

Study the Protection of Victim Rights to the Criminal Justice System of India

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Abstract – In India the condition of the victim are the worst because of there no separate legislation for their compensation and restitution and all restitution or rehabilitation services are available only to the accused in place of victims. In India, long way to go before we achieve victim justice. There are several obstacles in India in the process of preventing victimisation and protecting victims, which are being addressed through certain constructive methods. In India, there is no distinct law for crime victims. The central government has made no sustained effort to indorse a national law for victims. The State governments and union territories of India formed the Victim compensation Scheme in regard to the section 357-A of the code but these schemes are not so effective in comparison to the other countries of the world.

Key Words – Criminal Justice System, Victims' Rights, International Initiatives, Compensation & Rehabilitation

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INTRODUCTION

India's criminal justice system is based on the British model. In India's penal philosophy, the notions of crime prevention, treatment, & rehabilitation of criminals have been recognized, as evidenced by numerous Supreme Court decisions. In the criminal justice system, victims have no rights, & state assumes full responsibility for prosecuting & punishing perpetrators by considering victims as mere eyewitnesses.

The criminal justice system in India is administered by 4 primary statutes: the IPC, 1860; the Indian Evidence Act, 1870, the Indian Constitution, 1950; & the Code of Criminal Procedure, 1973.

Criminal justice administration is a legally designated jurisdiction for the states in India. It's natural to expect it to be dissimilar. Despite minor differences, the administration emanates a remarkable level of consistency. The reason is self-evident. This uniformity is ensured by the powerful occurrence of the appellate judiciary – the High Courts & Supreme Court. However, disagreements do arise from time to time, posing a threat to consistency. As appropriate, the Supreme Court intervenes, resolving controversies, settling the law, and providing clarity & inevitability. But, in a system in which the High Court has writ authority, conflicts are more likely, There may be intervals of legal doubt until they are brought

before the Supreme Court. The SC benches can sometimes produce problems, and unless these conflicts are resolved by larger benches, we will continue to be befuddled. As a result, notifying the judiciary of these conflicts is necessary in order to take corrective action to rectify the legal concerns.

States are working together and separately to improve the part of victims in the criminal justice system around the world. Main changes to criminal proceedings have been undertaken to enhance various rights for such crime victims. Victims of crime should be included in the investigation of the crime, the analysis of the case, the accused's trial, the assessment of punishment, and even the following of the sentencing, i.e. the victim's & prisoner's restoration and rehabilitation. According to a number of studies, whereas some victims may choose not to investigate the crime or commence criminal proceedings for apparent reasons, certain fully involved in the criminal processes against the offender. Victims' participatory rights to gain justice, restitution, & rehabilitation are regarded to be necessary around the world. Many governments have pledged to provide victims of crime with special participation rights. There are the compensation panel to offer the compensation to the crime victims as well as they also prepared a victim compensation fund to provide the assistance. In the various countries of the world like U.S.A., Canada, England & Wales, France etc.,

the monetary compensation, restitution and assistance services are available to the crime victims under the statutory legislation and the schemes but in India the crime victims has no any rights or dedicated legislation for their adequate compensation and restitution services.

THE JUDICIARY'S ACTION IN PROTECTING VICTIMS' RIGHTS

Generally, reestablish public order, protection & esteem for the rule of law, justice has been defined as the prosecution, conviction, and punishment of those who have broken the law. Victims, warriors, and witnesses through the court's altar for a number of reasons, notably the need to uncover the truth, speak for the dead, demand accountability, & demand justice. "Justice is not only in the end result; it is also in the process," says Justice Albie Sachs, a member of the South African Supreme Court. In today's context, these principles encapsulate the greater concept of justice. The focus of the justice system should not just be on whether a conviction or acquittal was obtained, but also on whether the court system was able to persuade victims & witnesses to testify in order for the guilty to be actually convicted. The trial court has the authority under Section 357 (3) of the Code of Criminal Procedure, 1973, to order that the fine imposed be given as compensation to the victim of the offence. The court may order the offender to pay compensation to the victim if a fine was not imposed as part of the conviction. Courts, on the other hand, rarely use these and other clauses in our penal legislation.

