

NEO VICTIMOLOGY IN CRIMINAL JUSTICE SYSTEM IN INDIA

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ABSTRACT

There are individuals experiencing unfathomable anguish. They are helpless victims who have done nothing to deserve this. They're the ones that get hurt because of the bad choices others make. It's troubling to think about, yet we must acknowledge the reality that such individuals do exist. It's time for a new look at the role of crime victims in the American judicial system. To better serve crime victims, the Indian Criminal Justice system should be refocused on their needs, as suggested by the country's current legislative structure. There are two main ways in which the Indian legal system has failed to safeguard victims' rights: by failing to adopt appropriate legislation and by failing to apply the law in both its text and its spirit.

Keywords: *Prisoner, Criminal law, supreme court etc.*

1. INTRODUCTION

When our legal system successfully prosecutes a case and secures a historic conviction against an alleged perpetrator of a particularly terrible crime, many in our society express a sense of relief and optimism. We anxiously anticipate the day of such a trial in which the accused will be found guilty by a competent bench of our judicial system. Several news outlets have framed this incident as a triumph of virtue against evil. At the same time, the people instill a deep faith in the judicial system. Yet, the focus of the public and the government on whether the accused is found guilty or not is misguided, since the victim deserves some type of relief regardless of the outcome of the case. As upstanding members of society, we should hold on to the conviction that justice may be both a sword and a shield. The goal of India's criminal justice system should be twofold: to bring justice to the accused and to alleviate the victim's suffering. There is no hierarchy between the two responsibilities; rather, they run concurrently. The study's overarching goal is to provide light on whether or not the rights guaranteed to victims by the Indian legislative framework are really upheld by the Indian criminal justice system's judicial authority. The rights and remedies available in the Indian criminal justice system are classified and simplified into four major categories to provide a better comprehension of the study issue and facilitate the reader's ability to follow the progression of this work. Being a member of the United Nations, India adheres to these standards as outlined by the UN General Assembly.¹

¹ Mia Farrow – Activist and Actress



2. LITERATURE REVIEW

Singh, Ashish & Jindal, Shivam (2021) By the late 1970s, the presumption of innocence of the accused and the burden of proving the guilt which fell on the prosecution indicated a relatively accused centric criminal justice system, leaving victims of crime as the forgotten component of the system. When victimology developed into its own field, this perspective shifted. The criminal court system's treatment of crime victims has seen dramatic change in recent decades. Most countries have created some form of legal structure to aid and support crime victims, however current legislative measures dealing with this phenomena in India fall short of what is necessary or desirable. This paper has three main goals: I to examine and bring attention to the current status of victims in India's criminal justice system; (ii) to emphasise the need to provide victims with help and legal assistance; and (iii) to present some of the immediate measures or steps that must be implemented and taken care of within the legal framework to enhance or uplift the current status of victims in India's criminal justice system, thereby reaffirming the state's active responsibility to protect and support them.

Raj, Prithivi (2021) An important aspect of the Criminal Justice System is protecting victim rights. This study examines the function of the victim in criminal procedures. This article will examine how victims engage with and are affected by various components of the criminal justice system throughout the whole criminal procedure. The author analyses the origins and growth of Victimology and Criminology, and explains the rights and responsibilities of victims under different legal systems. In order to better protect victims, this paper will propose changes to existing criminal process. This article will examine the victim's rights as they pertain to criminal law processes, with a focus on those involving sexual offences.

Srinivasan, Murugesan & Jane, Eyre (2007) The criminal justice system mostly ignored crime victims until the 1970s. As the study of victims matured into its own field, attitudes shifted. The criminal justice system's approach to crime victims has undergone radical change in recent decades. There has been a widespread awakening to the need of supporting victims of crime and guiding them through the criminal justice system in order to make full recoveries. Nevertheless, in India, the standing of victims in the criminal justice system has not improved much. This study makes an effort to analyse crime victims' rights and the Indian criminal justice system. The importance of aiding victims of crime is also emphasised in the document. The writers of this study have also proposed some urgent measures that the law enforcement authorities in India might do to better the situation of victims in the criminal justice system.

