



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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"ASSESSING THE VIABILITY OF VICTIM IMPACT REPORTS IN THE INDIAN LEGAL SYSTEM"

AUTHORED BY - INSIA ARORA

INTRODUCTION

In any society, the pursuit of justice is intrinsically tied to the protection and well-being of its citizens. An integral aspect of this pursuit lies in acknowledging the profound impact of criminal acts on victims and their families. In recent years, a growing emphasis on victim rights and restorative justice has sparked interest in introducing Victim Impact Reports (VIRs) as a means to ensure the voice of victims is heard within the legal system. This legal research paper delves into the feasibility and acceptability of implementing VIRs within the context of the Indian legal system.

Victim Impact Reports, also known as Victim Impact Statements (VIS) or Victim Impact Assessments, are written or oral accounts provided by victims or their representatives to convey the physical, emotional, and financial consequences of the crime they have endured. The primary aim of VIRs is to provide judges and other stakeholders with a comprehensive understanding of the aftermath of the crime on the victim's life, thereby influencing sentencing decisions and promoting a more victim-centric approach in the criminal justice process.

Despite the potential benefits of VIRs in terms of empowering victims and fostering restorative justice, the introduction of such a system raises several pertinent questions. The feasibility of implementing VIRs necessitates a comprehensive evaluation of existing legal frameworks, potential challenges, and the necessary safeguards to protect the privacy and well-being of victims. Moreover, the acceptability of VIRs depends on public perception, the readiness of legal practitioners, and the level of support from stakeholders within the justice system.

This paper seeks to shed light on the intricacies surrounding the implementation of VIRs in India. By

examining the potential benefits and challenges, this research aims to offer valuable suggestions for the effective and equitable incorporation of VIRs within the Indian legal system.

Furthermore, exploring the broader implications of VIRs on victim support mechanisms, the role of the judiciary, and the overall dynamics of the criminal justice process will be imperative. In doing so, we can envision a more comprehensive understanding of the impact of VIRs on the pursuit of justice and the reparation of victims.

In conclusion, this legal research paper embarks on a journey to assess the viability and public perception of introducing Victim Impact Reports in India. By evaluating the legal, practical, and societal aspects, we aim to provide informed recommendations for enhancing victim-centricity within the Indian legal system and fostering a more compassionate and equitable approach to justice. Ultimately, the successful integration of VIRs can significantly contribute to a more just and inclusive society, where the voices of victims are not only acknowledged but also embraced as a cornerstone of the justice-seeking process.

The rights of victims, and indeed victimology, is an evolving jurisprudence. It must find fulfillment not by giving more pain to the offender but by lessening the loss of a victim.¹ Krishna Iyer J. said that it is a weakness of our jurisprudence that the victims of the crime do not attract the attention of the law.² It needs no citations or studies to know and understand the fundamental connection that the harms caused to the victims of crimes are not just symbolic harm to the social order; it is substantive harms. Victims of crime suffered immense economic, emotional, physical, and mental trauma or agony. They often lost their human rights to life and liberty with dignity. The offenders of crimes are the violators of the constitutional and human rights of the victims. However, the question is whether only offenders of crimes violate such rights of the victims? In most of the criminal justice system globally, two types of victims' rights have been very well recognized. These are the right to participate in criminal proceedings and the right to be compensated for harms or injury suffered. The State being the custodian of all fundamental rights is duty-bound to protect the victims' rights. Therefore, in the welfare state, where the State fails in preventing the crimes or falls in preserving the constitutional and legal rights of the victims should not be categorized as a "secondary violator" of the rights of

¹ Maru Ram v. Union of India, (1981) 1 SCC 107

² Rattan Singh v. the State of Punjab, (1979) 4 SCC 719

victims? In this regard, there may be several arguments and approaches from both sides; however, the undeniable truth is that if justice is not done to the victim of the crime, criminal justice will look hollow.

