



A Comprehensive Study On The Concept Of “Rights, Compensation, Protection And Support To Victim Of Crime” And Administration Of Criminal Justice System With Special Reference To Indian Conditions.

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ABSTRACT

This paper discusses the Victim of crime with their types. The basic object of the Criminal Justice is to protect the society against crime and to punish the offender. However, Criminal Justice System does not show equal concern to the victims of crime, who have suffered loss or injury.

The present paper has attempted to examine the position of victims of crime in India and the criminal justice system. The paper also emphasizes the need to provide assistance to crime victims. The authors of the present paper have also suggested some of the immediate steps that are to be implemented by the law enforcement agencies in India to improve the position of victims in the criminal justice system. The paper also discusses that Victims of crime in India are increasingly being recognized with rights to compensation, legal aid, and protection under the Constitution and various legal provisions, including the Criminal Procedure Code (CrPC) and special Acts.

This paper has given stress on implementation of predominant rights facilitated by the Indian Criminal Justice with fairer treatment to the Victims of crime. The goal of this research is to present an overview on rights, compensation, protection and support to victim. This research work aims to study various aspects of victimology.

Keywords: Victimology, Victim of Crime, Victim's Rights, Victim Compensation, Criminal Justice System, Human Rights

1. INTRODUCTION

1.1 Meaning and Definition:

“Human Rights are not a privilege conferred by government. They are every human being's entitlement by virtue of his humanity.” - **Mother Teresa**

"Crime victim" or "victim of crime" is a person who has been physically, financially or emotionally injured and/or had their property taken or damaged by someone committing a crime.

Victim participation is essential to a functioning system of criminal justice. The role of the victim of a crime in the present criminal justice system is limited to that of a witness for the prosecution even though he or she is a person who has suffered harm such as physical, mental, emotional, economical or impairment of his/her fundamental rights.

Crime, by definition, is an act or wrongdoing against not just an individual, but to society & mankind as a whole. It is considered an assault against humanity itself, which is why the State is the one that initiates action against the accused. The seeds of victims' rights have sprouted in India in the last few years since the 1985 United Nations declaration on the principle of crime and abuse of power.

A lot of the time, no proper support or assistance is given to the victims. They have minimal rights and safeguards. Their rights have been discussed in many law reports like the 154th Law Commission report and

the Malimath Committee report but how successful have they been? But the most affected party of the crime, the victims, have been neglected.

Every crime leaves behind a trail of agony suffered either by the victim, if he/she survives the crime, or by his/her family members. Though it is a global phenomenon, the increase in crime rate is alarming in India.

However, traditionally, the entire criminal justice system revolves around the offender or accused from the very moment a crime is reported. If found guilty, he is convicted and sentenced to undergo punishment. Does this complete the wheel of criminal justice system? What about the victim? Traditionally it may have been sufficient that the criminal is caught and punished. But shall the victim remain the "forgotten man" of the criminal justice system?

The courts have from time to time directed the State to provide all necessary facilities and ensure that the human rights of accused and prisoners are not violated so that no person is harassed and becomes subject of oppression at the hands of the State authorities. But unfortunately, the law and establishment hardly took any note of the byproduct of crime - its victim. The poor victims of crime are entirely overlooked in misplaced sympathy for the criminal.

Justice V.R. Krishna Iyer said, "Custodial Torture is worse than terrorism."

1.2 Research Objectives:

The objective of the this study to be performed can be laid down as—

1. To identify the needs, the rights and the status of crime victims in different manners.
2. To evaluate the efficacy of the legal instruments, having a bearing upon the victims' rights.
3. To highlight the social problems of the victims resulting from victimization.
4. To gain familiarity with the phenomenon of victimization and to achieve a new insight into it.
5. To suggest some variable arrangements to assist crime victims.

2. REVIEW OF LITERATURE

1. K.D.Gaur in his essay, "Justice to Victims of Crime: A Human Rights Approach", discusses about compensatory schemes for victims of crime and suggest measures to make them more comprehensive.