3. RIGHTS OF A VICTIM

(A) Access to Justice and Fair Treatment

- **Right of Victim to Register A FIR**

The filing of a First Information Report (FIR) is the initial stage in the Criminal Justice System in India. If you or someone you know has been affected by criminal activity, you may file a First Information Report (FIR) with the nearest police station. The officer will begin his or her inquiry based on this data. Under Section 154 of the Code of Criminal Process, this data is described as follows:

“154. Information in cognizable cases.

- **Right of Victim to Participate through Private Counsel**

In court proceedings, a defendant has the right to be represented by an attorney of his or her choosing, known as the "right to private counsel." Although the victim's chosen advocate will work for the prosecution, the victim is nonetheless entitled to private counsel under the Indian criminal justice system. According to section 24(8) of the Criminal Process Code, victims have this protection. Section 301 (2) and Section 302 elaborate on the extent of this privilege. If the victim gives an attorney specific instructions to file criminal charges against a defendant in court, that attorney must follow the lead of the Public Prosecutor or Assistant Public Prosecutor and may only submit written arguments after the evidence has been closed if the judge allows it. This is required by Section 301 (2).

- **Right of a Victim to Appeal**

Because of the 154th Law Commission Report, victims now have the legal right to file an appeal by amending the relevant provision of Section 372 of the Code of Criminal Procedure. A victim has the legal right to appeal a High Court ruling that either acquits the accused, downgrades the severity of the crime, or awards insufficient restitution.

4. VICTIM RIGHTS AND THE INDIAN CRIMINAL JUSTICE SYSTEM

The Indian legal system follows the Anglo-Saxon adversarial approach. It is up to the prosecution to prove guilt beyond a reasonable doubt. Several Supreme Court rulings have reaffirmed the importance of both crime prevention and the treatment and rehabilitation of offenders as essential tenets of Indian penal theory. In the criminal justice system, victims are just treated as witnesses and given no rights of their own; instead, the state is solely responsible for prosecuting and punishing the perpetrators. Although victims of crime in other nations get adequate protection, aid, restitution, and compensation in accordance with applicable laws and acts, in India, victims play no important part in the criminal justice system. Current criminal



justice theory holds that a victim's rights are adequately addressed with the conviction of the offender. One of the numerous proposals put up as of late to better the criminal justice system is one that would shift the system's focus to victims. A victim-oriented approach prioritises the safety of victims and witnesses throughout investigations and prosecutions, gives victims more say in the accused person's punishment, and provides victims with some kind of restoration or compensation, especially in cases of serious crime.

International rules and procedures for the protection of crime victims were recognised as necessary in the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. It has acknowledged four key victim rights, including the right to justice and fair treatment, restitution, compensation, and help.² In this section, we'll take a look at how well India's legal code follows the guidelines outlined in the declaration.

4.1 Constitution of India

The Indian Constitution is the "mother of all laws" and the highest legal authority in the country. The Indian Constitution protects everyone equally and bans the government from taking anyone's life or liberties without due process.³ The criminal justice system in India reflects the commitment to social justice that is important to the country's constitution. The 'Rule of Law' is ingrained in the Indian criminal justice system, as the Supreme Court has deemed it to be a fundamental aspect of the Indian Constitution. As a whole, the Indian Constitution does a poor job of guaranteeing the safety of victims, protecting their rights, and acknowledging the notion of victim compensation. Important basic rights are outlined in Articles 14 and 21, and these articles must be interpreted in light of the principles of state policy outlined in Articles 39A, 41, 46, and 51C.