The Supreme Court addressed the meaning of Section 357(3) of the Cr.P.C in context in *Mangilal v State of M.P.* According to the Court: – "The court's authority to provide compensation to victims under Section 357 is not in addition to other sanctions. Section 357(1) applies when a court imposes a fine or a sentence (including a death sentence) that includes a fine. It vests the court with discretion over how the entire or any portion of the amount recovered is to be employed. Section 357(1) is inapplicable if no fine is levied. The fundamental distinction between sub-sections (1) and (3) of Section 357 is that in the former, imposition of a fine is a necessary and sufficient condition, whilst in the latter, even its absence enables the court to order payment of compensation. This power may be utilised by an appellate court, the High Court, or the Court of Sessions while exercising revisional jurisdiction." In *Rattan Singh v. State of Punjab*, the Court declared that it is a weakness in our jurisprudence because victims of crime and the pain of the prisoner's dependents are not brought to the attention of the law. Indeed, victim recompense has virtually disappeared from our criminal judicial system.

In *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. & Others*, the Court ruled that "...the aim of imposition

of a fine and/or provision of compensation to a significant extent must be examined in light of the relevant factors." It could be compensating the individual in some way. Thus, the compensation demanded must be reasonable and not arbitrary. Prior to granting a direction to pay compensation, the accused's capacity to pay must be determined. A fortiori, even a cursory inquiry in this regard may be appropriate.

According to the Court in *Ankush Shivaji Gaikwad v. State of Maharashtra*, "With modern concepts establishing a distinction between civil and criminal law, where civil law provides redress for private wrongs & criminal law is concerned with punishing the wrongdoer, the legal position that emerged until recently was that criminal law need not concern itself with compensation to the victims because compensation was a civil remedy that fell within civil law." This long-held position has recently undergone a sea change, as societies worldwide have increasingly felt abandoned by legislatures & courts alike. As a result, numerous countries, including Canada, Australia, England, New Zealand, & Northern Ireland, as well as certain states in the United States of America, have enacted legislation enabling for restitution/reparation through criminal justice courts."

INTERNATIONAL INITIATIVES

The UDHR & International Covenant on Civil & Political Rights both recognise the right to compensation. In 1985, the UN General Assembly approved The UN Declaration on the Fundamental Principles of Justice for Victims of Crime & Abuse of Power, which recognised the victim as a crucial component in the criminal justice process. The Declaration establishes fundamental norms for victims' rights, including fair treatment, concern of their perspectives in the criminal justice system, & restoration and compensation. In the Declaration, victimhood was interpreted as a notion that included those who had been victimised by both the state & private individuals. The declaration also acknowledges crime prevention as a victim's rights issue, ensuring victims' access to justice & fair treatment, as the right to information, assistance, & informal dispute resolution. Two UN reports, Theo Van Boven's 1993 report and Cherif Bassiouni's report to the commission on human rights, discussed the contents of this instrument.

These studies explored the relationship between the right to reparation & inhibition of human rights breaches, emphasising the necessity of seeking recompense from the perpetrator as well as state-led efforts to avoid future violations. The United Nations adopted the Basic Rules and Practices on the right to justice & restitution for victims of egregious violations of international human rights law and grave violations of international

humanitarian law in 2005, based on the findings of the investigations. Apart from these victim-specific processes, a number of additional international treaties require consideration of victims' interests in a variety of ways. The Vienna Declaration on Victimology, the United Nations Convention regarding Transnational Organized Crime, the Standard Minimum Rules for Non-Custodial Measures, & Fundamental Principles for the Treatment of Prisoners are only a few of these. As a consequence, recent UN acts are consistent with emphasising victim rights, especially the right to reparation.

Victims' rights in Europe: At the European level, the Council of Europe and the European Union have set standards for victim's rights. The Council of Europe drafted the European Convention on Compensation for Victims of Violent Crimes in 1983, that establishes basic standards for government compensation to crime victims. In 1985, as a result of the agreement, Recommendation 85(11) on the Victim's Position in Criminal Law and Procedure was issued.