2. N.R.Madhav Menon in "Victim Compensation Law and Criminal Justice System: A Plea for a Victim-Oriented in Criminal Justice" advocates for victim-oriented criminal justice system with greater respect for victims of crime, then come back to the 'Victim Compensation Scheme' as a recognition of victims' rights in Criminal Justice System.

3. Jayasimha B (2016) in his research "Protection of Victims Rights in Criminal Justice System a critical study" he described that The primary function of the Constitution and the laws is to fulfil the aspirations of the common man. Criminal justice system is that instrumentality which is looked at by the people to redress the harm done against them and seek justice to improve the quality of their life.

4. Newspaper: FreePress and Dainik Bhaskar were mainly studied to find the depth of the problem and plight of victims in social context. It helped the researcher to formulate the problem.

5. The National Police Commission: (The Police Act 1861)

The National Police Commission (NPC) was appointed by the Government of India in 1977 with wide terms of reference covering the police organisation, its role, functions, accountability, relations with the public, political interference in its work, misuse of powers, evaluation of its performance etc. This was the first Commission appointed at the national level after Independence. The Commission produced eight reports between 1979 and 1981, suggesting wide ranging reforms in the existing police set-up. The Police Act of 1861 should be replaced by a new Police Act, which not only changes the system of superintendence and control over the police but also enlarges the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the community.

The major recommendations of the NPC have remained unimplemented. There is a deep seated and strong resistance to the idea of police reforms. The existing system is unacceptable. It has resulted in subverting the rule of law and in obstructing the growth of a healthy and professional system of policing. It must change.

6. Singh, B. P. (2008) in his article entitled, "Compensation to the Victims of Crime and Judicial Trends in India," has traced out that the main emphasis in the system is to punish the offender, seek his reformation and rehabilitation. The author has also explained that the said system does not take into consideration the rights of victims of the crime regarding compensation and restitution. The victims of crime are mostly neglected in the administration of criminal justice system.

7. **Naval, S. (2012)** in her article, "Victim Compensation under Criminal Justice System," studies the apathy of victims of crime being a neglected lot in the whole judicial process. While defining victim she overview the laws related to compensation to the victim along with its limitations and suggestions.

3. DISCUSSION

In the criminal justice system, victims and criminals can be considered to be as two sides of the same coin where, in the absence of any of them the system does not work.

Criminal Justice System in India comprises all the machinery established by the government to ensure Law and Order in the country. It involves crime prevention, adjudication of crime and criminals, compensation and rehabilitation of victims, maintenance of the rule of law in the country, and deterrence of offenders from committing any crime in the future. The main aim of the Criminal Justice System is to prevail Justice in the country.

Criminal Justice – The criminal justice system is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws.

Overview of the Indian Criminal Justice System:

India derived its criminal justice system from the British model. There is a clear demarcation of the role and powers and functions of the Legislature, Executive, and Judiciary.

The Indian criminal justice system is governed overall by four laws:

- (i) The Constitution of India
- (ii) The Indian Penal Code
- (iii) The Code of Criminal Procedure of India
- (iv) The Indian Evidence Act

The legislative power is vested with the Union Parliament and the state legislatures and the law-making functions are divided into the Union List, State List and Concurrent List in the Indian Constitution. The Union Parliament alone can make laws under the Union list and the state legislatures alone can make laws under the State list, whereas both the Parliament and the State Legislatures are empowered to make laws on the subjects mentioned in the Concurrent List of the Constitution. The Constitution of India guarantees certain fundamental rights to all citizens.

Criminal Justice Process : Case Flow/Steps

1. Registration of the FIR
2. Investigation : Interrogation, Examination, Arrest and Detention
3. Final Report
4. Charge Sheet
5. Trial
6. Correction : Bail/Jail/Fine etc.

Legal Framework:

Justice System is primarily governed by:

1. Indian Penal Code (IPC), 1860: (BNS 2023) Substantive law : defining offenses and punishments.
2. Code of Criminal Procedure (CrPC), 1973: (BNSS 2023) Procedural : law governing investigation, trial, and appeals.
3. Indian Evidence Act, 1872: (BSA 2023) Rules for admissibility and : evaluation of evidence.