4.2 Victim's Rights under Indian Penal Code

After many years of successful use, India's court system has matured into a reliable and equitable system of incarceration and punishment. The judicial system is responsible for ensuring that the country's laws are followed. Yet, it cannot judge criminal or improper behaviour matters according to its own standards. Each and every one of the standards and procedures for making decisions and imposing punishments has to be codified in a single system or document. Every nations have a similar document; India's is called the Indian Penal Code⁴ (here in after referred as IPC). All Indian nationals who commit crimes within India are subject to the jurisdiction of the IPC. The document is valid for all vessels and aeroplanes in the Indian Ocean and across Indian airspace.

The Indian Penal Code (IPC) was first enacted as British law in 1860, during the era of British

² Clause 14 Part B

³ Arts.14 and 21 of Indian Constitution

⁴ Arts.14 and 21 of Indian Constitution

control in India. In the 1860s, under Lord Macaulay's leadership, the First Law Commission drafted the initial version of the code and an introduction document. Its origin may be traced back to 1862. Twenty-three chapters and a total of 510 individual sections make up the IPC. The code begins with an introduction, continues with explanatory notes and exceptions, then extends through a variety of criminal acts. The Code details the many crimes that may be committed along with the corresponding penalties. Every violation of the law that carries a penalty is considered an offence under the Code. Every other kind of punishment is now illegal in India, replaced by the 19 penalties outlined in the Code. More than 150 years after it was first enacted, the Indian Penal Code (IPC) has been amended only a handful of times since independence from Great Britain. In that time, three new chapters—concerning criminal conspiracy, election-related offences, and crimes committed by married men and women—have been added to the original 23. The clauses of IPC dealing to sexual offences, including rape, were recently updated with the help of the Criminal Law (Amendment) Act, 2013.

4.3 Code of Criminal Procedure, 1973

Criminal law's primary goal is to safeguard the public against violators of the law. The objective of the law is to deter potential lawbreakers with the fear of punishment and to ensure that real lawbreakers face the consequences that are established for their crimes. In this broader understanding, criminal law includes both substantive criminal law and criminal procedure. Substantive criminal law establishes what constitutes criminal conduct and what actions should be taken in response to such conduct, whereas procedural criminal law governs how the substantive law is implemented. There would be little use in enforcing substantive criminal law if it were not accompanied by a robust system of procedures.⁵ Why? Because the threat of punishment implied by the substance of criminal law would be meaningless without the enforcement mechanism. Criminal law would lose almost all of its significance and validity if empty threats were not effective deterrents.

The primary statute governing the administration of substantive criminal law in India is the Code of Criminal Procedure⁶(hereinafter referred to as Cr.P.C).

It was signed into law in 1973, and its implementation date was April 1, 1974. It sets in motion the processes by which criminal wrongdoing may be uncovered, suspects apprehended, evidence gathered, guilt or innocence determined, and punishments meted out to those found guilty. It also addresses issues of public disturbance, crime prevention, and support for one's spouse, dependent children, and elderly parents. It provides aid to victims of all stripes in an effort to safeguard their legal rights. The numerous victim-related clauses of the Criminal Procedure Code must be identified and analysed. Pretrial, trial, and appeals stages make up the three basic parts of

⁵Dr.K.N.Chandrashekhara Pillai, R.V.Kelkar's Criminal Procedure, fifth ed., Eastern Book Company, Lucknow (2008), p.1.

⁶ Act No 2 of 1974



criminal process. Each of these methods relies on a unique set of apparatuses to ensure that victims get fair treatment. Throughout the criminal process, the Code explicitly defines the roles and responsibilities of numerous agencies, such as the police, the prosecution, the courts, and the prisons. Yet, the victim, for whom the equipment is operating, is often overlooked. He is not allowed to participate, to object to his release on bond, or to file an appeal of the judge's decision. The victims of crimes are the ones who suffer the most, yet they don't have much of a voice in the justice system as it is right now.

4.4 Indian Evidence Act

The rules for admissible evidence in Indian courts are spelled forth in the Indian Evidence Act. It lays forth the rules by which a fact may be shown. The Latin roots of the word "evidence" are "evident" and "evidere," which mean "to show plainly, to find, to ascertain, or to prove." Prior to the Act's passage, the courts in India followed the rules of evidence as put down by various communities and social groupings. These standards varied by caste, religion, and socioeconomic level. The Indian Evidence Act provides a road map for the judicial system to follow as it determines the facts.