Recently, on 27 November 2020, the High Court of Delhi at New Delhi, India passed a landmark judgment in *Karan vs. State NCT of Delhi*³ in favour of the most unfortunates forgotten people in the criminal justice administration system. The victims of crime!. In this judgment, the High Court took cognizance of victims' plight concerning the criminal injuries compensation. The Court showed its concerns over non-enforcement of the victims' compensation provision provided under the criminal Procedure Code.

The Court was emphatic about the need to protect the rights of victims of crime. Therefore, the Court has categorically recognized compensation (pecuniary) to the victims of crime as protecting their rights. It further emphasized that victims and their families (secondary or tertiary victims) need may not be the same; it is bound to be extensive and varied. Therefore, the Court believed that although the monetary compensation to the victims of crime cannot reconcile their losses which they suffered, it could be of some solace to them.⁴

The Criminal code of India provides provisions for the victim compensation in Chapter XXVII of Criminal Procedure Code (CrPC). However, the same has seldomly been applied by the concerned Courts. The Court's discretionary powers in the chapter stated above are related to the quantum of compensation to victims of crime only; therefore, considering the said discretion for hearing on compensation is a misconceived notion. The victim compensation provisions are mandatory.

In the backdrop above, the Delhi High Court directed the Trial Courts to exercise their powers under Section 357(3), CrPC, for awarding compensation. The High Court further directed the DSLSA to submit a Victim Impact Report (VIR) with their recommendations in the prescribed format provided in the judgment to the Trial Court, who thereof, after considering the same, has to determine the compensation amount. The purpose of VIR is to weigh the impact of crime on the victim. Its other objective is to assess the accused's capacity for quantifying and awarding compensation to the victim.

³ *Karan vs. State NCT of Delhi*, Delhi High Court, dated 27.11.2020 in CrI. A. No.352 of 2020

⁴ Ibid.

From the standpoint of victimology, the main aim and object behind formulating such a resolatory process are to deliver complete and adequate justice to the victims.

Indian judiciary has always been the guardian-protector of the constitutional and fundamental rights of the people. By formulating a method concerning the victim, compensation is a progressive step and can be considered part and parcel of judicial activism. The judiciary has put the wheel of justice in motion. However, the strength of the spikes of the wheel is yet to be checked. It has to pass the rule of enforceability. The present paper has tried to explore the difficulties in its practical implementation and further explore the viability of the Victim Impact Report- Delhi Model (VIR-D) at the pan India level.

At this juncture, it is pertinent to note that the VIP and the Victim Impact Statement or Assessment (VIS) are not the same. However, they share the same contextual approach; that is, they assess the impact of harm or loss caused to the victim due to crime committed by the convict. However, they are distinct from each other based on their scope, purposiveness, and procedure application. The Victim Impact Statement or Assessment (VIS) is the old player of the field of victimology. The VIS is a document of a victim's expression to the Court about how the crime has affected or has been affecting him or her. This document is taken into account while considering the sentencing of the convict.

In comparison, the VIR is a report prepared by a third-party agency after conducting a summary inquiry. It is to decide victim compensation. For the present paper, a limited part of VIS, which is relevant for comparative studies, has been considered. In addition, the present paper has tried to explore the suitability of the mode and procedure provided in the judgment for awarding compensation.

VICTIM IMPACT REPORT VS. VICTIM IMPACT STATEMENT

Victim Impact Report is already mentioned earlier. On the cost of repetition, VIR is the report to be prepared by a third person based on information provided to it. It consists of three parts. First, the description of harm caused to the victim(s) due to commission of a crime by the convict, second, the

paying capacity of the convict, and third, the recommendation regarding compensation component by the Third person. The report is to be submitted in Court where the Court considers it for granting compensation to the victims. However, the Court has to determine the amount of compensation based on the material placed on the court record by the parties and the argument advanced. Thus, the VIR is, at best, called an informative document regarding the compensation amount in the position mentioned above.

