

# Study the Indian Legislative Action in Protecting the Rights of Victims

Mohit Kanwar<sup>1\*</sup> Dr. Pradeep Kumar Goyal<sup>2</sup>

<sup>1</sup> Research Scholar

<sup>2</sup> Supervisor

**Abstract – Victim's compensation and restitution has always been neglected in the Indian criminal justice system. There is not a single legislative act for the compensation and betterment of the crime victims in India. The crime victim has no various rights of criminal justice system. In any crime, the main focus has been always on the accused persons and his rehabilitation but no one gave his attention towards the victim of crime. The status of victim in crime is like as ignored person in the criminal justice system. No one is here to talk about the rights and restitutions of the crime victim. From the starting of twenty century, it had been seen that the position of the crime victim is lesser than the accused in the criminal justice system. In the recent decades, the position of the crime victims has been looked up as ignored person in the criminal justice system by the various countries of the world.**

**Key Words – Criminal Justice System, Victims' Rights, Victimization, Victims Crime**

-----X-----

## 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.

The modern victimologists are in the opinion that the justice is done for the victims upon the conviction of the accused person is totally false. According to them this is the compulsion of the state to defend the life & property of its every citizen from the offenders and the victims are suffered due to failure of this duty of the state. So the state has a duty to give justice to crime victims because of failure of this duty to protect them. In the recent decades, the various countries have placed the victim in center of their criminal justice system. There are various debates regarding the victim's rights to participate in the investigation and trial process. In the modern criminal justice of the various developed countries have a dedicated legislation to provide the monetary relief or restoration services to the crime victim. 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.

## VICTIMOLOGY & CRIME VICTIMS

There is a lot of indication suggesting there is a correlation amongst offending & victimisation. One cause for some forms of crime are born out of reciprocal interfaces amongst persons, to the point where victims & criminals are practically identical. Even if criminalities do not emerge directly from interpersonal contacts, People commonly commit crimes against others in their social circle as they are the most available or to settle an old score. We might define victimisation as the connection between the victim & accused in this way; yet, there is no precise description available. The following are some of the several victimization theories:

- Primary victimized
- Secondary victimized (victimization after a crime)
- Re-victimization (victimization after a crime)
- Self-victimization (multiplicity of cause to explain abuse)

Victimology is the studied of crime victims & issues associated to victimisation. Victimology is the study of the circumstances that lead to victimisation and the repercussions of victimisation, as well as criminal approaches to victims & victimisation. In case of gender, ethnicity, age, personal qualities, and neighbourhood, the risk factors for victimisation are essentially the identical as the risk influences for victimising. Some academics regard victimology as a distinct discipline of itself. Others regard it as a significant criminological subfield. Victimology has its roots in early cultures, when the victim's well-being trumped the offender's need for community punishment. Concerns for the victim's well-being have just recently resurfaced in the last 30 years.

## VICTIMS' RIGHTS

The victim of a crime serves as an informant for the purpose of filing a police report. Following the commission of an offence, a victim of crime has the option of filing a First Information Report with the police or filing a complaint with the court. Victims are sometimes unwilling to go to the police because of the officers' apathetic behaviour, both during the recording of the FIR and afterwards throughout the inquiry. The inquiry into the case can only begin after a FIR has been filed. However, the police refuse to record the FIR, exacerbating the victim's suffering. The practise of verifying any information before filing a FIR is illegal under the law. The main goal of filing a FIR is to start the criminal justice process and for the police to take appropriate actions to investigate the case and bring the culprit to justice. Without a

court order, the police are obligated to continue an investigation into a cognizable offence. In the case of a serious offence, a FIR should be reported, according to penal law. Depending on the situation, Once the investigation is completed, the police officer has the ability to submit the inquiry or police record to the Magistrate in the form of a charge sheet, failure reports, or cancellation document. A criminal victim has the right to testify as a witness for the prosecution. As during trial, the victim is presented as a prosecution witness against the criminal. Police-recorded offences are now considered crimes against the state/society as a whole in today's criminal justice system, and are taken to court through the prosecution agency for trial after being investigated by the police. During the case's trial, the victim is called as a witness in front of the court. Victims of crime have a number of rights in a criminal justice system, as well as the right to file a complaint, the right to be heard, the right to a fair trial, the right to information, the right to be present in the court at hearings, the right to be protected from reprisal, the right to address the court, the right to consult authorities, the right to cross-examine victims, the right to submit proof in his favour, right to in camera sessions during the investigation & trial Similarly, certain rights for the protection of victims are granted, such as the confidentiality of the victim's individuality, the trial of certain crimes being held in private, the recording of victims' statements, including use of screen recording of victims' declarations throughout video conferencing, cross-examination by the judge, change of trial venue, safety needs of the crime victim, and etc.

