nations resolution 217/A article 8 and resolution 30/3452 has stated in the basic principles with the description of rights for the victims of crime, abuse of power and terrorism. This regulations have clearly mentioned the scope, timing and progress of the criminal proceedings against the terrorism. According to this article the victims should be provided with the proper assistance throughout the judicial proceedings. It also insisted the local judiciary system to avoid unnecessary delay in the disposition of cases and the execution of orders or granting compensations and awards to the victims [14].

### **Victims' rights in USA**

According to the Crime Victims' Rights Act (18 USC § 3771) the victims of crime can claim the right to be reasonably protected from the offenders of criminals or accused.

The victims can have the right to reasonable, accurate, timely reaction for the public court proceedings involving the crime of the accused.

The right of victim of crime can have the right to confer with the attorney for the Government.

The victim of crime can enjoy the right to full and timely restitution as provided in law.

The victim of crime can be entitled to have the right to proceedings free from unreasonable delay.

The victim of crime is reserved with the right to be treated with fairness, respect for the victim's dignity and privacy.

The United states of American Criminal Justice System has given the right to the victim of crime to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence determines that testimony by the victim would be materially altered if the victim listen other testimony at that proceeding [16].

### **Victims' right in UK**

The latest press release on New rights for victims of crime in UK has described the new version of rights to the victims of crime. The victims of crime have the right of information and communication. The victims can listened to and their views and needs taken seriously. The victims can get the support from the states of judiciary system with high quality and accessible to them all. The special crimes can be supported with specialist support to safeguard the victims. The government can extend the services at redressal cells with accountability. The government has incorporated the Victim's

Code in 2006 against the domestic violence and other violent retaliations against women with updated version of 2015. The victims of crime are assured with the rights with high quality and safety which are need to be considered as predominant in the world.

### **Justification**

The Criminal Justice System of India should be improved to ensure and strengthen the rights of victims. It is also advised that the courts may seek victim approval for imposing the sentence with the goal of improving the satisfaction of victim with their involvement in the justice process. The court of justice should not feel inferior while seeking the victim approval before imposing the sentence to the offender. The system should feel that the involvement of victim in the criminal justice system. The authorities of criminal justice system especially the police should be given training and continuous impingement of knowledge on rights of victims of crime and insist them to safeguard the rights by giving respect and enjoy the dignity [16].

The victims of road crash should be safeguarded by establishing a separate judiciary system in India to provide immediate compensation to the medical treatment for their injuries. The said judiciary system should dispose the compensation to the family members in the case of death occurred in the road crashes. The judiciary system also provide the directions to the state governments to compensate the victims of terrorism [2] [15].

## Evolution

The rights of victims of crime are predominantly defined and incorporated in Indian Criminal Justice System. UK is facilitating the high quality rights to the victims of rights. US is also providing the right kind of protection to the Victims of Crime. The implementation of rights of Victims of crime in India is still questionable and needs refinement in implementation through the authorities of Criminal Justice System especially from the Police. The sincere and honest officers should take the initiative to implement the rights of victims.

## Conclusion

The rights of victims initiated by the General Assembly of United Nations are followed by the Indian criminal justice system. The good laws and regulations taken from British Code of Criminal Justice has been the prime source in developing the Indian Criminal justice system. UK criminal justice system has delivered the best facilities to the victims of crime. Though Indian Criminal Justice System is configured and defined with good regulations and rights to the victims of crime, the implementation governance is not reaching the victims to enjoy the rights and the victims are becoming the scapegoats in the hands of contemporary political, bearocratical society.

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