A victim Impact Statement is a statement of the harm, losses, injuries, or damages suffered by the victim(s) regarding their perception and expressions of the emotional, physical, psychological, or economic harm they suffered due to the commission of a crime. It symbolizes the victim's active participation in the criminal justice system as it allows the victim to share thoughts and feelings which will otherwise not allowed at trials. In addition, it gives a chance to place on the court record the impact of harm from the victim's perspective in a subjective manner. Thus, one of the rights of the victim is to participate in criminal proceedings. The same has also been emphasized upon by the Apex Court wherein the Court was pragmatic about the necessity of the Victim Impact Statement to incorporate in sentencing policy. The victim's involvement in proceedings further gives a sense of satisfaction with the justice process and creating an avenue for psychological healing and restoration. There are disadvantages also attached with the VIS; that is, it can be misused by the victims using it as a weapon of revenge or retaliation.⁵ Sharing VIS is a voluntary act on the victim's part, which means, if the victim does not want to participate, he or she will not be forced to share the statement. However, if the victim chooses to share the Victim Impact Statement, then the offender may have the opportunity to cross-examine the victim in a given case. In various countries such as the USA, Canada, Australia, Malaysia, and South Africa, the Victim Impact Statement is part of sentencing policy and is also consider for awarding compensation in some countries such as in the USA; the VIS is being used for both the sentencing of the convict as well as for compensating the victim.⁶ Analysis of the Victim Impact Statement is beyond the scope of this paper; however, the mentioning of the same in brief is to understand its basic connotes and to show the difference between the scope, nature, and purpose of the Victim Impact Report from the Victim Impact Statement.

⁵ Ismail, S., 2021. Victim Impact Statement In Criminal Sentencing: Success Or Setback For The Criminal Justice Process?. [online] Available at: <<https://www.researchgate.net/publication/322405791>> [Accessed 4 August 2023].

⁶VICTIM IMPACT STATEMENTS: KNOW YOUR RIGHTS. [online] Available at: <https://www.justice.gov/sites/default/files/usaowdla/legacy/2013/02/27/vns_Victim%20Impact%20Statements%20Know%20Your%20Rights.pdf> [Accessed 4 August 2023].

The question is whether VIR and VIS can be substituted for each other? If yes, which one is better to opt for?

In general, the Victim Impact Report is pro-restorative whereas, Victim Impact Statement is pro-retributive. However, both deal with a similar fundamental point: the inquiry or analysis of the impact of the harm caused to the victim due to the commission of a crime. So, it can be comfortably supposed that they can be a substitute for each other. Now the question remains which one could be better?⁷

ISSUES THAT MAY ARISE IN IMPLEMENTING THE VIR-D MODEL INCLUDES

1. Adverse effect on Speedy justice. The author understands that in applying the procedure in terms of the Karan Case⁸, as described above, all the stakeholders of the justice administration system have to face specific fundamental difficulties such as-

a. delay in passing judgment on sentence is a highly probable outcome of the waiting period of at least 60 (sixty) days, ideally in every conviction case. It is assumed that all the parties would act within the time frame prescribed.

b. However, in the absence of empirical data, let's keep in mind the external factors that would adversely influence the time frame, such as the availability of competent and authorized human resources in time, general pendency of cases in Trial Courts, and working culture of legal professionals and the courts. For instance, the delay in submitting the convict's affidavit beyond ten days or delay in filing of prosecution's affidavit beyond 30 days cannot be ruled out even assumingly that the delay was caused due to some just and plausible reasons.

c. Similarly, there is no time prescribed for sending relevant records by the trial Court to the DSLSA. The prescribed rule says "immediately" after receiving the affidavit from the convict. The word "immediately" must not be construed as before hands; it must be just and within a reasonable time or without unnecessary delay.

d. Delay in mandatory inquiry, recommendation, preparation of VIR, and submission of the same by the DSLSA beyond 30 days from the date of receiving all the documents from all concerns cannot be ruled out, especially when the Authority has to depend on persons of different departments who are

⁷ Sarita K. Sharma, Feasibility and Acceptability of Victim Impact Report (Delhi Vir Model) in India – An Analysis, 3 (4) IJLSI Page 358 - 371 (2021), DOI: <https://doi.org/10.10000/IJLSI.11899>

⁸ Karan vs. State NCT of Delhi, Delhi High Court, dated 27.11.2020 in CrI. A. No.352 of 2020

not directly in their control or supervision. Also, there is no time frame or mandatory rules prescribed for the assistance in inquiry within 30 days.

e. Also, there is no timeframe prescribed for deciding the compensation by the Trial Court after receiving the VIR from DSLSA.

