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# Comparative Analysis of Rights of Victim in The Criminal Proceedings in India: Need for improving Victim Justice

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**Abstract:** The victims of crime have long remained the forgotten identity in a judicial proceeding. Crime has been treated as wrong against society and thus the cases have been dealt as having two parties, the State and the accused. The aim of the criminal laws was focused on punishing the criminal and the plight of victims had been continuously ignored with no regard being paid to the needs or relevance of recognition of a victim as the actual sufferer of the crime. Gradually in India, the rights of victims have been recognized by the law and majorly by the courts. However, in comparison to the rights of the accused or other victim rights in other jurisdictions like UK, USA, and Canada, the Indian laws are still far behind. There is lack of specific legal provisions and uniformity in the sphere of victim rights. This study aims at in-depth analysis of the victim rights in the three stages of the criminal proceedings, i.e., investigation, enquiry and crime by simultaneously indulging in comparative analysis with rights of accused and victim rights in other jurisdiction and thereby suggesting the way forward.

**Keywords:** victim's rights; criminal proceedings; accused's rights; India law; UK law

## 1. Introduction

A crime has always been considered as a wrong against the society at the large and thus the State itself becomes a party in prosecution of the crime. In this process, somehow and somewhere the identity of the victim is lost. The rights and concerns of the victims have been long ignored in Indian criminal justice system. For a fair trial, various safeguards are provided for the protection of the accused, however the victim is the unheard part. Eventually with the recognition of the rights of the accused, the necessity of some recognition of the victim as an actual party of the case and thus entitlement to certain rights was felt.

The movement to recognize the victim rights first started in the United States of America in the 1970s. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by the United Nations has been often said to be the Magna Carta in the field of the victim rights. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 gives recognition to primarily four major rights of the victims namely access to fair and just treatment, restitution, compensation and assistance.

Similarly, in India the laws as well as the various committees have endeavored to highlight the dismal state of victims. The 154<sup>th</sup> Law Commission highlighted that crime entails harm to people and not just the symbolic harm to the society. Malimath Committee in 2003 suggested various reforms for justice for victims. However, the goal of victim justice is far from achieved. This paper seeks to analyze the various rights available to the victim under the legal provisions and the rights recognized by courts and further by analyzing these along with those available in other jurisdictions and the rights of the accused endeavors to suggest the way forward.

## 2. The Existing Problem

The primary interest of the state has always been the crime and not the victim and thus no special provisions exist to protect the victim's right. The conflict can be said to be stolen from the victim. With the passage of time to curtail the arbitrary exercise of the powers by the authorities, various safeguards and rights were provided for the accused in the criminal proceedings. Still there is need to give due recognition to the victim as a party to the criminal proceedings. Although based on various international instruments and the reports, certain changes have been brought, victim justice is still a far sought goal. The victim barely has participatory rights in her own case and is rather treated as a witness in her own case. Further focus is on punishing the crime and the criminal rather on the rights and restitution of victim.

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### 3. Analysis of Victim's Rights & Lessons from Other Jurisdictions

In our criminal law system, we follow the system of innocent until proven guilty and thus from the very beginning the case proceeds in a matter somewhat favoring the accused. No such presumption in favor of victim is there in our system and in fact victim has long been not been even treated as part of the case. Even the Malimath Committee Report suggested that there should be a neutral state in order to proceed with a fair trial.<sup>1</sup>

#### 3.1. Rights available to victim in India

##### 3.1.1. Pre- Trial Stage

###### *Right to be recognized as 'victim' and right to file a case*

The Section 2 (wa) of the Code of Criminal Procedure, 1973 (*hereinafter referred as "Cr.P.C."*) recognizes victim as a separate entity and defines it be the person suffering the loss or the injury by the accused and this definition is inclusive of the guardian or the legal heir. Thus, victims are now given due recognition as a class in the criminal procedure.

