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# **RIGHTS OF VICTIMS UNDER THE INDIAN CRIMINAL JUSTICE SYSTEM**

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## **ABSTRACT**

Victims have few legal rights to be informed, present and heard within the criminal justice system. Victims do not have to be notified of court proceedings or of the arrest or release of the defendant. The victim of the crime sets the criminal justice in motion by giving information to the police which is expected to reduce in writing. The position of victims who happen to be women or children has not merited the attention it deserves in the procedural statute. The support, protection, information, practical needs, reparation of the victims shall be recognized in the criminal justice system. The penal philosophy of India has accepted the concepts of prevention of crime and treatment and rehabilitation of criminals which have been reiterated by various judgements of Supreme court. Victims have less rights under Indian criminal justice system because the state undertakes the full responsibility to prosecute and punish the criminals by treating the victims as mere witnesses.

## **INTRODUCTION**

The drafters of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power have tried to give the widest scope in the definition of the term victim to give it a larger coverage. They have defined a victim as, “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 the Member States, including those laws proscribing criminal abuse of power”. This has made it possible to include not just the main victim who has suffered the trauma of the crime first-hand but also extends to people who have suffered vicariously through the main victim, to also be included in the definition of a crime

victim.<sup>1</sup>

By reading the title, a question arises in our minds: Who is a victim? Generally, people believe a victim is a person who has been harmed physically. But it is not entirely true.

A victim is a person who has been harmed physically and mentally. As per Section 2 (a) of the Code of Criminal Procedure 1973, *a victim is a person who has suffered any loss or injury caused because of the act or omission for which the accused person has been charged.*<sup>2</sup>

## **PROVISIONS FOR VICTIMS IN INDIAN CRIMINAL LAWS**

After years of debates and discussions some of the provisions of international community of 1985 were recognized when the UN Declaration was adopted by the General Assembly. In India, The Protection of Human Rights Act, 1993 defines “Human Rights” as, “Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by Courts in India.”<sup>3</sup>

Taking into consideration the pathetic condition of the crime victims, ascertainment of their human rights has become the need of the day. India is a frontrunner in advancing the cause of human rights but when it comes to human rights of victims of crime, the picture appears to be very bleak with victims.<sup>4</sup>

In general, a victim's rights can be classified in to following classes;

1. Right to be treated with self-respect
2. Right to be treated with self-respect
3. Right to be present
4. Right to be heard
5. Right to rational protection from terrorization and injury
6. Right to restitution
7. Right to information
8. Right to compensation especially for crimes of violent nature

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<sup>1</sup>Madhavi Raje, “Victim’s rights under the Indian criminal law system”, <https://blog.ipleaders.in/victims-rights-under-the-indian-criminal-law-system>.

<sup>2</sup> Megha Singal, “Rights of Victims in India”, <https://lawbhoomi.com/rights-of-victims-in-india/>

<sup>3</sup> Ravi Kumar Tyagi, “Victims Human Rights In India: Constitutional References”, <https://ignited.in/a/57881>

<sup>4</sup> Ibid

9. Right to speedy proceedings
10. Rights to privacy<sup>5</sup>

In our Indian criminal justice system, a victim suffers everyday as the crime is committed against him/her and also because he/she has to undergo a lot of manipulation of the existing system. Whereas, the person who is found guilty is sheltered, nursed, lighted, and entertained in prison for which the state gives the expenditure from the taxes that the victims of crime are not provided with.<sup>6</sup>

Justice V. R Krishna Iyer in **Rattan Singh v. State of Punjab**<sup>7</sup> correctly said that: It is a weakness of our jurisprudence that victim of crime and the distress of the dependents of the victim do not attract the attention of law. However, the reimbursement for victims is still the disappearing opinion of our criminal law. This shows the deficiency in our system, which must be rectified by the legislature.

### **INTERNATIONAL HUMAN RIGHTS NORMS IN INDIA:**

Article 51 of the Indian Constitution imposes an obligation upon the State to promote respect for International law and treaty obligations.

Regarding treaty obligations, India has acceded to the International Covenant on Civil and Political Rights (ICCPR), 1966 on 10th April 1979. India has signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 on 30th July 1980 and ratified it on 9th July 1993. India has acceded to the Convention on the Rights of the Child (CRC), 1989 on 11th December 1992. India has ratified the International Convention on Elimination of All Forms of Racial Discrimination (ICERD), 1965 on 3rd December 1968. India has signed the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 on 14th October 1997.

