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# VICTIMOLOGY AND RIGHTS OF VICTIMS UNDER CRIMINAL TRIAL

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## **Introduction**

The criminal justice system serves as a mechanism through which the State enforces laws, maintains order, and provides justice. Historically, however, its primary focus has been the **offender** — investigating, prosecuting, and punishing the wrongdoer. The victim, ironically the person most affected by the crime, has often been left without an effective voice in the process.

In traditional criminal jurisprudence, the offence is considered a wrong against the State, not the individual. This **State-centric model** views the State as the victim and prosecutor, while the actual human victim is relegated to the role of a witness. The emotional trauma, economic loss, and psychological suffering of victims rarely find acknowledgment in the courtroom.

Over time, this **imbalance in the justice process** gave rise to the field of *Victimology* — the study of victims, their relationship with offenders, and their treatment within the justice system. Victimology emerged in the mid-20th century as part of a global movement to humanize justice and restore equilibrium between the rights of the accused and the rights of the victim.

In India, the journey towards recognizing victims' rights began slowly but steadily. Judicial pronouncements under **Article 21 of the Constitution** (Right to Life and Personal Liberty) expanded to include the right to dignity, compensation, and fair treatment. Subsequent legislative amendments, such as the **Criminal Procedure Code (Amendment) Act, 2008**, introduced important provisions including **Sections 357A** (Victim Compensation Scheme) and the **Proviso to Section 372** (Right to Appeal by Victim).

The evolution of victim-oriented justice represents a shift from **retributive** to **restorative justice** — one that seeks not only to punish the offender but also to heal the victim and reintegrate them into society.

Despite legal progress, the practical reality for most victims in India remains bleak. They face **secondary victimization** through insensitive police procedures, delays, and lack of adequate information or support. Compensation schemes vary across states, legal representation is often inaccessible, and rehabilitation measures are poorly enforced.

The rationale for this research, therefore, is to examine whether India's criminal justice framework truly reflects a **victim-centric approach**. It seeks to understand the doctrinal basis of victimology, analyze relevant statutes and case law, and propose recommendations for strengthening victims' participation and protection within the trial process.

The Indian criminal justice system continues to favor the accused, granting them extensive procedural safeguards — presumption of innocence, right to counsel, protection against double jeopardy, etc. However, the victim's rights — to be informed, heard, protected, or compensated — are often overlooked.

### Objectives of the Study

1. To understand the concept and evolution of victimology as a branch of criminology and criminal law.
2. To examine the legal and constitutional framework protecting victims' rights in India.
3. To evaluate the participation, protection, and compensation rights of victims during criminal trials.
4. To analyze judicial trends and key case laws promoting victim-centric justice.
5. To identify shortcomings and propose reforms for improving victims' position in the justice process.

This is a **doctrinal research study** based primarily on secondary sources. It includes a detailed analysis of:

- Statutes (IPC, CrPC, Constitution of India)
- Judicial pronouncements
- Law Commission Reports
- Articles, commentaries, and international conventions

The study relies on **qualitative analysis** of legal principles, judicial reasoning, and policy frameworks relevant to victims' rights.

The research focuses on victims' rights within **criminal trials** in India, particularly during

prosecution and adjudication stages. It does not cover detailed empirical data or fieldwork but includes comparative references to international practices.

## Concept and Evolution of Victimology

The term *Victimology* combines two words — “*victima*” meaning one who suffers, and “*logos*” meaning study or knowledge. It refers to the **scientific study of victims of crime**, focusing on their suffering, their relationship with the offender, and their interaction with the criminal justice system.

According to **Benjamin Mendelsohn (1947)** — often called the “Father of Victimology” — victimology is “the study of the victim, the offender, and the social surroundings in which they interact.”

Similarly, **Hans Von Hentig** in his work “*The Criminal and His Victim*” (1948), emphasized that the victim is not merely a passive object but may also play an active role in crime causation.

In **ancient and tribal societies**, justice was primarily *victim-oriented*. The offender had to compensate the victim directly — through restitution, goods, or physical reparation. The objective was restoration, not punishment.

However, as states evolved, **crimes came to be viewed as offences against the sovereign**, not against individuals. The state assumed control over prosecution and punishment, effectively **excluding the victim from the justice process**. This transformation marginalized victims, reducing their role to that of an evidence provider.

By the mid-20th century, scholars and human rights activists began criticizing this exclusion, advocating a **restorative model** that reintegrates victims’ interests into justice delivery.

1. **Revenge Era:** Justice was personal; victims could retaliate directly (e.g., “eye for an eye” principle).
2. **State Control Era:** The state monopolized justice; victims lost active participation.
3. **Welfare and Human Rights Era (Post–World War II):** Focus shifted to victims’ rehabilitation, dignity, and compensation.
4. **Modern Victimology (Post–1970s):** Recognized as a separate discipline; international declarations (UN, 1985) emphasized victims’ rights.