Due to the Act's nature as a procedural legislation, it provides inadequate safeguards for victims throughout the legal process. The victim does not have to cooperate with investigators unless it is necessary for the identification of people or items found during the inquiry.⁷ An adversarial system is the basis of India's criminal justice system. The fundamental idea is that all defendants should be treated as if they were innocent until proven guilty. This is why the prosecution often has the greater burden of proof in criminal cases. The Act provides that, with respect to certain offences, the presumption shall be against the innocence of an accused, and that, in such cases, the burden of evidence shall rest severely on the accused individual. To provide only a few examples, the presumption should be against innocence of the accused in situations involving dowry deaths,⁸ aiding the suicide of a married woman, and rape.

4.5 Victim Compensation

Only if victims get fair recompense for their harm can the criminal justice system be considered effective. A victim, as well as his or her dependents, are entitled to restitution under the principles of justice. When anything bad happens, the perpetrator always has to pay to make it right again. In cases when the accused person is too impoverished to pay the restitution, however, the state will shoulder that burden. There are several reasons why compensation is

⁷ Sec. 9

⁸ Sec.113B of Indian Evidence Act :Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860)



warranted, including the fact that it helps victims and shows that his pain is acknowledged, but maybe most significantly because it discourages repeat offenders. The act of making restitution has "intrinsic moral worth of its own," which has a rehabilitative impact on the perpetrator.⁹ In India, compensation for victims of crime may be granted under a number of various statutes, including but not limited to:

- (i) Constitutional Remedy of Victim Compensation
- (ii) Fatal Accident Act, 1855
- (iii) Motor Vehicles Act, 1988
- (iv) Criminal Procedure Code, 1973
- (v) Probation of Offenders Act, 1958
- (vi) Other Legislations

4.5.1 Evolution of Victim Compensation under the Constitution

The Indian judicial system took the lead in developing a constitutional remedy for the infringement of basic rights by enacting Articles 32 and 226. For the first time in *Rudul Shah v. State of Bihar*, Chief Justice Chandrachud used the exceptional authority conferred in the Supreme Court under Article 32 to order monetary compensation for the petitioner's infringement of his right to life and personal liberty under Article 21. In another case, *State of Punjab v. Ajaib Singh*¹⁰, the Supreme Court went farther and awarded compensation of Rs. 5 lakhs despite acquitting the accused. India's highest court came up with novel concepts in victimology and victim justice in the seminal case *Bodhisattwa Gautam v. Subhra Chakraborty*¹¹. First, it determined that a victim of crime must be granted interim relief in the form of monetary compensation to ensure that the victim does not experience an unjustifiable wait in the delivery of justice. Second, it ruled that the court has the authority to provide the victim such compensation even if the defendant is not found guilty because of the lengthy length of the criminal procedures. In 2009, the court told the public that the revisions it made to the Cr.P.C. in 2008 would include these forward-thinking concepts.

4.5.2 Compensation under Fatal Accident Act, 1855

The purpose of this law is to compensate surviving loved ones for the harm done by a person's untimely death as a result of a legal mistake. The Act's section 1-A allows for a civil action to be filed on behalf of the spouse and any minor children of the accused. The two cases heard and

⁹ Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973 (1996) at 57

¹⁰ (1995) 2 S.C.C. 486

¹¹ (1996) 1 S.C.C. 490.



resolved by the High Courts of Lahore and Allahabad are relevant here.

A case in which the High Court reinstated a trial court decree for 4,000 rupees said, "Under the Act, it is sufficient to award damages to the dependents of deceased, if a person by whose wrongful act, negligence, or default has caused the death of the person." This case involved the deaths of Saradara Singh and Charan Singh. Similarly, in Jagannath Singh v. Pragi Kunwar¹², the Allahabad High Court ruled that the deceased's widow was entitled to 2,000 Indian rupees in compensation for her husband's gunshot death. Victims seldom use the Fatal Accident Act, 1855 because it is as time-consuming, costly, and burdensome as civil litigation. The availability of feasible substitutes in the present day almost rendered the Act irrelevant. Now, the Act is not in effect.