Regarding India's status in relation to ICCPR, it was observed by the Supreme Court in D.K.

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<sup>5</sup> ibid

<sup>6</sup> Yukta K, "Rights of Victims in Indian Criminal Justice System", <https://www.legalserviceindia.com/legal/article-5591-rights-of-victims-in-indian-criminal-justice-system.html#:~:text=Right%20to%20rational%20protection%20from,for%20crimes%20of%20violent%20nature.>

<sup>7</sup> 1980 AIR 84 1980 SCR (1) 846 1979 SCC (4) 719

Basu case<sup>8</sup>

India is a signatory to ICCPR, 1966. It has a binding effect on India because of its being a ratifying State. To give effect to the provisions of ICCPR, an ordinance was promulgated that resulted into the Protection of Human Rights Act, 1993 of late, the reference to International Covenants being made by Indian Judiciary can frequently be found in various judgments.<sup>9</sup>

### **VICTIMS' HUMAN RIGHTS IN HUMAN RIGHTS ACT, 1993**

The Protection of Human Rights Act, 1993 (No. 10 of 1994) not only defines 'human rights' but prescribes for the constitution of Human Rights Commission, Human Rights Courts or the Special Courts and Special Investigation Teams to look in to the cases of alleged violation of human rights. The Human Rights Commission may give its recommendations or may take any other action as it may deem fit for the protection of human rights<sup>10</sup>.

The Protection of Human Rights Act, 1993 (No. 10 of 1994) defines "Human Rights" as the rights that relate with life, liberty, equality and dignity of the individual as either guaranteed by the Constitution of India or the rights as embodied in the International Covenants that are enforceable in India.<sup>11</sup>

As far as rights guaranteed by the Constitution of India are concerned, Part III of Constitution of India guarantees certain rights as fundamental rights and provides a protection mechanism for the same in case of their violation in the form of Article 32 and 226.<sup>12</sup>

In case of international covenants, the Human Rights Act says that to find out rights embodied in International covenants, a reference has to be made to the International covenant on civil and political rights and the international covenant on economic, social and cultural rights as adopted by the general assembly of United Nations on 16th December 1966. Adding to this list the Protection of Human Rights (Amendment) Act, 2006 provides for insertion of any other covenant or convention that has been adopted by the General Assembly of the United Nations and has been

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<sup>8</sup> (1997 (1) SCC 416)

<sup>9</sup> Supra at 3

<sup>10</sup> ibid

<sup>11</sup> ibid

<sup>12</sup> ibid

specified by the central Government through notification.<sup>13</sup>

The Human Rights Act provides that a victim can approach the Human Rights Commission or the Commission itself can take steps to inquire suo moto or it can inquire on the direction or order issued by any court in case there is

- a. Violation of Human Rights or an abetment thereof,
- b. Or there is a negligence on part of a public servant to prevent such violation.

Most of the time we see how the main attention of the State and its functionaries is to punish the accused and in doing so the interests and rights of the victim get ignored. To ensure that justice is properly dispensed the United Nations General assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which recognised 4 major rights for victims of a crime. These rights are:

1. Access to justice and fair treatment
2. Restitution
3. Compensation
4. Assistance

#### **Access to justice and fair treatment**

Looking at the provisions of law, one can easily make out that criminal justice is more tilted towards ensuring the protection of the accused. The main attention of the State is to hear him out and if his guilt is proved then take all measures to ensure that he does not go unpunished. We can find various provisions like section 56 and section 76 of CrPC that make it mandatory for the accused to be presented before a judicial magistrate within 24 hours of arrest without any delay shield the accused from unnecessary harassment. However, concerning the victim, the rights are not well codified under the Indian criminal justice system.<sup>14</sup>

Despite the tilt towards the accused, there are still provisions granting rights on the victim which help in eliminating further victimization. Section 439 provides that before granting bail to the accused the victim has to be informed unless for cogent reasons court thinks it would not be