- **Positivist Victimology:** Studies victim's behavior or vulnerability to understand why certain individuals are targeted.
- **Radical Victimology:** Examines how social structures — inequality, gender, caste — lead to victimization.
- **Critical Victimology:** Critiques how state and legal systems define “victims,” highlighting systemic injustices.

Victimology in India has evolved through constitutional interpretations, legislative reforms, and judicial activism.

- The **42nd Law Commission Report (1971)** first recommended statutory victim compensation.
- In **Rudal Shah v. State of Bihar (1983)**, the Supreme Court awarded compensation for unlawful detention, linking it to Article 21.
- **Bodhisattwa Gautam v. Subhra Chakraborty (1996)** held that compensation to rape victims is integral to the right to life.
- The **CrPC Amendment (2008)** introduced compensation, participation, and appeal rights for victims.

Today, India recognizes victims as essential stakeholders in criminal justice — not merely witnesses or complainants.

### **Legal Framework for Protection of Victims in India**

The Constitution of India, though silent on the word “victim,” indirectly protects their rights through fundamental principles:

- **Article 14:** Guarantees equality before law; victims are entitled to equal protection and fair treatment.
- **Article 21:** Protects right to life and personal liberty — interpreted to include right to compensation, privacy, and dignity.
- **Article 39A:** Directs the state to provide free legal aid to ensure justice for all citizens, including victims.

### **Provisions in the Code of Criminal Procedure (CrPC)**

The CrPC, 1973, as amended in 2008, provides explicit recognition of victims' rights:

1. **Section 154 CrPC:** Mandates registration of FIR for cognizable offences — the first step in victims' access to justice.

2. **Section 173(2)(ii):** Requires police to inform the victim about the result of the investigation.
3. **Section 24(8):** Allows victims to engage an advocate to assist the prosecution.
4. **Section 357:** Empowers courts to order compensation to victims out of fines imposed on the accused.
5. **Section 357A:** Directs state governments to create Victim Compensation Schemes for rehabilitation.
6. **Section 372 (Proviso):** Grants victims an independent right to appeal against acquittal, conviction for lesser offence, or inadequate sentence.

These provisions have significantly empowered victims, enabling their participation and restitution in the justice system.

### Indian Penal Code (IPC)

- **Section 228A:** Protects identity of rape victims; disclosure is a punishable offence.
- **Sections 326A & 326B:** Deal with acid attack offences and mandate payment of compensation.
- **Section 354 & 509:** Protect dignity and modesty of women.

These provisions reinforce the constitutional commitment to uphold victims' dignity.

### Special Legislations

Certain special laws provide enhanced protection and assistance to specific categories of victims:

- **Protection of Women from Domestic Violence Act, 2005:** Provides immediate protection orders, maintenance, and residence rights.
- **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:** Ensures relief and rehabilitation for victims of caste-based crimes.
- **Protection of Children from Sexual Offences (POCSO) Act, 2012:** Mandates child-friendly investigation and trial procedures.
- **Witness Protection Scheme, 2018:** Ensures safety and anonymity of victims and witnesses during trials.

Together, these laws create a holistic framework to safeguard victims' physical, emotional, and social well-being.

## Role of the Judiciary

The Indian judiciary has been instrumental in developing victims' rights jurisprudence. Courts have interpreted Article 21 expansively to include compensation, privacy, and participation. In **State of Gujarat v. Hon'ble High Court of Gujarat (1998)**, the Supreme Court observed that victims deserve empathy and fair treatment as much as the accused deserve procedural protection

## Rights of Victims under Criminal Trial

The rights of victims within the criminal justice system form the cornerstone of a **restorative model of justice**. These rights ensure that victims are not treated as mere witnesses but as active participants in the process of justice delivery. The Indian legal framework — supported by constitutional principles, statutory provisions, and judicial interpretations — recognizes multiple categories of victim rights.

### Right to Access Justice

The foundation of victims' rights begins with **access to justice** — the ability to report crimes and seek remedies.

- Under **Section 154 CrPC**, police officers must record every cognizable offence reported by a victim.
- If the police fail to act, the victim may approach the **Magistrate under Section 156(3)** to order an investigation.
- The Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh* (2014) held that registration of FIR is mandatory, thus ensuring victims are not denied the first step toward justice. This provision safeguards against police inaction and recognizes the victim's autonomy in initiating criminal proceedings

### Right to Fair Treatment

The concept of *fair trial* under **Article 21** extends to both the accused and the victim. Victims must be treated with respect, empathy, and fairness at every stage — investigation, prosecution, and trial. The **Malimath Committee Report (2003)** emphasized that victims should be provided information about case progress, hearings, and outcomes.

