



## Protection of Victims' Rights in Criminal Justice System

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**Abstract:** The advocates for victim's rights suggest that there is a need for a paradigm shift in criminal justice from retributive justice to restorative justice. This will enhance the visibility of victim in the legal process, by involving him in terms of participation and restoration. Today, the understanding of justice includes accessibility to courts of law. The victims approach the system and give their testimonies only if the system provides them and their family adequate protection. It is imperative to the criminal justice system to show concern for victim's interests by incorporating and addressing their needs.

**Key words:** legal process, victimization, Crime harms

The traditional focus upon apprehending offenders, the adversarial system of the courts and general lack of concern about the effect of victimization have meant that in the past the treatment of victims and their rights and needs has not been adequately acknowledge. Crime harms people, and it should be our goal to repair that damage. The needs of victims of crime are often ignored. Most offenders are not held accountable to repay their victims. That is because the criminal justice system defines crime as an offense against the state, not against the victim. The purpose of the criminal justice system is to maintain order by punishing the offenders for breaking the law and trying to ensure that they do not break the law again. Victim's desires and needs are usually not considered. Unfortunately, this leaves the victim out in the cold. Victims may sustain physical injury, monetary loss, and emotional suffering. The crime may disrupt their lives temporarily or for as long as they live. To

be victimized is to feel powerless, and victims often need help regaining an appropriate sense of control over their lives. Victims also need to be vindicated declared "not guilty" of being victimized. The need for protection victim's rights can be better understood by studying the impact of crime on victim.

### Impact of Crime on Victim

Victims may face a wide range of immediate, short-term, and long-term reactions in the aftermath of crime. Every crime victim is unique. Individual trauma is affected by per victimization and post victimization factors related to individual experiences, degree of personal and social support, resiliency, and exposure to supportive services. The trauma of victimization is a direct reaction to the aftermath of crime. Crime victims suffer a tremendous amount of physical and psychological trauma. The injuries victims suffer can be grouped



into distinct four categories : Physical, spiritual, financial and emotional.<sup>1</sup>

### Needs of the Victims

People falling victim to crimes have a range of needs, which vary from victim to victim. To meet these individual needs, it is necessary that all victims are treated individually. However, the needs to victims can be grouped in the following five broad categories:

**Respectful Treatment and Recognition** as victims, both within the justice system and more widely by society;

**Protection** both from intimidation, retaliation and further harm by the accused or suspected and from harm during criminal investigations and court proceedings, such as by avoiding repeated interviewing of the victim;

**Support**, including immediate assistance following a crime, longer-term physical and psychological assistance and practical assistance during proceedings to help victims understand, participate and to reduce their distress;

**Access to Justice** to ensure that victims are aware of their rights and understand them both linguistically and legally, are able to provide additional

information and to participate in proceedings, and

**Compensation and Restoration**, whether through financial damages paid by the State or by the offender or through mediation or other form of restorative justice that allow victims to face the accuse, with a view to reaching a voluntary agreement between them on how to repair the harm to victim.<sup>2</sup>

In addition, many victims often want to meet their offenders, and are sometimes even ready to forgive them. There are several excellent programs that prepare victims and offenders for such a meeting. These Victim-Offender programs are called by various names: reconciliation, mediation, or dialogue. Victims who choose to participate are given the opportunity to express their true feelings about what occurred, ask questions to the offender, and suggest ways that the offender can begin to make things right. According to assessments of several programs in the Midwest, victims' goals were to recover some losses, help the offenders stay out of trouble, and have a real part in the criminal justice process.

Some of these needs are couched with protection of law to confer rights on the victims. The victims' rights are also human rights. They requires the special attention and protection given the impact the crime has on victims. Acknowledgement of rights is not

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<sup>1</sup> . Eidell Wasserman and Carroll Ann Ellis. *IMPACT OF CRIME ON VICTIMS*, available at :<http://www.ccvs.state.vt.us/sites/default/files/resources/VVAA%20Ch%206%20Impact%20of%20Crime.pdf> (accessed on 28<sup>th</sup> December,2015)

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<sup>2</sup> . European Commission, Rights of the victim, available at : [http://ec.europa.eu/justice/criminal/victims/rights/index\\_en.htm](http://ec.europa.eu/justice/criminal/victims/rights/index_en.htm) (last accessed on 26.05.2016)



sufficient. Victims require explicit entitlements from the Government.