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<sup>13</sup> Supra at 3

<sup>14</sup> *Rachit Garg*, “Victim’s rights under the Indian criminal law system”, [https://blog.iplayers.in/victims-rights-under-the-indian-criminal-law-system/#Access\\_to\\_justice\\_and\\_fair\\_treatment](https://blog.iplayers.in/victims-rights-under-the-indian-criminal-law-system/#Access_to_justice_and_fair_treatment)

practicable to inform him. Furthermore, by the virtue of section 439(2), the victim can also appeal against the bail granted to the accused. This provision ensures that the accused is not eased out without the knowledge of the victim. When a crime happens, it is treated not just as a crime against the individual but as a crime against society. Therefore, State is the prosecutor in such cases and a Public Prosecutor or an Assistant Public Prosecutor is in charge of the case. In case the victim wants to engage any pleader then he can do so. Such a leader has to act under the direction of the Public Prosecutor or the Assistant Public Prosecutor. Section 154 of the Code prescribes the procedure for lodging the first information report (F.I.R). As per this section, the victim can either give information relating to the commission of the cognizable offence in writing or orally to the officer in charge of the police station who shall then reduce it to writing. In case the officer in charge of the police station refuses to take down the information then the victim can the substance of such information to the Superintendent of Police who can either conduct the investigation himself or ask any of his subordinates to do the same. It has been a much-debated question whether lodging FIR is mandatory or if there is discretion upon the officer in charge of the police station. This issue has been resolved in the case of Lalita Kumari v Government of U. P<sup>15</sup>. where it was held that section 154 of the Code is a mandatory provision and in case a person comes with the information of a cognizable offence then the officer in charge of the police station is bound to register the FIR. This mandatory nature of the provision ensures that it is easy and swift access to justice for the victim, judicial oversight and it also reduces the chances of manipulation in criminal cases.

Even in cases of plea bargaining, the opinion of the victim in granting it is considered. Plea bargaining is basically a negotiation between the accused and the prosecution for a lesser punishment. The outcome of plea bargaining is based on mutual satisfaction and it may even involve payment by the accused to the victim for the expenses he had incurred. This provision is based on fairness.

### **Compensation/restitution**

It has been a topic of much debate and discussion whether the baton of the justice givers ends at the final result of the case, i.e., merely punishing the wrongdoer or does it extends to ensuring that the aggrieved party is rehabilitated. Rehabilitation of the victim becomes even more essential in certain grave crimes like rape etc. and without providing a proper mechanism for rehabilitation

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<sup>15</sup> (2014) 2 SCC 1.

the whole criminal justice system would fall shallow. The true idea of justice can only be achieved when there are not just punitive measures for the wrong-doer but also providing rehabilitative measures for the ones who fall prey to such wrongful acts. The fines and other punishments are given to the accused by the court are punitive measures. The criminal courts have to deal with the punitive part and punish the offender for his wrongful acts, whereas, the civil court has to get the victim compensated by the accused. Along with the punitive measure, the criminal court may also allow compensation to the crime victim that can be done without causing any disturbance to the civil and criminal process and would also save time, money and efforts. The provision related to compensation is encapsulated under section 357 of CrPC. However, compensation under this section can only be provided if the accused has been convicted and sentenced. While deciding the compensation the court will look into both physical and financial loss caused to the accused. If the court orders a sentence of fine or any other sentence of which a fine is a part then the maximum compensation that can be given, as per section 357(1) is the maximum fine that can be imposed as compensation as to be given out of the fine so imposed. Furthermore, section 357(3) can be construed liberally as it allows compensation only in cases where a fine is not imposed. The object of sub-clause 3 of section 357 is to allow compensation in those cases where fine does not form a part of the punishment given.<sup>16</sup>

There are several case laws where the courts have ordered compensation to the victim in case the State or its functionaries were unable to protect the life, liberty or dignity of such a victim. The provision for victim compensation was introduced in CrPC in 2009 by adding section 357A which mandated the State Government to coordinate with the Central Government and prepare a scheme fund for victim compensation. It provides that where the trial court feels that the compensation awarded or in those cases where the accused has been discharged or acquitted then compensation can be awarded to the victim for his rehabilitation. Clause 2 of section 357A provides that the where the court makes a recommendation for compensation the State Legal Services Authority (hereinafter SLSA) or the District Legal Services Authority (hereinafter DLSA) has to decide the quantum of punishment that has to be given. There can even be cases where the offender cannot be identified. In such cases, the Code provides relief to the victim or his dependents who can make write an application for such compensation from SLSA or DLSA who shall then conduct an enquiry within 2 months and if satisfied award adequate compensation.<sup>17</sup>

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<sup>16</sup> Supra at 14

<sup>17</sup> ibid

The court has time and again held that section 357 regarding compensation should be construed liberally and the court should record its reason for allowing or not allowing the same.<sup>18</sup>

