



**NEED FOR STRENGTHENING  
PRESENT POSITION OF VICTIMS IN  
INDIAN CRIMINAL JUSTICE  
SYSTEM**

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**Abstract**

By the end of 1970s victims of a crime were mostly the neglected entity of the criminal justice system mainly due to presumption of innocence of accused and burden of proving the guilt which lied on prosecution, indicating somewhat accused centric criminal justice system. This orientation changed with the emergence of the victimology as a distinct discipline. In the recent past, there has been a wide shift in which the victims of a crime are dealt within a criminal justice system. Most of the nation states have come up with a different sort of legal framework for assisting and helping the victims of a crime, but in India the present legal provisions dealing with the aforesaid legal phenomenon are neither adequate nor up to the satisfactory level. Firstly this paper seeks to examine and highlight the present existing position of victims in Indian criminal justice system, secondly it emphasize the needs for providing help and legal assistance to victims, thirdly it presents some of the immediate measures or steps that must be implemented and taken care of within the legal framework to enhance or uplift the existing position of victims in Indian criminal justice system thereby reaffirming the state's

active responsibility and thus reducing the sufferings of victim to the least possible extent.

**Present Legal Framework Ensuring Justice and Fair Treatment To The Victims**

The word victim in general means any person who is harmed by another but the statutes have tried to make its meaning more precise and accurate by including all the necessary aspects.

In Indian scenario The sec. 2(wa) of CRPC 2008 defines the word victim as any person suffered any loss or injury resulting out of any act or omission of the other person or accused this definition also includes guardian or legal heir of the person suffering any loss or injury. This definition however was not present since the inception of the statute but was inserted by the 2008 amendment to the code of criminal procedure. The above said definition is very narrow in its approach in comparison with the United Nations mandate. The approach of UN is reflected clearly in a resolution (40/34, dated 29-Nov-1985) passed by General Assembly named "Declaration Of Basic Principles Of Justice For Victims Of Crime And Abuse Of Power" defines victims as a person either individually or collectively suffering any harm which can be physical, mental, emotional, economical or any harm to fundamental rights which is the result of act or omissions in violation of existing criminal laws of the nation states.

It is General notion rather common to all criminal justice system that a victim of a crime is the initiator of criminal justice administration victim is the very basic entity



of criminal prosecution and Justice matrix mechanism.

Indian criminal justice system has colors of British criminal justice system as being an Earth wind Colony of British Empire but however some major amendments in Indian criminal institutes have tried to inject some local influences and parameters.

Indian criminal justice system initiates from FIR that is first information report <sup>1</sup>which is a document containing the information reduced to writing of any offence committed against the victim. It can be lodged by victim himself or buy near relatives where victim is unable to appear in person in any nearby police station.

If the police officer who is in charge of that police station does not allow the victim to lodge FIR the victim can approach to the superintendent of police who will direct in furtherance there of <sup>2</sup>.

If the above said mechanism fails due to any reason not on the part of victim victim can also lodge and complaint before a competent magistrate the magistrate before whom the complaint is filed after examining it on oath either enquires himself or direct and investigation by police<sup>3</sup>.

Furthermore after the initiation of criminal proceedings the following relevant sections helps the victim in achieving justice without mental pain and suffering.

Section 357A. talks about the compensation which can be given to the victim who has

suffered any harm or injury resultin out of the offence committed against himself.

S. 372 of CRPC somehow also manages to reduce the plight of victims by allowing him to appeal in higher courts when there is acquittal of accused or whenever in the viewpoint of victim accused has get lesser punishment and also victim can appeal for more adequate compensation grants.

Sections 377 of the Cr. P.C. states that the appropriate government, as the ease may be can file appeal before the High Court against sentence on the ground of inadequacy, irrespective of the fact that the prosecution was on the basis of the police charge or a private complaint. Therefore the 1st respondent has contended that the provisions under Section 377 of the Cr.P.C. is the only remedy available to the aggrieved party to challenge the sentence on the ground of its inadequacy and there is no provision in the Cr.P.C. enabling the complainant to file a revision before the Sessions Court challenging the inadequacy of sentence.

S. 378 of CRPC also favors the victim by allowing the appellate court in case of appeal against acquittal to review the evidences entirely and to arrive at any conclusion of its own, however it must give reasoned decision on the question of facts.

It is quite ironical that once the criminal justice mechanism initiates either through an FIR or complaint to Magistrate as the case may be victims participation role in the criminal justice matrix comes to an end considerably. As now at this stage victim is called in courts just to identify the offender or

<sup>1</sup> S.154 of the Code of Criminal Procedure, 1973 (Cr. PC).Provisions regarding First information Report.

<sup>2</sup> *ibid.*

<sup>3</sup> S.200, 202 Cr. PC. The failure by a public servant or willful neglect to act upon the complaint of member of SC or ST is itself an punishable offence.



material objects which are recovered during the course of Investigation.