Criminal Justice System divided into three parts:

1. Law enforcement or Police Force.
2. Adjudication (Courts)
3. Corrections (jail, Prisons,)

But some jurists say that criminal justice system has five pillars:

1. The community.
2. The law enforcement.
3. The prosecution.
4. The courts.
5. Corrections.

The goals and objectives of the police can be divided into primary and secondary categories.

Primary goals encompass maintaining law and order and safeguarding life and property.

The secondary goals include the following:

1. Preventing crime;
2. Arresting and prosecuting offenders;
3. Recovering stolen property;
4. Assisting the sick and injured;
5. Enforcing non-criminal legislations;
6. Delivering services not available elsewhere in the community.

Accountability of Police: According to the Commonwealth Human Rights Initiative (CHRI) Report, there are primarily four types of accountability or oversight over police services. These are listed below:

1. Governmental Accountability: - Legislative, judiciary, executive- the three branches of the governance provides the basic architecture for police accountability. The police are likely to be held accountable to all three pillars of states in a thriving democracy.

2. Independent External Accountability: - Due to the complexity of policing and the importance of police organisations to governments, more regulations are implemented. Authorities that can monitor the police and prevent police abuse of power include national human rights commissions, state human rights commissions, and public complaints authorities. Any democracy must have at least one such impartial, civil organisation.

3. Social Accountability: - It is regarded as a growing tool for external responsibility in contemporary democratic societies in addition to those already mentioned. In a democracy, citizens have the right to hold police accountable, in addition to official institutions that serve as the people's representatives. For improved performance, the media, community organisations, NGOs, and individuals all keep an eye on and comment on police actions.

4. Internal Accountability: - Internal mechanisms, processes, and procedures form the foundation of every effective accountability system. The necessary mechanism to hold policing to high standards is created by effective disciplinary processes, adequate levels of training and supervision, and mechanisms for monitoring, assessing, and documenting performance and crime data.

Adjudication (Courts):

This is second component of this system. It includes prosecution and defence lawyers, judges and juries. When any accused appears before it, Court considers his case. If prima facie it seems that he has no committed any crime. Court discharged the accused. In India, court procedure is divided into many parts according to offence. If a court thinks that prima facie he has committed the crime, court gives opportunity to plead the guilty. Accused plead guilty then court gives punishment and declare he is the accused. If he does not guilty then hear the arguments of both (prosecution and defense lawyer). After hearing the arguments he may convict or acquit the accused.

Corrections (jail, Prisons, probation and parole):

The last and final component of the Criminal Justice System is Corrections. It includes jails, prisons, probation and parole officers and borstal institution. After conviction of the accused, the sends to these institutions. In this accused totally lose his liberty. These institution help in the rehabilitation of the accused in the society again.

Victimology:

Victimology is the study of victims, their experiences and their interactions with the criminal justice system. It seeks to understand the impact of crime on victims and to develop measures to support and protect them.

Victimology is the scientific study of victims of crime, a subdiscipline of criminology. Sociology of victimology is the scientific study of victims of crime, a sub-discipline of criminology.

Victimology is the scientific study of victims. It seeks to study the relationship between victims and offenders.

Victim/Victim of Crime:

The victim is essentially an inseparable part of crime. Therefore the phenomenon of crime cannot be comprehensively explained without incorporating the victim of a crime. Indeed, crime reflects a relationship of conflict or an immediate consequence of criminal-victim interaction.

As per Macmillan dictionary victim "Someone who has been harmed injured or killed as the result of a crime".

As per Collins English Dictionary: "Victim means a person or thing that suffers harm, death etc. from another or from some adverse act, circumstance etc."

Classification of Crime Victims:

1. Innocent Victim
2. Depressive Victim
3. Greedy Victim
4. Wanton Type Victim
5. Tormentor Victim

Types of Victim:¹

Victim can be broadly categorised into: 1. Primary (Direct) 2. Secondary (Indirect)

Primary victims are those directly harmed by a crime, while secondary victims are those indirectly affected, such as family members.