## VICTIMIZATION CLASSIFICATION

Victimization falls into several categories. They can be classified in the following ways:

### Primary victimization

Personal victimisation is the primary form of victimisation. A real person or group of people becomes the direct victim of a crime in this scenario. This can be motivated by a personal vendetta against an individual or a group of individuals, such as someone seeking vengeance for a significant other's infidelity. Certain offences result in physical consequences that are likely to contain some level of discomfort and persistent pain, as well as loss of ability, inadequacy, and perhaps potential temporary disfigurement. Various crimes result in monetary losses, which can be direct or indirect. Crimes frequently result in additional costs, like medical treatment or legal advice, in addition to a lack of revenue as a result of the crime and also its consequences, including the possible failure of prospective earning potential. Likewise, convinced crimes cause mental suffering in the form of concern, despair, & panic, as well as

destroy the victim's social relationships with family, coworkers, and friends.

### **Secondary Victimization**

Additionally, secondary victimisation is referred to as post-crime victimisation. It raises to victimisation that occurs ultimately as a result of a criminal act. It relates to subsequent victimisation as a result of the initial victimisation. For instance, victim blaming and inadvertent behavior by medicinal staffs or other entities with the victim interacts may exacerbate the victim's suffering. Victims may also be subjected to secondary victimisation by the legal system, as a result of court officials' failure to keep them informed on the status of their case and any developments. This systemic apathy occasionally results in their dissatisfaction and confusion, and as a result, the victim grows a decreased inclination to engage in the procedures.

### **Re-victimization**

There's been certain debate regarding what constitutes repeated victimisation. The term "repeated victimisation" is used to refer to victimizations of several crime kinds by various offenders, as well as the apparent, repeated victimisation of the same crime by the same perpetrator. When a victim is the victim of the same crime perpetrated by the same criminal, this is known as repeat victimisation. While the victims live in the same house or neighbourhood as the probable culprits, this is typically the case. Domestic violence and rape assaults, for example, will persist as long as victims reside with the perpetrators. These victims are particularly vulnerable to re-victimization because they are usually unprotected. When victims are required to report their situation to the police & criminal court system on a regular basis, they will be disappointed. The victims endure considerable emotional anguish as a result of their recurrent mistreatment.

### **Self-victimization**

In this sorting, the subject submits to such activities, so victimising himself. For instance, developing bad habits, working for the wrong company, and so forth.

### **Victim Classification**

To gain a better grasp of victimology's patterns during the twentieth century, criminologists expanded the subject by establishing ways for classifying victims. These classifications were made on the basis of a variety of variables, including biological, sociological, psychological, demographic, and psychiatric. As a result, victimologists began to demonstrate an academic interest in the victim-offender relationship.

Von Hentig & Mendelsohn were the 2 victimologists that pioneered the development of victim

classification. Von Hentig's contribution to Victimology, in particular, is regarded as a watershed moment in the study of crime victims. Von Hentig published empirical research on criminal victimisation in his book, *The Criminal and his Victim*. He discusses several ways in which the victim contributes to the commission of a crime. He asserts, "The relationship between perpetrator and victimare much more intricate than the rough distinctions of criminal law. As soon as they draw near to one another, male or female, young or old, rich or poor, ugly or attractive- a wide range of interactions, repulsions as well as attractions, is set in motion. What the law does is to watch the one who acts and the one who is acted upon. By this external criterion, subject and object, a perpetrator and a victim are distinguished."

These phrases succinctly summarise his point & emphasise the victim's role in the commission of a crime. To demonstrate his concern in the victim's involvement in the crime, he categorises victims into 13 groups created on psychological, social, & biological characteristics. They include the young, the feminine, the elderly, the rationally ill, immigrants, members of minorities, the dull & normal, the depressed, the grasping, the bereaved & lonely, the tormentor, &'fighting' victim No implication could be derived from him that certain humans are born victims. He shown a distinct proclivity for victimisation in his art. That certain individuals & settings are more likely to create conditions conducive to victimisation. By examining the interaction amongst the "doer" (criminal) & also the "sufferer" (victim), he hypothesizes that in the majority of criminal situations, the victim bears some of the blame for his or her victimisation.

