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With this thought, we hereby present to you

**LEX BONA FIDE: LAW JOURNAL**

# **Recognizing and balancing the rights of the victims within the Indian System**

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## **ABSTRACT**

Recognizing and balancing the rights of victims is currently a major problem in the criminal justice system in India. This paper aims to find out what the present condition of victims is and how could that be improved positively. It also provides several case laws and examples which highlight the rights of victims. Not only domestic cases and provisions but also international touch is given to this article to make the reader get a better perspective. In India, the rights of victims are not recognized properly and this shall be a hindrance in the progress of criminal law. Through this paper, the author establishes how the country could improve the plight of victims of crime with the help of suggestions and analysis.

## **INTRODUCTION**

What are victims' rights in the first place? These rights are the legal rights afforded to the victims of crime. Here, the victim is a person who is directly affected and hurt by the wrongdoer. According to Criminal Procedure Code, 1973 section (2), the word 'victim' is defined as *a person who has suffered any loss or injury caused because of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir.* A study of these victims who are victims of crime and about the psychological aspects of their experience is called victimology. The protection of these victims' rights is one of the primary objectives of criminal justice. The predicament of victims in India must evolve drastically. This is because the victim has become a forgotten entity in the criminal justice system in India despite, he is the pillar of the criminal procedure. The situation that victims being treated merely as witnesses must change. Let us look at how the victims' rights in India are and how they must be recognized and balanced in the eyes of the Indian justice system.

## **RECOGNIZING THE RIGHTS OF VICTIMS**

Let us look at how the rights of victims are recognized at the international front. According to *the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, there are four major mechanisms of rights of victims' namely access to justice and fair treatment, restitution, compensation and assistance. Also, clause 4 of the same declaration reads as follows-

*Clause 4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.*<sup>[1]</sup>

We must enlighten the fact that victims must be treated with compassion and respect because they play a vital role in the process of adhering to justice.

In India, there are a few basic legal rights available to the victims of crime. Few of the important ones are:

- The right to appear for proceedings
- Right to get compensation
- Right to be heard
- Right to participate in criminal proceedings
- Right to a speedy trial
- Right to be informed of the events and proceedings
- Right to protection from intimidation and harassment
- Right to restitution from the offender[2]
- The above mentioned are the basic rights which are available to victims of crime in India. But there are few amendments in this regard as well which led to the new rights.

### **LEGAL PROVISIONS IN FAVOUR OF VICTIMS**

- **Section 357 (3) of CrPC, 1973** gives power to the trial court where the court while imposing fines shall direct that the fine recovered must be paid as compensation to the victim of the crime. Also in cases where the court did not levy fine during the conviction, it shall direct the convict to pay the compensation to the victim.

**Hari Shankar v Sukhbir Singh[3]**-The accused were convicted and sentenced under several sections of IPC, 1860. But they were released on probation for their good conduct. Now, each of them was ordered to pay compensation to the injured despite being released.

- According to **section 5 of The Probation of Offenders Act, 1958** – The trial court is empowered to order compensation to the victims.
- **Section 190 of CrPC**- Victims are allowed to directly approach the Magistrate with their complaints to avoid going to the Police Station for redress. This is because they are harassed and treated indifferently by the police when they go to approach them.
- **Section 357A of CrPC**- Under this section, victim compensation is currently made applicable and it does not necessarily require the apprehension and conviction of the criminal to deliver financial relief to the victims.

In the famous case of **D.K.Basu v State of West Bengal** it was observed by the Supreme court that: *“It is now a well-accepted proposition in most of the jurisdiction, that the monetary and pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by a public servant. However, it can be said that in the assessment of the compensation the emphasis is to be on the compensatory and not the punitive element”*. [4]

In **Brij Lal v Prem Chand** the Supreme Court in the facts and circumstances of the case substituted the sentence awarded to the accused with the sentence of imprisonment for period already undergone by him and enhanced the sentence of fine from Rs 500 to Rs 20,000/-. The court also directed that out of the fine amount, a sum of Rs 18,000 should be paid to the father of the deceased for bringing up the deceased’s minor son. [5]

### **INTERNATIONAL LEGAL PROVISIONS**

The purpose of international human rights law is to protect basic individual rights and provide to the victims of human rights violations legal remedies against the authors of the abuses. One major difficulty faced by the victims in this context originates in the limiting clauses that states insert in international conventions. [6]

In **Canada**, the **Canadian Victims Bill of Rights** was passed in 2015. It highlights that when a victim considers that his/her rights have been violated, the victim shall file a complaint with the federal department or agency that have the responsibility to take internal complaint mechanisms accessible to victims to check complaints, create recommendations and inform victims about the results of the review.