The child victim is generally offered with the children home shelter and women victim of rape or other heinous crime is provided generally with the protective custody or Nari Niketan or women shelter homes to avoid tempering with the evidence by other party. However such protective custody has no concrete legislative backup.<sup>4</sup>

Well if we come to the women victimization as from imposition of severe and maximum punishment<sup>5</sup> to shifting burden of proof on accused the existing legal framework of of punishments also somewhat tends to create a deterrence effect thereby decreasing victimization of women.<sup>6</sup>

In Delhi Domestic working women's forum v. Union of<sup>7</sup>India in which 7 army men raped 6 women in a passenger train between Ranchi and Delhi who were domestic servants of Delhi the court laid down some broad guidelines favoring women rape victims which are:

Firstly providing adequate legal representation to victims in such a manner that advocate must be able to help victims properly in legal proceedings as well as in proper mind counselling

Secondly the legal representation should be done by the same person from initiation till the end of the case

<sup>4</sup> Hussainara Khatoun v. State of Bihar (1980) 1 SCC 93 (at 96) the apex court strogly disapproved the procedure of keeping women victims in jails and stated it as "nothing short of a blatant violation of personal liberty guaranteed under Article 21 of the Constitution."

<sup>5</sup>S.376 (2) of IPC 1860 prescribes a minimum sentence of ten years and a maximum sentence of life imprisonment for certain severe forms of rape.

Thirdly the police is always under an obligation to communicate the victim of a crime of her right to legal representation.

Fourthly a well-maintained list of advocates able and willing to help such victims in legal representation should be placed in the police station for further reference

Some more judicial precedents strengthening the position of victims

First Rudalshah v. State of Bihar<sup>8</sup>it was a landmark judgement in which the higher Judiciary gave a verdict that it is competent for higher judiciary to grant compensation to victims through exercising the power of writ jurisdiction same or less was also held in Nilabati Benera v. State of Orissa.<sup>9</sup>

Second in Sebastian v. Union of India<sup>10</sup>in this case also victim's right to compensation was upheld and the wife of the victim was compensated for illegal detainment of her husband

Thirdly the concept of restorative justice has legitimized the courts to award compensation for restitution to victims of crime and victims of abuse of power

Fourthly the concept of speedy trial as victims constitutional right implicit in article 21 was emerged in the famous case of Hussainara Khatoun V State Of Bihar<sup>11</sup>in which the court took such note for a case pending more than 11 years.

### Need Or Loopholes For Better Approach

<sup>6</sup> For e.g., S. 114 A, Evidence Act 1872 raises a presumption as to the absence of consent where the woman raped says in her evidence before the court that she did not consent.

<sup>7</sup>(1994) 3 SC11.

<sup>8</sup>1983 SCC (4) 141

<sup>9</sup>(1993) 2 SCC 746.

<sup>10</sup>1984 1 SCC 339

<sup>11</sup>1979 SCR (3) 532.



Although enough of laws process procedures are in support of victim then also there are some major fallouts or loopholes in the criminal justice administration of India which makes the position of victim quite weak under the legal implementation matrix.

First and foremost fallout of victim protection is pendency of cases due to lesser number of courts as it is a common phrases that ‘justice delayed is justice denied’ and Indian is well known for pendency of the cases which was also highlighted in table 1.1 which shows **Pendency in courts has increased over the years; 87% of all pending cases are in subordinate courts** Table 1.1<sup>12</sup>

YE R	SUPRE ME COURT	HIGH COU RT	SUBORDIN ATE COURTS
2006	40 thousand s	37 lakhs	2.5 crores
2019	60 thousand s	44 lakhs	3.1 crores

Secondly, we all know that or more correctly victim compensation is very basic and popular remedy granted to the victims but this victim compensation has a major backdrop in Indian criminal justice scenario that is a judge or judicial authority cannot impose fine and order for victim compensation at the same time so for instance for an offence if punishment is imprisonment

of either description or fine or both Judiciary can grant imprisonment and fine or imprisonment and order for compensation but cannot impose fine and allow compensation at the same time thus fine and compensation do not go hand in hand is fine is deposited in States treasury and compensation is the sum of money granted by Court which has to be given by accused or Convict to the victim directly<sup>13</sup>

Thirdly, there is also an improper limit of fine in posing power conferred upon the magistrate of first and second class say for instance if a person is tried under section 326 of IPC that is grievous hurt and it is tried by Judicial Magistrate of first class so the magistrate here is bound to impose fine but only up to the rupees 10,000 it is not adequate for the victim who spent more than rs 10000 in a hospital for recovering that grievous hurt and has now no means of recovery as compensation.<sup>14</sup> on the other hand session courts do not have any limit on imposing fine. Fourthly, practically the compensation which is given to victims as token is implemented practically by virtue of section 421 and 422 of CRPC which provide a very complex and conversion process for its recovery the mechanism which is applied is either sale and attachment of offenders movable property aur imposition of fine amount as areas of land revenue both of these are in itself way too much complex and delayed process.