Despite modern victimologists dispute his observations, he implies that some crime victims become victims as a result of their personal characteristics, whereas others become victims as a result of the communal in which they reside.

In 1940, Benjamin Mendelsohn invented the name "victimology," suggesting that it be an altogether novel area of study not a subfield of criminology but a different science that would be the 'inverse of criminology'. He categorises victims according to the criminal's culpability in relation to the victim. He is referring to the extent to which the victim contributed to the crime.

Mendelsohn classified victims into 6 categories, from the most acquitted (as small children) to the "guiltiest victim" (as the aggressor who successively gets murdered). Individual violent crimes can be explained using the premise of culpability, or the judgement of guilt. Focusing on the criminal's culpability in relation to the victim, he divided victims into 6 categories.

1. A victim who is completely innocent.

2. Victim who bears some culpability and is a victim of her own stupidity.
3. Victim is equally culpable as the criminal.
4. The victim is guiltier than the criminal.
5. The most culpable victim & victim who is culpable alone.
6. Impersonating & imagining a victim.

Von Hentig's paradigm of victims divides victims into 13 categories created on psychosomatic, social, & genetic variables. They are as follows:

1. The young
2. The female
3. The old
4. The mentally defective & other mentally deranged
5. Immigrants
6. Minorities
7. Dull normalcy
8. The depressed
9. The acquisitive
10. The wanton
11. The lonesome & heart broken
12. Tormentors
13. The blocked, exempt & aggressive

Using von Hentig's approach, Stephen Schafer employed an ironic title change for his manuscript *The Victim & His Criminal*. Additionally, he concentrated on the offender-victim-offender connection & created a cataloguing system founded on the victim's efficient obligation for the crime:

1. Victims who are unrelated ( no victim restraint)
2. Provocative Victims (victims bear some of the blame)
3. Victims Who Are Perceptive (some degree of victim responsibility)
4. Victims Who Are Biologically Weak (no victim responsibility)

5. Victims Who Are Socially Impaired (no victim responsibility)
6. Self-Victimization (total victim responsibility)
7. Political Victim (no culpability for the victim)

Strangely, the offender's hurt to the victim was not the emphasis of these 3 pioneer victimologists. The victim's role in the crime & cooperation with the criminal justice system were their main concerns.

Silverman & other criminologists have noticed how ethnic variances might generate in disparate views of victim precipitation and indications. Silverman notes that replicating studies of victim precipitation is nearly challenging due to the latitude in interpreting & assigning reasons to the victim.

Numerous experts' victimological studies have sparked interest & concern for victims throughout the world, comprising India. Though different researchers developed distinct classifications, certain broad categories of vulnerable persons and victims require extra care & attention in order to minimise crime & suffering. The following are the many categories of such victims:

- **Elderly Victims:** Growing older impairs a person in a variety of ways. He gets physically frail as he ages and becomes increasingly reliant on those around him. With his increasing fortune, he is the ideal and most lucrative target for the criminal. In Western nations, the majority of these persons are wealthy, and those who live alone are more prone to repeat victimisation. Previously, these occurrences occurred infrequently in India, but in recent years, we have discovered that elderly couples living independently, with their siblings in foreign nations in quest of a better life, have frequently become aims of time robbery & certain cases have lost their lives.
- **Young victims:** Among animals and humans alike, the weakest are the most frequently attacked. Typically, such individuals are young, youngsters of a vulnerable age, physically or sexually immature, and so forth. The most perilous stage of life is adolescence. They are quite vulnerable in their natural environment and easily fall victim to crimes. Child trafficking victims, in particular, are frequently abused for profitable sex, which includes prostitution, pornography, & sex travel.
- **Women victims:** Crimes against females, particularly sexual attack, have been collective worldwide, exclusively in traditionally conservative countries similar India, & superior attention is now being



paid to the victims' plight. This category of victims, regardless of their age, deserves the most humane treatment. Police & court procedures can be just as painful as the incident that precipitated them.