Within the European Union, the commission submitted a 1999 communication to the European parliament titled "Crime Victims in the European Union: Reflections on Standards & Action," which urged member states to enact fair and effective legislation that included recommendations organised under five broad headings: prevention of victimisation; support to victims; standing of victims in criminal cases; compensation concerns; and general issues. Following the passage of the Implementation Decision on the Status of Victims in Criminal Proceedings by the parliament, the Justice & Home Affairs Council adopted it in 2001. Unlike all other international norms, the framework decision's rights are all binding & directly applicable inside the home legal system.

As a result, it is clear that victims' rights have gained a lot of traction at the European level. As a result, It may be claimed that in international human rights & criminal justice disputes, the victim's right has now taken centre stage. Right to protection, It comprises the right to be protected from becoming a victim and from secondary victimisation; the right to justice and fair treatment, that gives us the right to redress, access to knowledge, and truth; and the right to participate, and right to restitution are all recognised in international human rights documents. It is encouraging to see that all of these international protocols demonstrate agreement on the victim's right of crime to be reimbursed.

COMPENSATION & REHABILITATION FOR RESTORATIVE JUSTICE

Western countries have created victim compensation schemes and passed laws on the subject. New

Zealand was the first country to establish a victim compensation scheme in 1963. Following New Zealand's lead, the Criminal Injuries Compensation Scheme was established in 1964 in the United Kingdom to compensate victims of specific crimes ex-gratia. To oversee the compensation procedure, the Criminal Injuries Compensation Board was established. In 1968, Queensland, South Australia, & Western Australia were the first Australian states to pass legislation in this area, followed by New South Wales, South Australia, & Western Australia in 1969, 1970, & 1968, 1969, and 1970, correspondingly. The state of Victoria enacted a more comprehensive law in 1972, and other states quickly followed suit. In the U.S, California was the initial state to enact victim compensation legislation in 1965, and other states soon followed suit. The Victim & Witness Protection Act of 1982 or the Victims of Crimes Act of 1984, and both were enforceable across the country, were also passed by the US federal government. There is no provision for victim compensation in the IPC, which was enacted in 1860. Stolen property that is found must, therefore, be returned to the victim/owner under Chapter XVII of the Offenses Against Property Act. The trial court could offer victims relief in the form of compensation paid out of the fine enacted on the criminal when he was convicted & punished under Sections 545 & 546 of the Code of Criminal Procedure of 1898. Payment was only allowed while the judgement was rendered final and the fine was retrieved. The 1973 Code of Criminal Procedure replaces the 1898 Code of Criminal Procedure, which was substantially modified and re-enacted. Sub-Sections (1), (2), & (5) of Section 357 of the new Code were kept from the old Code, but Sub-Sections (3) & (4) were introduced to sort Section 357 more victim-friendly. The new rules are inevitable to deal with offences where a fee isn't part of the substantive punishment and provide trial & appellate courts more leeway in compensating victims. Section 357-A of the Code of Criminal Procedure was additional by the Code of Criminal Procedure (Amendment) Act of 2008. This provision offers a means for the state government to reimburse crime victims or their descendants who have suffered a significant loss or injuries as a outcome of the crime, in collaboration with the federal government. In addition, Provisions 357B and 357C of the Criminal Law (Amendment) Act of 2013 introduce two new sections. Section 357B of the IPC, 1860, offers for compensation in adding to the amount imposed under Section 326A or Section 376D. According to Section 357C of the IPC, all public and private hospitals, if either run by the Central Government, the State Government, local bodies, or other person, have to provide free first-aid or medical treatment to victims of any crime obscured by Sections 326A, 376, 376A, 376B, 376C, 376D, or 376E of the IPC, and must report the matter to the police immediately.

FUNCTION OF RESTITUTION IN CRIMINAL LAW

Unlike civil law, criminal law is not limited to a single set of objectives. It demonstrates concern not only for society harm, but also for victim harm. Additionally, it establishes that each member of the society bears a minimal level of obligation for their fellow members. As a result, the assumption that reparation benefits exclusively particular victims is incorrect. Indeed, reparation demonstrates criminal law's concern for victims. In its final report, presented in December 1982, the aforementioned Task Force stated to "Legislation should be introduced and adopted to demand restitution in all situations, unless the court offers specific justification for not requiring it." The Report's commendations for the judiciary indicate that judges must mandate restitution to victims in entirely cases involving financial loss, unless they can show that there are compelling reasons for a different decision on the record. The justification for suggesting reparations was due to the fact that "It is simply unjust that the victim should be forced to liquidate their assets, mortgage their home, or forego their health or education, or that of their children, whereas the offender escapes accountability for the monetary need he has imposed. The sufferer may be thrust into a life-altering financial crisis. If any party is required to incur debt, the perpetrator should do so." Additionally, restitution imposed in criminal law has a punitive consequence & precludes the victim from seeking reserved vengeance. Restitution's compensating component is a natural extension of the "symbolic" recompense already provided by criminal punishment.