1. Primary (Direct) Victim: This category encompasses individuals who are directly harmed by a crime. For example, a person who is physically assaulted or robbed is a primary victim.

2. Secondary (Indirect) Victim: These individuals are not directly involved in the crime but suffer harm as a result of its impact on the primary victim. Family members, close friends, or even colleagues can be considered secondary victims. For instance, if a person is seriously injured in a robbery, their family members might experience emotional distress, financial strain, and changes in their daily lives, making them secondary victims.

Rights of a victim

They must have certain basic rights, which are as follows:

1. Right to be heard.
2. Right to be notified or informed of their various legal rights.
3. Right to get assistance
4. Right to be notified of the events & proceedings.
5. Right to Restitution
6. Right to protection during the criminal justice process.
7. Right to speedy Trial
8. Right to compensation
9. Right to be treated fairly, with respect and dignity
10. Right to file appeal (under proviso to section 372 of CrPC)

Misuse of Investigation Powers:

But the real picture is quite different from this image. As is clear from the analysis of court cases in this, too often police reaches quite late at the crime scene, where a prompt visit is required. This late arrival is beneficial for the accused in too many ways. Offender may get chances of not only manipulating or destroying evidences but of evading arrest and can also threaten victim-witnesses for not reporting crime or not to depose against them. His faith and trust upon the Criminal Justice System shatters when he is denied registration of his complaint on one ground or other or his version is substantially changed while registering the complaint so as to shield the accused. Sometimes victim is returned on the ground of his complaint not being in writing, sometimes appropriate section is not invoked or sometimes facts of the case are so twisted that convert the nature of the case. All these methods of police functioning results into failure of victims' right to access to justice.

This whole misuse of investigative powers by police make the case of prosecution weak and the benefit of all these irregularities pass on to the accused thus resulting into failure of justice. If after going through all this trauma, victim retains something worthwhile to substantiate the case of his victimization or the prosecution version, he can claim successfully and enjoy his human right to justice peacefully. Such a biased, motivated and inadequate investigation leads towards victims' losing their trust in the Criminal Justice System.

Police and Victim:

Police, prosecution, judiciary and jails are supposed to be the pillars upon which the whole edifice of our Criminal Justice System is based. Among these four, police play a crucial role within the Criminal Justice System and its failures may result into breaking down of the Criminal Justice System.

Police is entrusted with the task of providing protection to victims, to ensure their access to justice delivery system and to collect the best evidence so as to ensure just and fair investigation in the case. Police is the first and foremost agency that comes into contact with the victims of a crime. Victim visualizes the Criminal Justice System through the lenses of police functioning. A proper and positive functioning of police helps in cementing victims' trust upon the Criminal Justice System.

Right to Legal Aid/Victims have few legal rights as - The right to attend criminal justice proceedings; The right to apply for compensation; The right to be heard and participate in criminal justice proceedings; The right to be informed of proceedings and events in the criminal justice process, of legal rights and

¹ <https://www.sciencedirect.com/topics/medicine-and-dentistry/crime-victim>

remedies, and of available services; The right to protection from intimidation and harassment; The right to restitution from the offender; The right to prompt return of personal property seized as evidence; The right to a speedy trial; and The right to enforcement of these rights.

Human Rights of Justice to the Victims of Crime:

The criminal justice system in India has become a bane of human rights. A great deal is wrong with the criminal justice system in India. This includes various stages beginning with reporting of crime, investigation of a case, arrest of the accused, his interrogation, interminable delays in criminal trial, languishing in jails of under trials, and finally the incarceration of the convict in jail.

Human Rights and Law Enforcement:

Fundamental Rights are important for the fact that they are considered inherent for every citizen and thus, their violation gives the citizens, the right to move to the Supreme Court and the High Courts under Article 32 and Article 226 of the Indian Constitution respectively.

The way we handle crime cases now is often criticized when human rights concerns are discussed at national and international forums because it is antiquated, outdated, and repressive.