**Rights of Victims:** The advocates for victim's rights suggest that there is a need for a paradigm shift in criminal justice from retributive justice to restorative justice. This will enhance the visibility of victim in the legal process, by involving him in terms of participation and restoration. Today, the understanding of justice includes accessibility to courts of law. The victims approach the system and give their testimonies only if the system provides them and their family adequate protection. It is imperative to the criminal justice system to show concern for victim's interests by incorporating and addressing their needs. This is going to be a fairly bigger challenge for the criminal justice system in advancing the interests of victim's with in the contours of law and justice, with out erosion of fair trial and rights of accused.

In the past two or three decades, there has been a strong movement to acknowledge victims' rights in traditional criminal proceedings. This movement has focused on enacting law to codify the rights of victims. Today, the rights of victims are required to be clearly defined by taking into consideration the unique concerns of distinct victims such as sexual assault victims, domestic violence victims, child abuse or neglect crimes etc., These groups have to be provided rights and remedies to address their special needs, such as restraining orders for domestic violence victims, videotaped testimony and testimonial aids for child victims, and protective services for elderly victims. However the victim's rights can be in general be classified in to following categories:

- Right to be treated with dignity and respect
- Right to notification.
- Right to be present.
- Right to be heard.
- Right to reasonable protection from intimidation and harm.
- Right to restitution
- Right to information.
- Right to apply for compensation (for violent crime victims).
- Right to speedy proceedings
- Rights to privacy.

#### **Dimensions of Victims Rights**

##### **Rights to be treated with dignity and respect**

The right to be treated with dignity and respect asserts that crime victims will be treated with sensitivity during all phases of justice processes and by all the agents of justice system. This critical right needs to be included in all statues that define victims' rights. The Indian Criminal Justice System governed by Code of Criminal Procedure doesn't contain any provision securing the victim the right to be treated with dignity and respect. The nearest approach in this regard is special treatment of victims of sexual abuse or rape cases.<sup>3</sup> However,

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<sup>3</sup>.In Section 26 of the principle Act, in clause (a), the following proviso shall be



this right is protected as a fundamental right under Art.21 of the Constitution. Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by the law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim.

### Right to notification

The criminal justice system is often required to provide general information of interest to victims. Most states also give victims or their families the right to be notified of important, scheduled criminal proceedings and the outcomes of those proceedings. They also notify victims when hearings have been canceled and rescheduled. Victim notification is considered to be the threshold right from which all other victims' rights emanate. If crime victims are unaware that they even have rights, they will be unable to exercise them.<sup>4</sup> Victim notification is generally provided in person by the court official or service provider. By telephone; by letter and by e-mail. Further it may be through computerized system for case status updates and also by uploading the status of cases on the websites of Courts.

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inserted, namely:- "Provided that any offence under section 376 and sections 376A to 376D of the Indian Penal Code shall be tried as far as practicable by a Court presided over by a woman".

<sup>4</sup>. A. Seymour and D. Beatty, in press, Judicial Education Project Curriculum, Washington, DC: Justice Solutions et al., and Office for Victims of Crime, U.S. Department of Justice.

There are many events in the ordinary criminal justice process for which notice to the victim may be required by statute. These commonly include:

Arrest of the accused:

- Bail release and related proceedings;
- Dismissal of charges;
- Negotiated pleas and entry of plea bargain;
- Trial dates and times;
- Sentencing hearings;
- Conditions of probation or parole;
- Post-trial relief proceedings;
- Appeals process and related proceedings;
- Parole release and related proceedings;
- Cancelled and rescheduled proceedings;
- Final release from confinement, including from a mental institution; and
- Escape and subsequent recapture of offender.

