



## DESIGNING THE RIGHTS INSTITUTION FOR THE VICTIMS OF CRIMES

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The Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power was unanimously adopted by the General Assembly of the United Nations Organization on 29<sup>th</sup> November, 1985. This declaration is otherwise called a kind of Magna Carta of rights of victims of the crimes.

Thirty years have elapsed since the International Declaration on Victims of Crimes was adopted in United Nations. There is no exclusive law for victims of crimes in India till today. Various studies have made so far, especially in analyzing on crimes and punishment. But, a detailed study in the area of victims of crimes still remains unexplored. It is appropriate to examine the necessity and initiations to enact the special law on victims of crimes and essential measures to constitute the same.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recognized four types of rights and entitlements of victims of crime. They are:

- a. Access to justice and fair treatment, which includes prompt redress, right to be informed of benefits and entitlements under law, right to necessary support services throughout the proceedings and right to protection of privacy and safety.
- b. Right to restitution return of property lost or payment for any harm or loss suffered as a result of the crime.
- c. Compensation when compensation is not fully available from the offender or other sources, the State should provide it at least in violent crimes that result in serious bodily injury, for which a national fund should be established.
- d. Personal assistance and support services include material, medical, psychological, and social assistance through governmental, voluntary, and community-based mechanisms<sup>1</sup>.

Crime is present in various forms in India. Organized crime include drug trafficking, gunrunning, money laundering, extortion, murder for hire, fraud, human trafficking and poaching. Many criminal operations engage in black marketing, political violence, religiously motivated violence, terrorism and abduction. Other crimes are homicide, robbery, assault etc. Property crimes include burglary, theft, motor vehicle theft and arson. Corruption is a significant problem. The offenders are naturally responsible for the victims.

Serial Number	Year	Total crimes under Indian Penal Code <sup>ii</sup>
1	1953	6,01,964
2	2006	18,78,293
3	2014	28,51,563

At the time of the crime or upon discovering that a crime has occurred, victims are likely to experience a number of physical reactions to the event. Physical injuries arising from victimization may not always be immediately apparent. Victims may incur cost in the following types: participating in the criminal justice system, access health services, repairing property or replacing possessions, installing the security measures, etc.

Crime is usually experienced as more serious than an accident or similar misfortune. Psychological and social cost of the victims of crimes is less documented. Secondary victimization from the criminal justice system and society is also important to be considered.

Victims of the crimes need various kinds of assistance like support for the emotional sufferings, physical injuries, financial or material loss, social difficulties, etc. throughout all the stages of victimization. The victims' services may be divided as police based, court based, community based, system based and need based services.

In the above context, the Justice Malimath Committee appointed by the Government of India (2003) made a series of recommendations to put the victim back at the centre of criminal proceedings through a series of steps designed to empower him and the court. These include:



- (i) The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding, where the offence is punishable with seven years imprisonment or more. In select cases to be notified by Government, this right may even be extended to recognised voluntary organisations as well.
- (ii) The victim has a right to be represented by an advocate of his choice; an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer.
- (iii) The victim's right to participate in criminal trial shall, *inter alia*, include the right to provide evidence, to put questions to witnesses with the leave of the court, to be informed of the status of investigation, to move court to ensure proper investigation, to be heard on issues relating to bail and withdrawal of prosecution, to advance argument after the prosecutor has submitted his arguments, and to participate in settlements of compoundable offences.
- (iv) The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation.
- (v) Legal services could include psychiatric and medical help, interim compensation, and protection against secondary victimisation.
- (vi) The victim compensation law is to be made by Parliament, which will provide for the creation of a victim compensation fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the court<sup>iii</sup>.

The report of the Justice Malimath Committee is an important mile stone in the area of victims of crimes.

The 152<sup>nd</sup> Report of the Law Commission of India recommend for the inclusion of victim assistance provisions and compensation in the Code of Criminal Procedure. This provision is an important tool to push forward for victim compensation. The Indian society of Victimology constituted an expert committee to draft a Victim Bill and the same was submitted to the Government of India<sup>iv</sup>.

Till the year 2008, there is no definition for the victims of crimes in the Indian law. There are no provisions for the rights of the victims of crimes also.

After the Code of Criminal procedure (Amendment) Act, 2008, a radical and impactful change is found in the criminal justice system in India by introducing and redefining the rights of victim in the following manner.

In section 2 of the Code of Criminal Procedure, 1973, after clause (w), a new clause (wa) was inserted. It defines that victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir<sup>v</sup>. The definition of victim is useful for the criminal justice system.

In section 24, Code of Criminal Procedure, 1973, in sub-section (8), the following proviso was inserted, namely: "Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section."<sup>vi</sup> The victims' right to participate in the criminal justice system has to strengthen.

After section 357 in the Code of Criminal Procedure, 1973, the following section was inserted by the amendment Act, 2008, namely:

"357A.

- (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
- (2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).



(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section

(4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.<sup>viii</sup>

In section 372 in the Code of Criminal Procedure, 1973, the following proviso shall be inserted, namely: "Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."<sup>viii</sup> Likewise, the sections 157, 161, 164, 173, 275, 327 in the Code of Criminal Procedure, 1973, were amended in the year 2008 in favour of victims.

Code of Criminal procedure (Amendment) Act, 2008 made a little development in the rights of the victims of crimes. But, these are too insufficient to be considered fair in dispensing equal justice under Article 14 of the Indian Constitution. According to the National Crime Records Bureau, applications for the permission to engage an advocate to assistance the public prosecutor and appeal by the victims are availed in very rare cases. The uses of the above amendment are below the 0.01 percent only.