Human rights in criminal justice system are the central pillar of administration of criminal justice. Criminal justice is the beacon of the light. Therefore human rights is the sovereignty of man, peaceful co-existence in the family, society, nation and international context need human rights. Human rights have to be followed in letter and spirit. It is the reservoir of life. Liberty equality and dignity of the individual. It is precious beyond all prices.

Human rights are the very wheels of justice in criminal administration. In criminal Justice System Police is first law enforcement agency which has to mind well human rights in context of offender, victim or witness.

National Human Rights Commission, India

The NHRC is the National Human Rights Commission of India. The National Human Rights Commission (NHRC) of India was established on 12 October, 1993. The statute under which it is established is the Protection of Human Rights Act (PHRA), 1993 as amended by the Protection of Human Rights (Amendment) Act, 2006.

The Protection of Human Rights Act, 1993

Human rights are standard that allow all people to live with dignity, freedom, equality, justice and peace. Every person has these rights simply because they are human beings. They are guaranteed to everyone without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Human rights are essential to the full development of individuals and communities.

Justice to the various victims of Crimes:

1. Woman
2. Child
3. Elderly Person
4. SC/ST
5. Weaker Section
6. Minority Groups
7. Consumer Victim
8. Handicapped
9. Disabled

Compensation and Assistance/Support:

The legal framework of victim compensation in India is provided under different statute, for example-

1. The Code of Criminal Procedure, 1973 (BNSS 2023)
2. The Protection of Children from Sexual Offences Act, 2012
3. The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989
4. The Protection of Women from Domestic Violence Act, 2005
5. Motor Vehicle Act (MVA) 1988 Along with 2019 Amendment
6. Consumer Protection Act, 2019
7. The Protection of Human Rights Act, 1993
8. Compensation Awarded for Specific Offences Under Indian Penal Code. 1860 (BNS 2023)

Now, if we throw light on the origin of the concept of the terminology "Victim Compensation", it is seen that although at the beginning, the principle of state compensation was not there, repairing the victim by monetary assistance of the offender prevailed which showed that they were not considered as a forgotten body from the justice system and hence occupied a strong position in the whole process.

In the criminal justice system compensation is provided either for injury suffered, whether mental or physical, or for loss of life to victim or his dependant which is derived from the enjoyment of life if such injury or loss would not have been committed. This may be committed either by the government agencies or an individual.

Victim compensation refers to payments made by the government to victims of crime. It differs from restitution, which involves payments, in either money or service, made by the offender to the victim of the crime.

Compensation in Cases of Victimization:

1. by Central Agencies
2. by State Agencies

In the modern era in the Indian criminal justice administration the idea of victim compensation has been developed by two fold initiatives undertaken by the Apex Court and various reports and recommendations of commissions and committees.

The terminology 'victimization by state agencies' could be categorised as the violation of fundamental rights contained in part III of the Constitution of India. Part III of the Indian Constitution dealing with fundamental rights.

In India, although there are a number of sections in the Code of Criminal Procedure, 1973 to facilitate financial assistance to the victim of crime by the offender, due to some loopholes in these provisions and also due to the low financial capacity of certain criminals, the victim does not get proper facility from the system. However, after a series of efforts in order to provide sufficient amount of compensation by the State, the Parliament of India introduced Section 357A in the Code of Criminal Procedure, 1973.

Each State has its own remuneration policy, which varies from one state to another in terms of the amount of compensation given to victims of the same crimes.

Rehabilitation /Restorative:

"Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death."

Victims are unfortunately the forgotten people in the criminal justice system.

Compensation is a widely accepted way to rehabilitate the victim. Different ways of rehabilitating and assisting victims are equally acceptable.

Today's victims of crime need better treatment from the criminal justice system. Without a shadow of doubt, the victim's rights and the notion of restorative justice have been incorporated into our judicial system. This whole idea needs a lot of micro level work now. We must help the people who have been hurt by this crime as soon as possible.

Law Commission in its 154th Report also mentioned that victims of crime should be given priority attention because they suffer substantive harm due to the incidence of crime.

Complainants, witnesses and others at risk should be protected from intimidation and reprisals. A witness protection programme should be established in every State. Methods and findings of investigation should be made public and the victim or the victim's family must be allowed access to the complete records of the enquiry.