- **Female Victims:** Female victims are viewed as additional manifestation of weaker sex. In western cultures, crime against women is limited to sexual offences, while in India, women face a variety of afflictions such as rapes, prostitution, domestic violence, and dowry killings. They are growing daily. Women's offences might be linked to their inferior status in society and religion. Though illegal behaviours such as sati & devadasi system are prohibited by law, we still see these practises, notably the devadasi system, in rural areas. In larger cities, lonely older women are more likely to commit crimes for financial gain, such as stealing, chain snatches, in certain cases, murder.
- **Those who fall victim to weaker divisions:** Members of traditional or spiritual sectors in varied social regimes may be especially vulnerable to crime, as a result of financial difficulties and political considerations. They are frequently the victims of mob violence.

## JUSTICE THEORIES AND VICTIMS' RIGHTS

Historically, criminal punishments have been ineffective in promoting criminal justice's objectives. While much is spoken about criminal rehabilitation, the certainty is quite dissimilar. Prisons that are overcrowded & expensive do not rehabilitate offenders or safeguard society. They become more dangerous as a result of the abusive treatment. The public has grown upset with the "assembly of justice" system, which allows convicted criminals to remain free to commit more crimes while on parole or probation. As a consequence, criminal sanctions' deterrent effect has weakened. Furthermore, in prison, offenders are not treated in a way that prevents recidivism, leaving victims with no recourse for their pain. As a result, criminal justice reformers are considering solutions including pre-determined sentences, work-release programmes, & part-time imprisonment, amongst many others. Reformers determined that restitution was the most adequate replacement for harsh sentences & probation's leniency during their search for a new alternative sentencing strategy. They believe that "restorative justice" must be the fundamental aim of criminal justice. The perpetrator ought to be obligatory to recompense the victims from his or her own assets or the revenues of his or her imprisonment. If the criminal is unable to compensate the victim, the state shall assume responsibility for the victim's restitution. The state shall establish a Criminal Injuries Compensation Board for this purpose. Additionally, the judicial initiative becomes critical in this regard to achieving criminal justice's victim-centered goals.

They fundamentally differ in their legal philosophy and, more crucially, in their administration.

## LITERATURE REVIEW

Pavithra V. and Riktha Muralidhar (2021) "For too long, the law has centered its attention more on the rights of the criminal than on the victims of the crime. It is high time we reversed this trend and put the highest priority on the victims and the potential victims." Gerald R. Ford is a former president of the US of America. The criminal justice system is a tool for social control that is utilized to prohibit, discourage, & punish crimes. An act of criminality is regarded as a threat to humanity & societal order. The Indian criminal justice system is based on age-old concepts of justice. "Let Hundred Guilty Be Acquitted but One Innocent Should Not Be Convicted." & "innocent until proven guilty". Legislators have changed & constructed various rights, safeguards, and methods for offenders over time in order to reform and rehabilitate them back into society. However, the victims, who are the most harmed by the crime, have been overlooked. A lot of the time, victims do not receive adequate support or aid. They have the bare minimum of rights and protections. Many law reports, such as the 154th Law Commission report and the Malimath Committee report, have addressed their rights, but how effective have they been? The Code of Criminal Procedure Amendment Act, 2008, includes Section 357A of the CrPC, 1973, which provides for a victims compensation mechanism. The same statute added a proviso to section 372 that gave victims the ability to appeal.

Dr. Sailaja Petikam (2021) The Victim of Crime (Crime Victim) has not having any rights in criminal justice system such as the accused. In all crimes, the focus has been given to the accused person and for his rehabilitation, but nowhere pays any attention towards the victims of crime and totally ignored the status of crime victims. The major aim of the Criminal Justice System is to protect the rights of the citizens of the State and to punish the offender for the offence committed by him. To gain this object, it is the most important duty that the accused should be punished by the court in the accordance of law. While convicting the accused there is also a duty of the system that the rights of the accused should not be infringed. The role of the Criminal Judicial system is finished when the accused is punished on proving of his guilt. In the criminal case the victim is treated as a complainant of a crime and a piece of the evidence. The modern victimologists are in the opinion that the justice is done for the victims upon the conviction of the accused person is totally false. According to them this is the duty of the state to protect the life & property of its every citizen from the offenders and the victims are suffered due to failure of this duty of the State. So the State has a duty to give justice to crime victims because of failure of this duty to protect them. In the Indian Constitution there are some Articles as well as some Statutory