4.5.3 Compensation under Motor Vehicles Act, 1988

As the number of traffic incidents, whether caused by hasty or careless driving or otherwise, continues to rise, the Act now includes a specific compensation provision for victims. Those who have suffered a loss owing to the victim's death or permanent disability may be eligible for compensation under Sections 140 to 142 of Chapter X of the Act, even in circumstances where no culpability can be shown. Compensation rates were standardised by the Act to eliminate case-by-case variations, which was a positive development.

4.5.4 Compensation under Criminal Procedure Code, 1973

Section 357 of the Criminal Procedure Code, 1973 (henceforth referred to as the "Cr.P.C."), was amended to provide a comprehensive provision for victim compensation after being recommended by the Law Commission of India. In the interest of justice, the court may, at the time of issuing judgement, grant victims of crime compensation according to clauses (1) and (3) of s. 357. Compensation for victims of crimes may be granted by the trial court or the appellate court (under revision jurisdiction) after the offender has been tried.

4.7 Justice VS Maliath Committee on Reforms of Criminal Justice

To examine potential reforms to India's judicial system, the Ministry of Home Affairs of the Indian government issued an order on November 24, 2000, creating the Committee on Reforms of the Criminal Justice System, which Judge VS Malimath would head. Part of the charge was to "suggest ways and means of developing such synergy among the judiciary, the Prosecution, and the Police as restores the confidence of the common man in the Criminal Justice System by protecting the innocent and the victim and by punishing unsparingly the guilty and the criminal."¹³

¹² ALR 1949 448

¹³ Committee on Reforms of Criminal Justice System 1.1 (iv) at p. 3



The committee said that the low conviction rate and the high pendency of cases awaiting disposition are the two most pressing issues facing the criminal justice system.

According to the committee's observation, "the victim whose rights are infringed by the accused is not allowed any right to participate save as a witness" describes the current status of victims in India's criminal justice system. He is unable to provide assistance to the court by adducing evidence or questioning witnesses because of the way the system is set up. The committee came to the conclusion that the disinterestedness and subsequent collapse of the system is due to the victims not receiving the legal rights and protection which they need in criminal proceedings. Concern for victims was expressed strongly throughout the Committee's interactions with law enforcement, judges, prosecutors, defence attorneys, prison officials, and members of the public, and it was suggested that the criminal justice system would not regain its integrity as a fair procedure for establishing the truth unless justice for the victim was made one of its central focuses.

5. POSITION OF VICTIM IN CRIMINAL JUSTICE SYSTEM

The rule of law cannot be maintained without a strong criminal law system. For criminal justice to be effective, it must be strict but not overbearing. While this competency is required in all areas of law, it is especially important in criminal law because the potential for severe societal harm makes the stakes especially high.¹⁴ We have progressed from a prehistoric individualistic view of the administration of the criminal justice system to a modern collaborative one. There were originally simply the criminal and the victim in the system. Before, it was common for the victim to pursue legal action against the attacker. Yet, as time went on, the state increasingly played the role of victim, relegating the victim to secondary status. Right now, we have the perpetrator and the state. One fundamental premise guides modern criminal justice system everywhere: safeguarding the rights of the accused. In deciding whether or not an accused person is liable for a crime, the criminal justice system must ensure that the accused person's rights are protected. When an offence has been committed, the perpetrator is captured, brought to trial, and either sentenced to jail time or released on probation.¹⁵ Even if he is found guilty, the courtroom will be dominated by his reformist theme. There was a period when the victim was at the centre of the criminal justice system. Yet, victims have been reduced to the role of mere witness in criminal proceedings throughout the ages. As a result, the role of victim in human societies has evolved considerably throughout time. Many criminal justice systems have different ways of dealing with victims, which is mirrored in the different legal conceptions that have developed through time.