4. CONCLUSION

The role of the victim in the Indian Criminal Justice system is followed by the common law tradition that was limited to that of a witness in the prosecution of an offence.

Because of the existence of a social contract between the State and all parties involved, the victim should be compensated when his or her rights are violated.

It is imperative that our legislature establishes laws and programs that are comprehensive, effective, and consolidated, with a particular emphasis on ensuring that victims receive justice.

Criminal Justice system in India operates in accordance with the specific criminal statutes and Constitution of India. Criminal laws are enacted by the Parliament and state legislative bodies are interpreted by the high courts and the Supreme Court.

On the basis of the discussion it can be summarized that the courts in India have started visualizing the importance of awarding compensation to the victims of crime, and violations of fundamental rights by the instrumentality of the state as discussed elaborately above. But the trend of the courts is not in the right earnest. It needs a vital change in its conception and the use of the power to award compensation to the victims logically.

There is need to reform in criminal justice system. Many things got change by time to time but it is not enough. There is need to change a lot (reform/betterment).

Some of the important suggestions are as under:

1. Victim should be treated with compensation and respect for their dignity.
2. Providing proper assistance to victims through the legal process.
3. Judges should ensure that victim's justice issues are paid due attention by the functionaries.
4. Victim should be provided information regarding progress of the investigation and outcome of the investigation.
5. Witnesses are prime factors of justice delivery system. But they are not given any protection or safeguards by the system. They should be given proper facilities, protections and safeguards. So that truth of the case is discovered.
6. The victims should be informed about their rights.
7. Police should interact with the victim in a respectful and dignified manner and provide
8. Victim with explanations regarding the procedures adopted by police and regarding the outcome of police decisions.
9. Police should be made responsible to ensure victim protection from any form of intimidation and retaliation by the offender.
10. Prosecutors should interact with the victim in a respectful and dignified manner and provide victim with explanations regarding the procedures adopted in his case.
11. Prosecutors training module should have component on victim-justice.
12. At present police are overburdened. So the law and order making wings are required to be separated from the investigating wings.
13. Judges training programme should include components on victim-justice.

"The greatest drawback of the administration of justice in India today is because of delay of cases...The law may or may not be an ass, but in India, it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in the community of snails. Justice has to be blind but I see no reason why it should be lame. Here it just hobbles along, barely able to work". - **Nani Palkhivala**

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ABBREVIATIONS:

1. ADPO : Assistant District Prosecution Officer
2. ADR : Alternative Dispute Resolution
3. ASI: Assistant Sub-Inspector of Police
4. BNS : Bhartiya Nyaya Sanhita
5. BNSS : Bhartiya Nagrik Surksha Sanhita
6. BSA : Bhartiya Sakshya Adhiniyam
7. CBI: Central Bureau of Investigation
8. CCTNS: Crime and Criminal Tracking Network & Systems
9. CFSL: Central Forensic Science Laboratory
10. CID: Criminal Investigation Department
11. CJ : Chief Justice
12. CJS: Criminal Justice System
13. Cr.PC: Code of Criminal Procedure
14. DGP: Director General of Police
15. DLSA : District Legal Service Authority
16. EWS : Economical Weaker Section
17. FIR: First Information Report
18. FSL: Forensic Science Laboratory
19. HC: High Court
20. IEA: Indian Evidence Act
21. IO : Investigating Officer
22. IPC: Indian Penal Code
23. LIG : Lower Income Group
24. NCRB: National Crime Record Beaurro
25. NHRC: National Human Rights Commission
26. NPC: National Police Commission
27. PIL : Public Interest Litigation
28. POCSO : Protection of Children from Sexual Offences
29. SC : Schedule Caste
30. SC : Supreme Court
31. SCC : Supreme Court Case
32. SEC. : Section
33. SI: Sub Inspector of Police
34. SLSA : State Legal Service Authority
35. SP: Superintendent of Police
36. ST : Scheduled Tribe
37. UDHR : Universal Declaration of Human Rights, 1948
38. UK : United Kingdom
39. UT : Union Territory