Typically, the distinction amongst civil & criminal law is in their prominence on realizing certain common ends. Civil law is largely concerned with compensating victims of wrongdoing. By contrast, criminal law is motivated by the goals of rehabilitation, deterrence, and retribution. It is primarily concerned with punishing & reforming offenders. While restitution could related to reimbursement under civil law, a closer analysis exposes that not simply a means of making the victim whole, but is also used as a deterrent. By requiring the offender to provide restitution, the criminal law creates an incentive for the victim, as the payment is made to the victim rather than to the state.

Thus, the restitutive approach provides an effective alternative to traditional forms of criminal punishment by providing victims with better emotional and economic satisfaction. Additionally, it provides vicarious satisfaction to victims' dependents and acts as a deterrent to criminals.

UNITED NATIONS DECLARATIONS AND PROTECTION OF VICTIMS RIGHTS

Most international human rights documents, notably the International Covenant on Civil & Political Rights (ICCPR), the Convention on the Elimination of Discrimination against Women (CEDAW), & Convention on the Rights of the Child, discuss or touch on victims' rights (CRC). The U.N. General Assembly and Economic & Social Council adopted Guidelines on Justice for Child Victims and Witnesses to Crime.

The Fifth United Nations Conference on the Prevention of Crime & Treatment of Offenders (PCTO) emphasised victimization's economic and social costs. The sixth United Nations Conference on the PCTO, held in 1980, placed a greater emphasis on crime victims. By 1983, the Council of Europe had developed a regional model in the Convention on Compensation for Victims of Violent Crimes. The UN Institute for the Prevention & Control of Crime, the International Law Associations Committee on International Criminal Law, & International Association of Penal Law all have model legislation that includes crime victims.

The Sixth United Nations Congress was only focused with victims of abuse of power, as well as psychological and financial loss, and called for worldwide action. The call was reiterated during the UN Commission on Crime Prevention & Control's Seventh Session in 1982. The Declaration of Basic Principles of Justice for Victims of Crime & Abuses of Power was formally endorsed in 1985 during the 7th UN Congress on PCTO, based on a draft by the World Society of Victimology.

The word "victim" also covers, if applicable, the direct victim's immediate family or dependents, as well as those who have been harmed while intervening to help victims in distress or avoid victimisation.

According to the Declaration, victims must be preserved with compassion, respect, & dignity, and they should be able to receive timely remedy. They should be informed about their rights to seek redress through expeditious, fair, and inexpensive and accessible official or informal channels.

The judicial and administrative processes' responsiveness should be tailored to meet the demands of victims. They are also expected to have the right to be informed about their rights, their role in the proceedings, to be able to express their opinions, to receive proper legal assistance, to be safe for themselves and their families, and to avoid unnecessary delays in case disposition, decree execution, and award granting. Offenders or third parties should be held accountable for their actions and make adequate and equitable reparation to victims, their families, or dependents.

Payment for suffering or loss sustained, as well as repayment of expenses incurred as a result of victimisation, shall be included in such restitution. Restitution should be considered as a punishment option in criminal cases, and the government should implement such procedures, regulations, and legislation.

In the unique situations of damage incurred by victims for bodily harm or injury of physical or psychological health as a outcome of crimes, the Declaration provides for compensation to be awarded to the victim from the perpetrator and other sources, including the State. The family, particularly the dependents, is also entitled to compensation for the bodily and emotional disabilities that rendered them disabled as a result of victimisation.

Governmental, voluntary, and community-based organisations should offer victims with the required material, physical, psychological, and social aid. States should make an effort to educate police, justice, health, and other employees about the victim's requirements.