The **Supreme Court in State of Punjab v. Gurmit Singh (1996)** underscored the need for compassion and sensitivity, especially in cases involving women and children.

Traditionally, victims had no formal role in criminal proceedings. However, post-2008, this

has changed significantly:

- **Section 24(8) CrPC (Proviso):** The victim is entitled to engage an advocate to assist the prosecution.
- **Section 301(2) CrPC:** Victims can submit written arguments through their counsel.

Judicial precedents such as *Reena Hazarika v. State of Assam* (2018) have reinforced that the victim's participation is integral to a fair trial.

### Right to Compensation and Restitution

Victim compensation represents the most tangible form of restorative justice.

- **Section 357 CrPC:** Courts may order compensation payable from fines imposed on the accused.
- **Section 357A CrPC:** Mandates every State Government to create a Victim Compensation Scheme (VCS) to provide financial support even when the offender is not traced or convicted.
- **Ankush Shivaji Gaikwad v. State of Maharashtra (2013):** Supreme Court ruled that trial courts must consider compensation in every conviction case.

Compensation recognizes the **State's responsibility** to rehabilitate victims of crime — a fundamental component of social justice.

### Right to Appeal

The **Proviso to Section 372 CrPC (inserted in 2008)** grants victims an independent right to appeal against:

1. An order of acquittal.
2. Conviction for a lesser offence.
3. Inadequate compensation.

In *Mallikarjun Kodagali v. State of Karnataka* (2018), the Supreme Court affirmed this as a **substantive right** and not merely procedural.

### Right to Privacy and Dignity

Victims, particularly in sexual offences, have the right to privacy and protection of identity:

- **Section 228A IPC:** Prohibits disclosure of a rape victim's identity.
- **Section 327(2) CrPC:** Mandates *in-camera* trials in rape cases.
- *Nipun Saxena v. Union of India* (2018): The Court emphasized that victims' names, photos, or details must never be revealed in media or public records.

Such measures preserve dignity and protect victims from social stigma.

### **Right to Protection and Assistance**

The **Witness Protection Scheme, 2018** (approved in *Mahender Chawla v. Union of India*) provides security for victims and witnesses who face intimidation or threats during the trial. It allows:

- Identity protection
- Relocation or change of identity
- Financial aid during the trial

Victims of crimes such as human trafficking, sexual assault, and organized violence require such institutional safeguards.

### **Right to Legal Aid and Representation**

Under **Article 39A** and the **Legal Services Authorities Act, 1987**, victims are entitled to free legal aid.

The **National Legal Services Authority (NALSA)** and State Legal Services Authorities provide lawyers, counseling, and rehabilitation assistance to victims, ensuring they are not disadvantaged due to economic or social status.

### **Right to Rehabilitation**

Victims of certain crimes such as acid attacks, human trafficking, and sexual violence require not just financial compensation but also long-term medical, psychological, and vocational rehabilitation.

- In *Laxmi v. Union of India* (2014), the Supreme Court directed states to provide free medical treatment and minimum compensation to acid attack survivors.

This right recognizes the State's moral and constitutional obligation to restore victims to a life of dignity.

## **Judicial Recognition of Victims' Rights**

Judicial activism in India has been pivotal in shifting focus from offender-oriented justice to **victim-centric justice**. Courts have used the expansive interpretation of Article 21 to uphold the dignity and rights of victims.

## Landmark Judgments

### 1. **Rudal Shah v. State of Bihar (1983):**

Supreme Court awarded compensation to a man illegally detained for 14 years, linking it directly to Article 21.

### 2. **Delhi Domestic Working Women's Forum v. Union of India (1995):**

Directed establishment of criminal injuries compensation boards and free legal aid for rape victims.

### 3. **Bodhisattwa Gautam v. Subhra Chakraborty (1996):**

Declared that compensation is not only punitive but also rehabilitative, forming part of the right to life and dignity.

### 4. **State of Punjab v. Gurmit Singh (1996):**

Ensured privacy of rape victims during trials through in-camera proceedings.

### 5. **Ankush Shivaji Gaikwad v. State of Maharashtra (2013):**

Mandated courts to consider compensation under Section 357 CrPC in every conviction.

### 6. **Nipun Saxena v. Union of India (2018):**

Recognized victims' right to privacy and directed media and authorities to protect the identity of victims of sexual crimes.

### 7. **Mallikarjun Kodagali v. State of Karnataka (2018):**

Upheld the victim's independent right to appeal under Section 372 CrPC.