Thus, the likelihood of delay in delivering justice to the satisfaction of all the stakeholders cannot be ruled out.

2. Significance of Victim Impact Report. It appears that the Victim Impact Report is the least significant document for the consideration of awarding victim compensation under Section 357 CrPC by the Court for the reasons that-

a. As it appears, the Trial Court has to determine the amount of compensation based on material provided and argument advanced by the parties. Therefore, the VIR is relevant for consideration of harms caused and payable capacity of the convict. However, the acceptance of the recommendation of the DSLSA is not mandatory. Therefore, it can be comfortably presumed that all the arguments qua the compensation to be awarded shall remain open before the Trial Court even after the whole exercise done by DSLSA as described above.

b. Another example, if the DSLSA finds that the convict is not capable of paying, then there is no question of giving recommendations.

c. Also, if the trial court also finds the exact status of the accused, the Court has to invoke Section 357A of CrPC. In that case, the matter shall again send back to the DSLSA. Moreover, it is pertinent to note that the victim's compensation scheme under this provision is limited to certain heinous crimes. It does not cover victims of all the crimes, such as it does not cover loss/damages suffered by the victim due to offence against property.

d. Inquiry under objection: In the case where Section 357A is invoked, a different process is to be followed because, in that case, the compensation is not to be paid by the convict to the victim; therefore, the convict has no role to play. The compensation is to be paid by DSLSA from the fund created for this purpose. However, in compensation under Section 357(3) CrPC, the convict has to compensate the victim from his or her funds. Thus, there is a high possibility of challenging the inquiry or VIR before the Court of law by the convict on various grounds, such as refuting the harm and its impact claimed therein, lack of fairness in inquiry, or report based on incorrect information facts.

3. Lack of fairness. It appears that there is no sanction attached to the victim's version of harm in the Victim Impact Report. Therefore, it would depict a lack of fairness towards the convict who is

directed to compensate the victim without himself getting the chance to cross-examine the victim in that regard.

4. No substantive benefits shall be achieved. The process prescribed appears to be complexed in nature, time-consuming, expensive, needs enormous human resources, and the Victim Impact Report is not very effective.

5. Other factors. Such as monitoring all the cases by DSLSA until they attain finality. In other words, until the parties exhaust all the remedies up to the Apex Court. It will divert the sources, funds, and resources of the legal cell authority from their other necessary and practical tasks; or

Issues related to other statutory provisions may also crop up, for instance, issues related to the right to appeal, revisions, effect on limitation periods, the multiplicity of litigations (such as two appeals may be preferred first against the judgment of conviction and another later against the verdict on sentence), bail, jail, or parole.

6. It is analyzed that besides other complexity, the voluntariness of victim participation is missing in VIR- Delhi Model (emphasized) because it is made a mandatory process in all conviction cases.

7. It is a complex, expensive, and time-consuming affair, especially keeping in mind the population of India. for instance, in the year 2019, the total cases of conviction in Delhi were in 17,57430 Cases under IPC and 6356 Cases under Special laws. If we consider 365 days as working, even then, the ratio of cases that undergo the VIR-D process will be 48 cases under IPC alone per day. One has to keep in mind the other factors, such as the strength of population ratio per police personal, cases per judicial officer, and infrastructure. The total convictions tally for all over India is 8,37,075 cases in IPC and 13,78,322 Cases under Special laws.⁹

The points above are illustrative. The ground reality could be explained and interpreted from the empirical data in this regard. In the absence of empirical data, the Author hypothesizes the issues, analyze the same and tried to interpret the prescribed rules based on known legal parameters of the criminal justice delivery system. In a nutshell, for the actual practicability and suitability of the process, the specified mode and the formulation of the victim Impact report need modification. The same in the present form may not be viable enough to secure and ensure complete justice to any of the stakeholders.