Section 357A of the Criminal procedure Code, which came into effect across the country in December 2009, empowers trial courts to recommend the grant of compensation to victims of criminal offences and requires every State government to frame a 'victim compensation scheme' in consultation with the Centre and allocate separate funds for it.

In November, 2014, the Supreme Court of India stated in its order that "We are informed that 25 out of 29 State Governments have notified victim compensation schemes. The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/District legal authorities. It has been brought to our notice that even though almost a period of five years has expired since the enactment of Section 357A, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the Courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation"<sup>ix</sup>.

In USA, Crime Victims' Rights Act was enacted in October 2004, the Crime Victims' Rights Act (part of the Justice for All Act) authorizes program efforts to: help victims assert and encourage enforcement of victims' rights, promote compliance with victims' rights laws, fund grant programs and other activities to implement provisions, provides an enforcement mechanism for rights delineated in the Act.

China amended its Criminal Procedure Code in 1996. One of the most important amendments to the law is the recognition of the position of the victim as a party and the increased protection given to the victim. The more important rights of the victim in the new law are considered<sup>x</sup>.

In Australia, the Victims of Crime Act 2001 lays down principles to govern the treatment of victims of crime in the criminal justice system; to provide limited rights to statutory compensation for injury suffered as a result of the commission of criminal offences and this law provides a system of victims' commissioner.



In France, all those who suffer injuries on account of crime are entitled to become parties to the proceedings from the investigation stage itself. They can assist the investigation to proceed on proper lines and move the court for appropriate directions, when the investigation gets delayed or distorted for whatever reasons. They may suggest questions to the court to put to witness to produced in the court. They may conduct the proceedings if the public prosecutor does not show due diligence. They will help the court in the matter of deciding grant or cancellation of the bail. They will adduce evidence in the matter of loss, pain and sufferings to decide on their entitlement of interim relief and compensation by way of restitution. Wrongful attempt to withdrew or close the prosecution due to extraneous factors can be resisted<sup>xi</sup>.

In Malaysia, some legislation, which provide for the presentation of hardships befalling a victim of a crime are the Criminal Procedure Code, the Juvenile Court Act, the Women and Girls Protection Act, the Child Protection Act and the Domestic Violence Act<sup>xii</sup>. Likewise, many countries have the system for the victims of crimes.

The victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by Rule of Law. But if the State fails in discharging this responsibility, the State must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated<sup>xiii</sup>. This are notable points, which are mentioned in a judgment delivered by the High Court of Punjab and Haryana.

"Tears shed for the accused are traditional and "trendy", but has the law none for the victim of crime, the unknown martyr?"<sup>xiv</sup> asks Justice V.R.Krishna Iyer. This condition has to be changed. Law aims at formalizing the ambitions of the society while conforming to its norms. If it does not do so, it will be a dead letter<sup>xv</sup>. The import of Article 21 of the constitution of India has been amplified in its application by the catena of decisions of the Honourable Supreme Court of India. Expanding scope of Article 21 is not limited to providing compensation when the State or its functionaries are guilty of an act of commission but also to rehabilitate the victim or his family where crime is committed by an individual without any role of the State or its functionary.

While many of the developed countries in Europe, USA, and Australia have taken the U.N. Declaration on victims seriously and initiated steps, in the form of new legislation or amendments, to realize the objective, India have not given any serious thought to plight of the victims of crime and abusive of power. An exclusive law on rights of the victims of crimes is essential. This law has to provide mechanism for the protection of victims of crimes at national and state levels also. This institution has to monitor victims' assistance, witness protections schemes, victims' compensation schemes and supervise the prosecutor's role in India.

Twenty first century has witnessed enormous development in the scientific enquiry of crime and resulting strategies to be adopted to deal with the problem of crime and the criminal. In all these years, complete focus has been laid one side of the coin of the problem of the crime, i.e., offender alone, without paying any attention to the other important partner of the criminal transaction, i.e., victim, who are forgotten people in the criminal justice system. In order to fulfil this lacuna and strengthen the rights of victims of crimes, it is essential to concentrate on the following measures in India. Political will is very essential for the same.

- a. Legislate to produce a Victim's Code of Practice setting out what protection, practical support and information, victims have a right to expect from criminal justice agencies.
- b. Legislate to entitle victims with information about release and management of the offenders and progress of their cases.
- c. Enable victims to submit a "victim personal statement" to the courts setting out the effect of the crime on their lives.
- d. Establish an institution for rights of the victims of crimes by way of the legislation like National Human Rights Commission, Commission for Protection of Child Rights.
- e. The victims assistance, witness protection, compensation and monitoring the role of prosecutors has to be come under the institution for the victims of crimes.

## REFERENCE

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<sup>ii</sup> <http://ncrb.gov.in/>

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- <sup>v</sup> Gazette of India, New Delhi, January 7, 2009.
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- <sup>vii</sup> Ibid.
- <sup>viii</sup> Ibid.
- <sup>ix</sup> Judgment in Suresh & Another Versus State Of Haryana, (criminal appeal no. 420 of 2012), Supreme Court of India, 28 November, 2014.
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- <sup>xi</sup> N.R. Madhava Menon, Op.Cit.,
- <sup>xii</sup> Ibid.
- <sup>xiii</sup> Judgment in Rohtash @ Pappu Vs. State of Haryana (Criminal Appeal. No. 250 of 1999), High Court of Punjab & Haryana, 1 April, 2008.
- <sup>xiv</sup> Justice V.R.Krishna Iyer, Of law and Life, Vikas Publishing House, New Delhi, p.145.
- <sup>xv</sup> Mohamed, *The Victim in Criminal Justice*, Social Defence, Volume 15, Central Bureau of Correctional Services, Government of India,p.5.