Under Indian Criminal Justice System, victim is just an informant and possibly a witness for the prosecution depending upon the good sense of the police and the discretion of the public prosecutor. Though he puts the entire



criminal justice system into motion with his information,<sup>5</sup> he is deprived of a right to be informed about the progress of the case. The investigating agency calls him only to record his statement and identification of any material objects found during the investigation.<sup>6</sup> Even during the trial, he just acts a prosecution witness and thereafter literally no role to play. The Code of Criminal Procedure doesn't have any mechanism for providing information to the victim.

### **Right to be present**

A victim's right to be present (referred as the right to attend), by the simple meaning of its terms, asserts the right of a victim to be physically present during criminal justice proceedings. Few State like America, Germany, have defined the right to be present though varying in degrees of specificity. Some states mandates state the right in near absolute terms (e.g., " Victims shall have the right to attend all criminal justice proceedings that the defendant has the right to attend"). Other establish a rebuttable presumption regarding a victim's right to attend, allowing judges considerable discretion in its application.

In India the Code of Criminal Procedure, is silent about this important right of victim. There are no express provisions which provide the victim a right to be present during the trial. However, few provisions which are analogous to this right are, in a limited sphere, he can attend at the commencement of trial and depose as a prosecution witness. The Code of

Criminal procedure also gives a limited right to engage lawyer to arguments.<sup>7</sup> But importantly when the charges are framed and sentence is announced he recognize this important right to be present through out the proceeding either in person or through his agent.

A crime victim's right to be present at proceedings or hearing is of great significance, for it provides him an opportunity to be part of the criminal justice process. Victims often feel that there is no substitute for witnessing, in person, the administration of justice in their own case. The right to be present in important because:

It helps victims take an active role in securing justice, holding the offender accountable, and promoting safety for themselves and the community.

It reminds the judge, jury, court personnel, and parole boards of the real human consequences of crime in a way that helps foster a more balanced and just system.

It helps keep victims informed about what is happening in their case.

It provides victims with the information needed to ask the prosecutor timely and informed questions about their case and its progress.

### **Right to be heard.**

A victim's right to be heard provides that victims have a voice at critical hearings related to their cases, from bail and bond hearings to sentencing and parole hearings. This

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<sup>5</sup> .See section 154 of Cr. P.C.

<sup>6</sup> .See section 173 of Cr.P.C

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<sup>7</sup> , See, ss 24 and 301(2)



right allows victims to express their concerns about the status of their offenders and, in the case of a Victim Impact Statement (VIS), the opportunity to tell the court or paroling authority about the physical, psychological, financial, social, and spiritual impact the crime has had on them and their families. The right to be heard has been extended by statute to include other stages of the criminal justice system such as pretrial release hearings, bail hearings, disposition of plea agreements, before a probation agreement, etc.

In addition, one of the most pressing victim's rights today is the absolute need for crime victims to be heard before criminal cases are resolved through a negotiated plea, including the acceptance of a plea of guilty *or nolo contendere*. There are many reasons for this, including the reasons that a large percentage of felony cases are disposed of by plea agreements and sentencing is often negotiated as part of the plea agreement. It is important that prosecutors seek victim input before finalizing plea or sentencing agreements.

In India the plea bargaining was added by Code of Criminal Procedure Amendment Act, 2005 through a new Chapter XXIA. This has certainly changed the look of the Indian Criminal Justice System. Some of the skin texture of plea bargaining is that it is applicable in respect of those offences for which punishment is up to a period of 7 years. More over it does not apply to cases where the offence committed is a socio-economic offence or where the offence is committed against a woman or a child below the age of 14 years. Also once the court passes an order in the case of 'Plea Bargaining' no appeal shall

lie to any court against that order.<sup>8</sup> The victims of crimes might be benefited as they could get the compensation. They need not get implicated or involved either as witness or seeker of compensation or justice any longer than required for acceptance of plea bargaining. Whether they get money or not their time might be saved. However, in India there are mixed response to plea bargain and its advantages and disadvantages.