provisions are available in the Code of Criminal Procedure 1973 to protect the victims' rights and to provide the monetary compensation. In India, the trial courts have ignored these statutory provisions for compensating the victims from a long time. The main focus of the provisional court is upon the conviction or acquittal of the suspect. But in the last three decades in India, the higher judiciary by its judicial activism came forward to protect the rights of the crime victims. The Supreme courts and the High Court had passed number of judgments in which they provided the compensation to the victims. In the cases where the offence was taken place and no report was lodged by the police officers in those cases Apex Court compensated the victims for their restitutions. There are the three processes by which victim can be compensated. First there is a criminal law in which he register the case against the accused and after disposal of the case he can get compensation by the court. Second is the civil law in which he can file the suit for the damages including mentally or physical loss which he occurred during the crime. Third is the administrative process in which he can claim for the compensation from the administrative authorities for the loss or injury caused in the crime. The present Article is to analyze the Constitutional and Statutory provisions and the administrative schemes for the compensation and restitution of the crime victims in India.

Witness & Criminal Justice System(2011) looks statistical into the challenges experienced by victim-witnesses throughout their interactions with criminal justice authorities. Despite the fact that the criminal justice system relies largely on the victim-witness in a case for its proper operation, the victim is subjected to secondary victimisation when he interacts with the authorities inside the system. This empirical study emphasises the importance of using a variety of preventive measures to enhance victim-witness safety.

"International Handbook of Victimology," edited by ShlomoGioraShoham, Paul Knepper, and Martin Kett, CRC Press, Taylor and Francis Group, USA,: Historical and theoretical structures, especially how victims interpret justice, victimisation patterns, with an increasing focus on repeat & secondary victimisation, varied developed in the field of victimology, the role of victims in the European Criminal Justice Process, numerous services offered to victims in the U. S., & restitution are all covered in this comprehensive guide.

## CONCLUSION

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. Victims now have the right to a fair hearing and to consult with the case's attorney to ensure their participation. To ensure fairness, victims of crime have been granted various rights, including the right to reasonable protection,

the right to be present during judicial hearings, the right to expedited processes, and the right to be treated fairly and respectfully. Victims have the right to be notified in a reasonable, accurate, and timely manner, which ensures informational justice. The traditional notion that the victim's justice is gratified by the offender's conviction is a farce, according to modern victimologists, and it is unjust, unfair, & inequitable.

## REFERENCES

1. Aymen Najm Abed (2020) "Rights of Victims of Crime in India with international perspective", Journal of Emerging Technologies and Innovative Research (JETIR) www.jetir.org (ISSN-2349-5162).
2. By Anusree A (2019) "Right To Compensation Of Victims Of Crime In India: Need For A Comprehensive Legislation", International Journal For Legal Developments And Allied Issues [Vol. 2 Issue 1]
3. Carsten Stahn (2019) A Critical Introduction to International Criminal Law published by Cambridge University Press
4. Christine Evans (2012) The Right to Reparation in International Law for Victims of Armed Conflict published by Cambridge studies in international and comparative law Cambridge University Press
5. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly resolution 40/34 of 29 November
6. Dr. SAILAJA PETIKAM (2021) "RIGHTS OF CRIME VICTIMS – A CRITICAL APPRECIATION OF CONSTITUTIONAL AND LEGAL PERSPECTIVE IN INDIA", NIU International Journal of Human Rights ISSN: 2394 – 0298 Volume 8(I), 2021
7. [http://mja.gov.in/Site/Upload/GR/Title%20NO.81\(As%20Per%20Workshop%20List%20title%20no81%20pdf\).pdf](http://mja.gov.in/Site/Upload/GR/Title%20NO.81(As%20Per%20Workshop%20List%20title%20no81%20pdf).pdf)
8. JUSTICE V.S. MALIMATH COMMITTEE, Report of the Committee on Reforms of Criminal Justice System,(MARCH 2003),
9. jyo (2019) Victims' Rights in India published in the Legal Service India.com online legal services Magazine.
10. Law Commission of India, Code of Criminal Procedure, 1973, report no 154, (august 1996)

<http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf> (last visited on march 6th, 2021)

11. Liesbeth Zegveld (2019) Victims as a Third Party: Empowerment of Victims? published in International Criminal Law Review published on 01 April 2019

---

**Corresponding Author**

**Mohit Kanwar\***

Research Scholar