### **Right to Information**

General information of interest to victims should be provided by the criminal justice system. It includes information on the right to attend a proceeding, submit a victim impact statement, sue the offender for money damages in the civil justice system, file for a protection order, and collect witness fees for their testimony, among others. The victim should be informed of various proceedings in the criminal justice process such as the arrest of the accused, bail release and related proceedings, dismissal of charges, negotiated pleas, sentencing hearings, parole release and related proceedings etc.<sup>19</sup>

### **Right to the Expedient Return of Personal Property**

Sometimes, a victim of a crime may suffer the loss of property. This loss can either be due to theft or the seizure of property by the police. Generally, the property seized is returned to its rightful owner when it is no longer required as evidence in criminal prosecution. Some states have attempted to impose specific time requirements for the return of property so that the victim is not deprived of his property for a long time.<sup>20</sup>

### **Right to a Speedy Trial**

This right is provided by many jurisdictions to crime victims. Moreover, some specific cases are given priority as compared to others due to their facts and circumstances by several jurisdictions. Such priority cases can be cases involving children or vulnerable elderly victims.<sup>21</sup>

### **Right to Privacy**

Furthermore, many victims back down from seeking justice because of the fear of harassment or retaliation from their known ones and offenders. Victims have the right to protect their privacy such as name, address, phone number etc. In addition, particular communications, such as conversations between husband-wife, doctor-patient, attorney-client etc. are safeguarded from judicial disclosure<sup>22</sup>.

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<sup>18</sup> ibid

<sup>19</sup> Megha Singal, "Rights of Victims in India", Law Bhoomi, <https://lawbhoomi.com/rights-of-victims-in-india/>

<sup>20</sup> ibid

<sup>21</sup> ibid

<sup>22</sup> Supra at 19

### **Victim's Rights under Indian Penal Code**

The Indian Penal Code is applicable to all Indian citizens who commit crimes within the Indian Territory. It is a list of offences and its punishment. The Code describes offence as an act or omission punishable by law. One of the major advantage to victims protection was received by the Criminal Law Amendment Act, 2013 since, for the first time, it had introduced a number of new crimes for protection of women against acid attacks (Sec. 326A20 and 326B21), sexual harassment (Sec. 345A), voyeurism (Sec. 345C) and stalking (Sec. 345D) and it also widened the scope of definition of rape (Sec. 375) in IPC.<sup>23</sup>

The two significant remedies of criminal justice system are compensation and restitution which now, have become civil remedies during the modern period. This invited the attention of various jurists to analyze the problems of victims from a different perspective to improve their position and bring them on equivalence with the accused.<sup>24</sup>

### **Victim's Rights under Code Of Criminal Procedure**

Indian criminal law in a broad sense includes both the substantive criminal law and the procedural criminal law. Here, the Substantive criminal law describes offences and punishments for each of those offences, whereas the procedural criminal law manages the substantive law. In any circumstance where the procedural criminal law is absent, the substantive criminal law would be considered as almost worthless.<sup>25</sup>

The basis of the process that consists plea bargaining are found in Section 206(1) and 206(3) of the CrPC. Plea Bargaining as a concept was introduced by The Law Commission of India in its 142nd, 154th and 177th reports. In these reports, the Committee advocated that the concept of plea-bargaining should be introduced into the Indian criminal justice system to enable the past resolution of criminal cases and lessen the burden on the courts.<sup>26</sup>

The victim is represented by the Public Prosecutor who is appointed by the state. A proviso has been added to Section 24(8) which allows the victim to choose an advocate of his choice for assisting the public prosecutor according to the amendment of 2008. However the Code identifies

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<sup>23</sup> Yukta K, "Rights of Victims in Indian Criminal Justice System" Legal services India , <https://www.legalserviceindia.com/legal/article-5591-rights-of-victims-in-indian-criminal-justice-system.html>

<sup>24</sup> ibid

<sup>25</sup> Supra at 23

<sup>26</sup> ibid

few rights that favor the victims but they are not as operative as those of rights of accused. For example, the code grants a right to victim to choose his own private lawyer but the authority given to that lawyer is limited to appoint where he can only submit the written arguments after the evidence is recorded and only after the court permits.<sup>27</sup>

a) Rights Of Victims During Filing FIR;