#### **Right to reasonable protection from intimidation and harm**

This right is to enhance to personal safety of victims and prevent an alleged or convicted offender from intimidating, threatening, or harming them in future. Legislations related to victim protection in many forms are to be enacted. The first one, providing information to the victim protection in many forms are to be enacted. The first one, providing information to the victim that directly affects victim's safety or, conversely, to protect information that might compromise such safety. Secondly, to address safety issues related to the release of accused or convicted offenders, Thirdly, to provide legal recourse for victims through protective orders and lastly, to establish policies and practices that enhance victim safety during the proceedings of the court.<sup>9</sup>

Victims of crime may have important concerns about their personal safety and that of their family and loved

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<sup>8</sup> . See ss 265A to 265I

<sup>9</sup> . A.Seymour and D. Beatty, in press, Judicial Education Project Curriculum, Washington, DC. Justice Solutions et al., and Office for Victims of Crime, U.S. Department of Justice..



ones. Often, victims' concerns about safety arise from many circumstances, including the pain of victimization; threats made by the alleged or convicted offender and his or her colleagues; and lack of knowledge of their rights to protection as defined under law and the various services available to identify and address their safety issues. When victims have concerns about their safety and identity these concerns to criminal justices authorities, various steps can be evolved to promote safety for the victim within the criminal justice system, as well as at home and in the community.

### **Right to Restitution**

Restitution is the oldest of the victims' rights. The concept of restitution dates back thousands of years. Restitution statutes were among the first victims' rights laws passed nearly 50 years ago. Restitution is a civil remedy that is applied to criminal cases in an attempt to restore to the extent possible the crime victim to his or her pre-offense state. It also serves to prevent unjust enrichment of the offender.

The consequences of violent crime are predominantly viewed as committed against the state, and punishment imposed on the offender is often referred to as "paying a debt to society." But in reality it is the victim who suffers the actual harm that crime inflicts –physically, emotionally, spiritually, and financially. Victim advocates and others have argued that since the victims who suffers the real harm should have an authority to demand the criminal justice system to consider their interests and protect their rights. They want their suffering be healed, both figuratively and literally and

restitution in this regard has a role to put the victim back to the position where he was not at all harmed. In general, restitution can be ordered in the following cases:

Crimes like theft of goods or offences of damaging property.

For victim and dependents of victims of homicide, current and future expenses.

Offences involving theft of services, fraud, forgery, and violation of vehicle and traffic laws.

In India, though the victim's right to restitution has not merited the statutory recognition separately but the same has been provided under the provision relating to victim compensation under Code of Criminal Procedure.<sup>10</sup>

### **Right to Information**

A victim's right to information and referral to include the provision of information about basic victims' rights, the justice process, community and system based services that are available to help victims survive the post crime situations.

### **Right to apply for compensation ( for violent crime victims)**

Victim compensation programs reimburse violent crime victims for crime-related expenses that are not covered by collateral sources—such as medical costs, mental health counseling, funeral and burial costs, and lost wages

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<sup>10</sup> .See Section 357(1)(d)



or support.<sup>11</sup> Victims of violent crime may suffer financial stress that can be as devastating as the physical injuries and emotional trauma. The victims often find it too difficult to meet the medical expenses and get replacement for the loss of income due to disability or death. Further, the intentional delays of trial process by the accused put the victims into further despair, particularly, the elderly victims, victims with life shortening illnesses, and child victims, for whom speedy trial are particularly important. For these reasons right to apply for compensation is very important amongst the rights of the victims.

Under Code of Criminal Procedure in India, there are provisions which provide compensation to the crime victims.<sup>12</sup> Under the provisions the victim shall get compensation when the accused has been convicted and fine is also imposed as a part of punishment.<sup>13</sup> However, in some cases the court can also order for compensation even if the fine is not part of the punishment.<sup>14</sup> This makes it clear that the victim right to compensation depends upon the conviction of the accused. But the subsequent Criminal Law Amendment Act, 2008 has inserted a new provision under which the award of compensation has been made as an exclusive remedy, irrespective of whether the accused is convicted or not.<sup>15</sup> The amendment has

put an obligation on the state to pay the compensation.