In the **USA**, there are very helpful rights mentioned in the **Crime Victims' Rights Act** like, "*The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.*" [7]

In ***Payne v. Tennessee***, the **United States Supreme Court** explicitly recognized that crime victims are not nameless/faceless non-players in the criminal justice system. [8]

In ***Payton v. State, 266 So 3d 630 (Miss. 2019)***, the court observed that the victims' rights laws formally recognized crime victims and afforded them substantial rights within the criminal justice process. [9]

### **CRITICAL ANALYSIS for BALANCING THE RIGHTS OF VICTIMS WITHIN THE INDIAN JUSTICE SYSTEM:**

The criminal investigation process is a method where its primary role is to balance the rights of the victims and offenders in society. All individuals must be treated equally and given basic rights which the law must adhere. The basic purpose of balancing the rights of victims and offenders as well as society is to create equality and peace within the legal system so that the victims of crime feel they have been validated, offenders are penalized accordingly to their case and so finally the society feels secured enough. Few of the important factors that affect the balancing of the rights are police powers, plea and charge negotiation, and the role of victims in sentencing.

The Supreme court of India in the case of ***Nirmal Singh Kahilon v State of Punjab***, "*the right to fair investigation and trial applies to the accused as well as the victim and such a right to a victim is provided under article 21 of the Indian Constitution. A victim of crime is equally entitled to a fair investigation.*" [10]

- **Protection of Women from Domestic Violence Act, 2005**- This is a major step towards the protection of domestic violence. Under this act, the protection of women has been strengthened against physical, sexual, verbal, and emotional abuse.
- **Prevention of Child Abuse and Victim Protection** – Child victims are the most vulnerable in victims. Primary education and awareness for children are so important for avoiding child abuse.
- **The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**- There must be equality in the society and there must be no atrocities based on caste in the criminal proceedings. Under this act, compensation to victims is compulsory.

### **COMMENTS AND SUGGESTIONS:**

The rights to victims come under basic human rights. Criminal law, and in particular the common-law legal tradition, views victims primarily as witnesses to a crime against the state. As a result, victims are treated as objects and used by legal actors to advance their case. The absence of any role for victims in the criminal justice system, other than that of witness, is often seen as the root of victims' frustration with criminal justice and an important source of secondary victimization. [11]

1. **No separate law for the rights of victims in India**- In India there is no act or particular law that separately deals with the rights of the victims.

2. **Corruption in the Criminal justice system-** There should be steps taken to avoid corruption in the justice system. Declaration of assets and wealth of judges was introduced as well.
3. **Women empowerment to prevent the victimization of women-** Both the NGOs and the government must work hand in hand to avoid the victimization of women. Reservation of seats for women is one step.
4. **Empowerment of Children-** Primary education must be made a fundamental right in the constitution. The death of female infanticides and child labour must be stopped.
5. **State Compensation for Victims of Abuse of Power-** The SC has recognized the importance for the state compensation in cases where there is the abuse of power by the state machinery.
6. **Protecting Rights of Rape victims-** The Supreme Court has highlighted the justice for rape victims where the court trying an offence of rape has the jurisdiction to award compensation at the final stage along with the interim compensation to the victim.

## CONCLUSION

In India, the struggle of the victims to gain proper legal rights within the criminal justice system has not ended. For the change of this situation and expansion of the rights of the victims, the legislatures and the judiciary play a significant role. Since the problems of victims are long-lasting, agencies of criminal justice must be proactive to address their issues sincerely. Several steps can be taken to ensure this, eg: victims must be informed about the progress of their case timely and they should be availed with equal opportunities to be heard as and when they want to give input. Along with this, they must pass a new law regarding the rights of victims to ensure the implementation of the rights. Ultimately, the victims should be more than a witness and they should play a stronger role in the criminal justice system.



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