¹⁴ Ahmad Siddique, Criminology, Afzal Qadri, ed., 5th edn., (Lucknow: Eastern Book Company, 2007) .p.32

¹⁵ A.H.Mondal "Crime Victims and Their Treatment in the Administration of Criminal Justice" (Central India Law Quarterly, Vol XIV 2001) p 32

5.1 Victim's Position in the Historical Perspective

The first human societies were governed by the rules of the jungle. The strongest prevailed. A person who was physically superior could do what he wanted and get away with it. From the dawn of organised human civilization, criminal activity has been an unavoidable fact of life. Several people have broken the rules that society has set for them. Nonetheless, some criminologists argue that crime actually strengthens communities by bringing people together. There is no such thing as a crime without a "victim," hence every crime results in the development of a new one. Over all of humankind's recorded history, criminal activity and criminals have been known to exist. Likewise, the connection between the offender and the victim. The original participants in a criminal case were the offender and the victim. The perpetrator of the unlawful act was the major focus of attention. When criminality and criminal investigation were prioritised, the academic discipline known as "Criminology" flourished. This field, a synthesis of law and sociology, views criminal behaviour as a transgression of social standards and views criminals as members of society. This subfield focused only on offenders and their actions, ignoring the victim entirely. Yet, a new branch of evolutionary science has emerged as a branch of criminology called "Victimology." Research into victimisation and its effects is known as "victimology." Nowadays, victimology has been an area of increasing study and inquiry. One reason for this is the growing field of victimology, while another seems to be a desire to give victims a greater say in the criminal justice process. Because of this subfield, the victim is once again front and centre.

5.2 Victim's Position in Medieval period

It was thought that the shift from vindictive revenge to compassion for victims was a normal element of history. Because the tribes have begun to settle down, they no longer respond to tragedy with the same level of ferocity whenever someone is hurt or loses anything. Payment to the victim ended blood feuds, which, when tribes developed into more or less stable societies, continued to be a source of conflict since any kind of harm would spark a lifelong vengeance.¹⁶ The composition provided a viable option that met the needs of the victims in many respects. To some degree, the victim's need for retribution was appeased by recompense, as witnessed among the tribes in the cities of Arabia and even among German tribes.¹⁷ Because family disputes are so perilous in a democracy, Tacitus writes that "even murder is atoned by a certain fine in cattle and sheep: and the entire family takes the satisfaction to the good of the general weal."

¹⁶ H.E. Barnes and N.K. Teeters : New Horizons of Criminology, (New Jersey, Prentice Hall, Englewood Cliff, 1944). p 400-01

¹⁷ Hans Von Hentig, Punishment, its Origin, Purposes and Psychology, (London ,1937), p 237



6. CONCLUSION

In India's common law based criminal justice system, victims are only allowed to testify in court if they were directly affected by the crime. This is because of preconceived notions about how a victim of crime should be treated due of the pain and suffering they endured as a result of the crime. As the state in India now has the power to punish criminals without include the victim in the process, criminal law has become a tool of social control. These "value-laden judgemental categories" are unnecessary to criminological and victimological study, thus they should be replaced with terms like "participants to the conflict," "parties to the dispute," and so on.¹⁸ This perspective calls for a shift away from the traditional, top-down criminal justice system and towards a more victim-centered, bottom-up "horizontal line of justice," in which the focus shifts from punishment to mediation. Unfortunately, the traditional, top-down approach to criminal justice has remained in our system. A cursory examination of the current legal framework concerning the rights of victims of crime indicates that, except from the provision of compensation, little little has been done, either statutorily or via programmes, to address the full scope of difficulties experienced by victims of crime.

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¹⁸ Fatah A. Ezzat, "Some Problematic Concepts, Unjustified Criticism and Popular Misconception", in Kirchoff ed International Debates of Victimology, WSV Publishing, (1994) at p. 82-84