Fifthly, as per the United Nation handbook of justice for victims victims had sufficient interest in the proceedings instituted against the accused so the victim must also be allowed to participate actively in the

<sup>12</sup> Court News, 2006, Supreme Court of India; National Data Judicial Grid accessed on August 7, 2019; PRS

<sup>13</sup> Bajpai, G.S. (1997). Victim in the Criminal Justice Process , Uppal Publishing House. New Delhi: India.

<sup>14</sup> Rabindra K Mohanty & Satyajit Mohanty ,Text book on criminology, penology and victimology,454( 2012)



proceedings but unfortunately the criminal justice administration of India criminal has a different outlook in which the state took responsibility of victims flight and act as a parent as a result of which the victim is not involved in most of the procedural proceedings and thereby making victims and alien to the criminal justice system<sup>15</sup>

### Measures Recommendation

After going through the various rights and victim oriented procedures and laws and their loopholes respectively it can be ascertained that the plight of victim under Indian criminal justice system needs some immediate measures for overcoming the shortcoming or Pitfall.

Firstly there is instantaneous requirement of number of courts and completed judges and also some more specialised and special quotes which will reduce the plight of the victim the more or less was also highlighted in the hussainara Khatoon's case.

Secondly that judicial authorities should be allowed to impose fine and order compensation both at a same time along with the punishment of either description that is fine and punishment be allowed to go hand in hand.

Thirdly the major Reform which is needed or is the need of the hour is making implementation of compensatory loss much more easier that is compensation should be provided before the court and at the last hearing and instead of attachment and sale for realising the compensation offenders aur accused or Convict right to appeal should be

suspended up to the realisation of proper compensation.

Fourthly instead of making victim and alien to the criminal proceedings victim should also be allowed to participate actively in the proceedings and should also be given for allowed them validly to claim their own right of Representation in their own case.

The law commission has in its report of 1996 stated that the victim of a crime must be supported by state funds in the case of acquittal of accused, or where the accused can not be traced, or where the offence stands proved prima facie.<sup>16</sup>

Another set of major recommendations has been forwarded by Malimath committee chaired by the famous well known Justice V.S. Malimath, the committee has under his chairmanship recommended some of the beneficial measures which must be adopted by the Criminal justice administration of India.

1. If the victim is dead then his legal heirs must be vested with a right to be impeded in the case in which the victim was party, if the offence in question has punishment of imprisonment of seven years or more
2. Every victim must be provided with the realization of Right to Representation even from state funds if he is not able to afford a lawyer.
3. In all heinous and serious crimes victim compensation scheme should be imposed as obligation upon the state.
4. The state must regulate victim compensation and welfare schemes through Legal Service Authorities

<sup>15</sup> UN Office for Drug Control and Crime Prevention. (1999). Hand Book on Justice for Victims on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, New York: Centre for International Crime Prevention.

<sup>16</sup> Law Commission of India Report. (1996). Victimology in 154th report on the code of criminal procedure 1973 (Act No. 2 of 1974) Chapter XV, pp. 57-65.



5. The victim's right to participate in proceeding should include active participation allowing victim to ask questions from witnesses and to produce evidences and also he must be informed in detail about the stages of investigation and status thereof.
6. Victims should also be allowed to advance the argument of his lawyer and his statements must also affect the accused bail applications.
7. Victim should also be allowed to appeal in higher courts when there is acquittal of accused or whenever in the viewpoint of victim accused has get lesser punishment and also victim can appeal for more adequate compensation grants.

### Conclusion

The law commission of India, Malimath committee and various judicial precedents of the Supreme court of India has tried to throw light upon the need to take a fresh look on victims plight. It has been analyzed that Justice to victim in real sense is a kind of state's obligation which includes assistance to victim at all the stages of criminal proceedings so that he/she doesn't feel alienated to the Justice matrix. It must be noted that if the sufferer of the crime is not satisfied within the crime punishment and justice matrix then this whole system of interlinked administration will fail and the very existence of state as an authority will be futile and questionable. Hence there is an urgent necessity to streamline the criminal justice system by legitimately including appropriate rights in the existing legal matrix with lesser complex procedures for their easy and effective implementation.

After going through this brief discourse on various rights and present situation of victims in the criminal justice administration of India,

it can be very well analysed that only the victim's right to compensation is present within the legal framework which is focus more and legal impediments are neglected majorly

Therefore it is the need of the hour for Indian legislative and executive to take a fresh Look upon the plight of the victims thereby amending complex and cumbersome process and laws for the realization of victims right at the ground level should be made easy and simple the existing legal Framework diminishes significantly the role of victim in proceeding this forms a little bit negative perception on the part of the victim who has a person has suffered harm including mental physical and emotional furthermore each and every offence depicts the non fulfillment of the application on the part of the state to protect and upheld the basic human rights of its subjects.

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