### Right to Speedy Trial

A victim's shall have a right to speedy disposal of the case without unreasonable delay. It means that the court is required to consider any adverse impact the delay may have on the wellbeing of the victim when an application is moved before it by the defense for the adjournment of the trial for whimsical reasons. Also the defense shall be ordered to reimburse the expenses of the victim, every time when trial is delayed by the defense.

In India the *Code of Criminal Procedure* prescribes a time limit to complete the investigation by the investigating agency.<sup>16</sup> If the investigation is not completed within the specified period, the accused shall become entitled to be released on bail. However, no such time limit is fixed for completing the trial in the courts. One of the biggest worries under Indian criminal justice is the inordinate delay in the disposal of cases. Many times the prolonged delay has made the victims lose interest in the case.

**Rights to privacy:** The victim's right to privacy will ensure at least two things. One, protection of victim's contact details and second right against disclosure of the identity. These two rights are so important to protect the victims from further victimization, harassment and intimidation by the offender. In other word, the primary purpose of privacy rights concerning the victim's contact details is to ensure the safety to the

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<sup>11</sup> . A. Seymour and D. Beatty, in press, Judicial Education Project Curriculum, Washington, DC: Justice Solutions et al., and Office for Victims of Crime, U.S. Department of Justice..

<sup>12</sup> . See section 357 of Cr.P.C.

<sup>13</sup> .See section 357(1) *ibid*

<sup>14</sup> .See section 357(3) *ibid*

<sup>15</sup> . See section 357A *ibid*.

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<sup>16</sup> .See section 173*ibid*





victim. In respect of victim's non-disclosure of identity, and stigma that victims face from the publication of personal facts and details about the crime particularly in sexual offences.

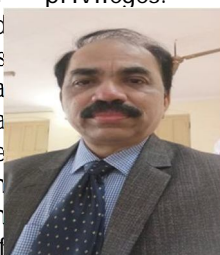
In India under Code of Criminal Procedure, there are few cases relating to sexual offences shall be tried in camera by the court. The *Criminal Procedure Amendment Act, 2008* requires that the trial for offences of rape cases shall be held in camera. The provision also mandates to maintain the confidentiality of the victim's identity by the press and media.<sup>17</sup>

The study of criminal-victim always suffered because of improper conceptualization, methodology and organization. The early criminologists dealt the subject so vaguely and with a simplified allusion, that no clear idea upon criminal-victim relation could be made. They instead adverted the problem of victim participation in the perpetration of the crime. Therefore the problem of victim and his perception in criminal justice system have not received proper attention and systematic study.<sup>18</sup>

The study of criminal -victim relationship further, emphasizes, that there is a need to recognize the important role the victim play in the criminal justice system. He is not simply reason or cause for initiation of criminal justice system but is responsible for its operation and functional solution to the crime problem. The contribution of the victim to the genesis of crime and the contribution of

the criminal to the reparation of his offence should be the central problem of victimology.<sup>19</sup>

The monopoly of power of the state in the criminal justice process has silenced victims, rendering them mere witnesses to a crime against the state. This approach fails to recognize the reality of victims. They directly experience the crime and, as such, it constitutes a violation of their human rights. The victims' movement has introduced victims' rights in an effort to improve the plight of victims. It is time to move victims' rights to the next level. We need to acknowledge the victim as a person before the law with rights and privileges.



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<sup>17</sup> . See Section 327 of Cr.P.C

<sup>18</sup> .Das. Bharath B, Victims in the Criminal Justice System,(New Delhi, APH Pub. Crpn, 1997),p.29

<sup>19</sup> . Stephen Schafer, Victimology, The Victim and his Criminal ,(Reston, Virginia, 1977),p.3

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