## Judicial Trends

The judiciary has progressively expanded the interpretation of constitutional rights, transforming victims from passive spectators to active participants. It has promoted **restorative justice**, emphasizing reparation and reconciliation over retribution.

## International Perspective on Victims' Rights

### UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

This landmark declaration by the United Nations is the foundation of international victimology.

It recognizes:

- Access to justice and fair treatment.
- Restitution, compensation, and assistance.
- Protection of victims of both crime and state abuse of power.

It calls upon member states to create mechanisms ensuring these rights, including financial compensation schemes and victim support services.

### **International Criminal Court (ICC) and Victim Participation**

The **Rome Statute (1998)** established the International Criminal Court (ICC), which gives victims a **formal role in proceedings**.

- Victims can present views and concerns through legal representatives.
- They can claim reparations directly from the convicted person or through the Trust Fund for Victims (TFV).

This global model reflects an advanced stage of victim empowerment within international criminal jurisprudence.

### **Comparative Practices**

#### **1. United States:**

The *Crime Victims' Rights Act (2004)* provides victims with eight enforceable rights, including the right to be heard and to receive restitution.

#### **2. United Kingdom:**

The *Code of Practice for Victims of Crime (2005)* ensures that victims are kept informed, treated with respect, and entitled to compensation.

#### **3. South Africa:**

The *Victims' Charter (2004)* guarantees rights to participation, protection, and reparation, emphasizing equality and dignity.

### **Lessons for India**

India can learn from these systems by institutionalizing victim liaison officers, national funds, and comprehensive victim service centers at district levels.

## **Challenges and Shortcomings**

Despite legislative and judicial advancements, implementation remains inconsistent. Major challenges include:

### **Lack of Awareness**

Most victims, especially in rural areas, are unaware of their legal rights, compensation schemes, or the process to seek assistance.

### **Implementation Gaps**

The Victim Compensation Schemes under Section 357A CrPC are poorly funded and vary widely among states. Many victims never receive the promised aid due to bureaucratic hurdles.

### **Secondary Victimization**

Victims frequently face harassment from police, insensitivity during cross-examination, and societal stigma — particularly in cases of sexual or domestic violence.

### **Procedural Delays**

Lengthy investigations and trials cause emotional and financial strain, often leading victims to withdraw or lose faith in justice.

### **Inadequate Rehabilitation**

Rehabilitation efforts focus mostly on financial aid, ignoring psychological counseling, education, or vocational training that are essential for true recovery.

### **Lack of Coordination**

There is little coordination between police, prosecution, and victim service agencies. Victims are often left navigating complex procedures without guidance.

### **Absence of Uniform Standards**

There is no comprehensive national policy standardizing compensation amounts, timelines, or procedures for victim rehabilitation.

## **Suggestions and Recommendations**

To create a more **victim-oriented criminal justice system**, the following reforms are recommended:

#### **1. Uniform National Victim Compensation Policy:**

Develop standardized compensation criteria across all states with time-bound disbursement.

#### **2. Victim Assistance and Support Centers:**

Establish specialized “Victim Support Cells” in every district, providing counseling, legal guidance, and rehabilitation services.

#### **3. Sensitization and Training:**

Introduce victim-sensitivity training for police officers, prosecutors, and judges to reduce secondary victimization.

#### **4. Restorative Justice Mechanisms:**

Incorporate mediation and community service to encourage offender accountability and victim healing.

**5. Strengthening Witness Protection:**

Fully implement and fund the Witness Protection Scheme, ensuring confidentiality and physical safety of victims.

**6. Enhanced Legal Aid:**

Appoint specialized “Victim Advocates” through Legal Services Authorities to represent victims at every stage.

**7. Use of Technology:**

Provide online portals for filing victim compensation claims and tracking case progress.

**8. Awareness Campaigns:**

Educate the public about victims’ rights through schools, community programs, and mass media.

**9. Data Collection and Monitoring:**

Create a national database to track compensation, case outcomes, and implementation efficiency.

## Conclusion

Victimology has transformed the understanding of justice by highlighting that punishment alone does not restore social harmony. A crime is not merely a wrong against the State but a **personal harm** to an individual who deserves recognition, respect, and reparation.

The Indian legal system, through progressive judicial interpretations and legislative reforms, has moved toward a more inclusive model that values victims’ participation, protection, and rehabilitation. However, **true justice remains incomplete** until these rights are uniformly enforced and victims are treated as equal stakeholders rather than secondary participants.

Building a **victim-centric justice system** requires not only legal provisions but also attitudinal change — a collective acknowledgment that justice must heal as much as it punishes.

Ultimately, the strength of any justice system lies not in how harshly it punishes the offender, but in how compassionately it restores the victim’s faith in law, dignity, and humanity.