LITERATURE REVIEW

Aymen Najm Abed (2018) The Nations General Assembly resolutions of 1985 specified and affirmed the rights of crime victims . In 2019, the United Kingdom revised its ideas on crime victims' rights, which may be the best in the world. The United States of America has established more equitable guidelines on the rights of crime victims. The Indian government built the criminal justice system on the basis of four major constitutional articles in order to provide more visible protection for victims of crime. This includes all United Nations General Assembly resolutions and the British criminal justice system. The former places a premium on victims of domestic crimes, whereas the latter places a premium on victims of foreign crimes, more precisely gross violations of international human rights law and grave violations of international humanitarian law. This article discusses the rights of crime victims in India from an international viewpoint, focusing on international criminal law and prominent countries such as the United States and the United Kingdom. This study has emphasised the importance of the Indian Criminal Justice system facilitating the execution of fundamental rights while also providing victims of crime with more equitable treatment.

By Anusree A (2019) the main aim of any country's criminal justice system is to defend individual & state rights from dishonest individuals who intentionally violate society's basic rules. This goal is to be reached by confirming that the defendant is disciplined in line with the law, while taking every precaution to guarantee that the accused's rights are protected. But, it is revolting to see how little care the system has for the victims of crime, who are the "bye products of the crime." When an offender is found

guilty and sentenced, the victim's claims are presumed to be sufficiently satisfied. Unfortunately, this is far from the case. The victim is only considered a material basis of evidence in any criminal case, & most situations, as an informant, he initiates the criminal procedure by reportage the incident to the police. It is reassuring to see that current developments in criminal justice policy in most nations emphasise a victim-centered approach to criminal justice. In fact, there has been an exponential increase in victim-related rules in international human rights legislation in recent years, indicating their prominence in the current situation. So there are significant disagreements on victims' rights to participate in trials & sentencing procedures, there is broad agreement on their protective and reparative rights. Victims' compensation rights have become so important in today's criminal justice system that practically every developed country has complete legislation in this area. In this research, we look at how far the right to compensation for crime's victims is implemented in India, based on legal legislation & judgments.

The collection of papers "Support for Victims of Crime in Asia," written by Wing-Cheong Chan & released by Routledge Taylor & Francis Group, inspects the role & victims' rights in numerous legal structures in Asian countries. Several issues were investigated in this study, whether victims' rights could be lodged within current criminal justice systems or whether providing victims' rights will have a negative impact on the offender's rights or the state's interests. The support for victims in ten Asian jurisdictions has been thoroughly examined. Wing-Cheong Chan proposes that victims be informed of their rights in order to improve the enforcement of their rights. "It is a truism that laws are of no service unless their presence is made known to those who need them the most, and those who need them are supported in exploiting those rules," he says.

Douglas E. Belo of (2005), argues that two waves of crime victims' rights in the U.S, Victims have received only phantom rights rather than genuine rights as a outcome of the transition from statute rights to state constitutional rights. Victims require standing, appropriate intervention, and just a non-discretionary review system to turn their phantom rights into real ones. According to Belo of, "Standing" is meaningless unless it is accompanied by a "right to remedy." When a right is rejected in trial court, an adequate remedy must be provided. According to Belo of, the availability of standing or a remedy is insufficient to transform victims' rights into actual rights rather than illusory rights unless they are backed up by a nondiscretionary' review' mechanism. Courts do not take abuses of victims' rights seriously because of the discretionary review procedure.

CONCLUSION

Victims' justice requirements are sometimes disregarded due to a preconceived assumption that victims are properly represented by the State apparatus, which is well-equipped to address victims' concerns or needs. Victims' rights are regarded as secondary to the interests of the state during the criminal justice process. Another misconception that diverts focus away from victims' concerns is that the accused, not the victim, is the one who is subjected to the State's might, and his rights must be protected from interference by the State or its agencies. Victims' justice needs have been recognised in several countries that follow an adversarial and public law tradition, as the U.S, Canada, & U.K. as well as Australia. The federal Crime Victims' Rights Act of the U.S of America stipulates that a victim of crime is entitled to procedural justice during the criminal justice process, this applies to both the pre-charge and the prosecution stages. This study aims to determine the true meaning of victim justice as viewed by victims, as well as the extent to which the criminal justice system takes victims' demands into account.

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