The police, being the primary authority play an important since they are the first authority to examine the case from a victim's perspective. Regrettably, in India the victims are still provided with the treatment as mentioned in the United Nation Handbook on Justice for Victims. The police, despite of being the primary authority to investigate into the case, are totally unaware of the international developments in areas such as victimology and well treatment that should be given to the victims.<sup>28</sup>

Negative and ill treatment by police themselves will form a wrong perception of Indian criminal justice system in the eyes of victims because as stated by United Nation Declaration, treatment with compassion and respect for their dignity is no doubt found missing at this stage. Section 25 of the Indian Evidence Act, No confession made to a police officer shall be proved as against a person accused of any offence, is not taken seriously and the government and the police department end up following the policy of sanitizing the police to a better treatment of victims.<sup>29</sup>

b) Rights Of Victims During Judgement

In a criminal case, after the judgment is pronounced, the victim's role in that case ceases to exist. But the victim should be offered with some rights after the judgement in order to ensure complete justice.

**Compensation to victim;**

while pronouncing the judgement, the victim should be given the right to get compensation. According to section 357(3) of the Code of Criminal Procedure, the court has the right to grant compensation for any loss or injury suffered by the victim, even in cases where fine was not levied upon on the accused.

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<sup>27</sup> ibid

<sup>28</sup> Supra at 23

<sup>29</sup> ibid

The Supreme Court of India in **Harikishan & State of Haryana v. Sukhbir Singh**<sup>30</sup> observed that courts in India rarely make use of section 357 of CrPC to grant compensation to victims of crime. Keeping in mind the recommendations given by the Malimath Committee and the Law Commission, the legislature inserted a provision in section 372 of the Code through the Amendment Act of 2008 to provide victims their right of appeal.

## **VICTIMS' RIGHT TO JUSTICE IN INDIA:**

### **CONSTITUTIONAL PROVISIONS**

#### **1. VICTIMS' RIGHT TO PROTECTION:**

Article 21 relates with the Human Rights of every person and thus has an equal Application for protection to an accused as well as the victim of a crime. To safeguard the human rights of every person is the duty of the State. It was emphasized by the Constitution Bench of Supreme Court that<sup>31</sup>,

“The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim In certain situations even a witness to the crime may seek for and shall be granted protection by the State.”

Article 39-A directs the State to provides for such conditions that the operation of the Legal system promotes justice, on a basis of equal opportunity.

#### **2. VICTIMS' RIGHT TO ACCESS TO JUSTICE**

Emphasizing the status of victim in *Sonalal soni v. State of Chhattisgarh*<sup>32</sup> case, court referred to the victim friendly steps being taken by the legislature and judiciary in that direction

#### **3. VICTIMS' RIGHT TO FAIR INVESTIGATION**

Hon'ble Supreme Court has given wider interpretation to Article 21 by recognizing right to fair trial including right to fair investigation as part of right to life and liberty. Explaining the essentials of a fair trial Court made it clear that, “Prompt registration of a case by a competent

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<sup>30</sup> 1988 AIR 2127 1988 SC

<sup>31</sup> Ravi Kumar Tyagi, “Victims Human Rights In India: Constitutional References”, *Ignited Minds* , <https://ignited.in/a/57881>

<sup>32</sup> 2005 SCC on Line Chh 132.

police officer followed by swift investigation resulting in a quick final report are all concomitants of a fair trial. To be fair to the victim, fair to the accused and fair to the society at large are the constitutional obligations of the police. If there is any deviance, it is likely to result in failure of justice.”<sup>33</sup>

#### **4. VICTIMS’ RIGHT TO CONSTITUTIONAL REMEDIES**

Article 226 entrusts the same power in every High Court in the Country to issue appropriate directions, orders or writs in case of violation of fundamental rights so as to ensure victim justice.<sup>34</sup>

### **CONCLUSION**

It is important to remember that no country's good criminal justice system can afford to ignore the rights and plights of crime victims. With an ever-increasing number of crimes, it is critical that the system gives equal weight to the rights of both the accused and the victims in order to ensure equality and justice.

The victimology movement, which has recently gained traction in several parts of the world, advocates for making victims an integral part of the criminal justice system, which can be accomplished by providing victims with equal opportunities to be heard at various stages of the criminal justice process, ensuring that they receive proper justice. On that basis, it is said that India's current criminal justice system requires an administration that is more sympathetic to the predicament of victims and extends victim rights protection.

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<sup>33</sup> Supra at 31

<sup>34</sup> ibid