⁹ Crime in India 2019. [online] Available at: <<https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>> [Accessed 4 August 2023].

CONCLUSION

Retribution is one of the goals of sentencing policy, and restoration is one of the goals of compensating policy. Thus, to impart confidence to society in the criminal justice system, both goals should be given equal importance. The steps taken by the judiciary are commendable. However, the mechanism designed for enforceability is appeared to be more promising on paper from its practicality standpoints. Its needs extensive modification or alterations. Therefore, implementing the Victim Impact Report Delhi (VIR-Delhi Model) should be deferred for the time being, and extensive empirical and legal research should be carried out in a time-bound manner to get fruitful results in the future. Also, till the coming of an effective process, the Trial Courts can be directed to issue notice to the victim to the effect that if the victim desires, they may participate in the proceedings and share their Impact Statement (VIS) orally or in writing before it.

Similarly, the concerned Court can direct the accused or convict to file an affidavit of asset and income or declaration that he or she is insolvent with relevant details. Thereafter, before awarding compensation, the Court may make inquiries in such cases where it deemed to do so. The factors for considering the impact of harm mentioned in the VIR-D shall be work as a guideline for the Court to determine the quantum of compensation.

To conclude, the feasibility and acceptability of Victim Impact Reports (VIRs) in India have been thoroughly examined in this legal research paper. The analysis reveals that introducing VIRs in the Indian legal system holds considerable potential to enhance victim-centricity and provide a deeper understanding of the impact of crimes on victims and their families. While the concept aligns with principles of restorative justice and victim rights, its successful implementation requires careful consideration of various challenges.

- 1. Legal Framework:** To pave the way for VIRs in India, it is crucial to enact comprehensive legislation outlining the purpose, scope, and guidelines for VIR submission. The law should ensure that VIRs are admissible in court proceedings and hold a significant weight in sentencing decisions.
- 2. Training and Sensitization:** Judges, lawyers, and law enforcement personnel should receive specialized training on handling VIRs to understand the nuances of victim trauma and ensure empathetic consideration during legal proceedings. Sensitization programs can promote a victim-

centric approach within the justice system.

3. Privacy and Safety Measures: Given the sensitivity of VIRs, robust measures should be put in place to protect the privacy and safety of victims and their families. Anonymity options and restricted access to VIRs must be implemented to prevent any potential harm.

4. Support Mechanisms: Implementing VIRs should be accompanied by strengthening victim support mechanisms. Providing counseling services, legal aid, and rehabilitation resources to victims is essential to ensure their well-being throughout the legal process.

5. Public Awareness Campaigns: Conducting public awareness campaigns on the importance and benefits of VIRs can help overcome potential resistance and skepticism. Educating the public about the positive impact of VIRs on victims' lives can garner support for the initiative.

6. Pilot Programs: Before full-scale implementation, conducting pilot programs in select regions can help assess the effectiveness of VIRs, identify challenges, and make necessary adjustments based on real-world experiences.

7. Interagency Collaboration: Collaborative efforts between various agencies, such as law enforcement, social services, and the judiciary, are vital to ensure a seamless integration of VIRs into the legal system and to provide holistic support to victims.

8. Research and Evaluation: Continuous research and evaluation of the implementation of VIRs will provide valuable insights for refinement and improvement. Regular assessments can help identify potential biases and ensure the integrity of the VIR process.

In conclusion, the introduction of Victim Impact Reports in India can be a transformative step towards a more victim-centric legal system. With careful planning, collaboration, and public awareness, VIRs can become an essential tool to address the needs and rights of victims, promoting a fair and compassionate justice system in the country.