As per Section 154, any person can get the information about a cognizable offence recorded in the police station and if the police officer refuses to do so remedies for the same have been provided. Alternatively, a complaint may be filled directly to the magistrate and the cognizance of the same can be taken under section 190. Thus, the victim also has a right to bring her case in the notice of the legal system. At this stage there seems no issues has proper right as well as safeguard for special offences like woman police officer for recording information about sexual offences. Further section 166A of the Indian Penal Code, 1860 provides punishment for such police officer refusing to file case regarding the offences mentioned therein. However, the issue is that such punishment is only limited to the offences mentioned therein and not to the victims of all crimes.

###### *Right to information about the progress of the case*

As per the Section 157 of Cr.P.C. the police officer has to prepare a report of reason in case he is not proceeding with the investigation and inform the informant in the prescribed manner. Thus, if the victim is the informant in a case, the victim has the provision to be informed about the status of the investigation. However, the issue with this provision is that only the word "informant" is used and thus there no as such special right exclusively for victim to get the information about the status of the investigation. Moreover, the provisions only provide for giving information if the investigation is stopped but gives no remedy to the victim to contest this decision or take part in the investigation and thereby help her case.

###### *Right to get a special public prosecutor appointed*

As per the Section 24(8) of Cr.P.C. a Special Public Prosecutor may be appointed for the purpose of any case and thus the government has the power to appoint him in order to cater the needs of the victim if it deems so. However, this right again is dependent on the discretion of the government.

###### *Right to engage an advocate of his own choice*

As per the proviso to the Section 24(8) of Cr.P.C. that was added in the year 2007 based on the advice of the Madhava Menon Committee now the victim may be permitted by the court to engage an advocate of his choice to assist the prosecution. This shall enable the victim to represent her case in a more efficient manner and gives a greater sense of participation to the victim. The issue however is that the scope of the work of the victim's advocate is limited to assisting the public prosecutor and not plead the case independently. Even under the Section 301 the victim's advocate can at most give written submission in the court and not argue the case himself. Thus, the role of the victim advocate is limited to be under the supervision of the Public Prosecutor as has also been held in the case of *Rekha Murrakka v. State of West Bengal*.<sup>2</sup>

###### *Rights regarding recording of statements & examination*

As per the Section 157 of Cr.P.C., the statement of the victim has to be recorded at her residence or place of choice and as far as possible by women police in the presence of her guardian or at least some social worker. The issue however is that this right is limited only to the victims of the offence of rape and not otherwise. Additionally, as per Section 161 the examination of the witnesses, which includes victim, may also be done by the audio-video means. But this again depends on the discretion of the police officer. The Section further provides that it is mandatory that a woman police officer examines the statement of victim of the particular offences mentioned therein.

###### *Right to timely conclusion of the investigation*

The Section 173 of Cr.P.C. states that every investigation should be concluded without any unnecessary delay. However, the issue is that whether the delay caused was necessary or not is a subjective thing and thus there can be no proper accountability. Further the sub-section 1A provides a 3-month time frame for completion of the investigation in the cases of rape of child but this again is a discretionary provision.

<sup>1</sup> <http://www.livewlaw-in.nujs.remotlog.com/columns/victim-participation-in-criminal-justice-system-code-of-criminal-procedure-section24-crpc-malimath-committee-204526> .

<sup>2</sup> *Rekha Murrakka v. State of West Bengal* (2020 AIR(SC) 100).

**Right to receive treatment**

As per the section 357A of Cr.P.C. on the report of the police or a Magistrate, the legal service authorities may order for immediate treatment and medical benefits free of cost or also other interim reliefs as deemed required. This provision is discretionary in nature and dependent on the report of the authorities. Further Section 357C provides the mandate for hospitals to provide first aid to victim of certain offences free of cost. The issue is this relief is restricted to those offences only.

**Right to oppose bail plea and receive information about completion of investigation**

The victim and their kins have the right to oppose the bail plea in cases of heinous offences as held the in Jagjeet Singh v. Ashish Mishra case.<sup>3</sup> In the case of Bhagwant Singh v. Commissioner of Police,<sup>4</sup> the court held that the informant, which can be a victim, should have the right to be informed and heard when the final report under Section 173 of Cr.P.C. is filed by the police officer.

**Right to fair investigation**

In the case of Nirmal Singh Kahilon v. State of Punjab<sup>5</sup> the court noted that the right to fair investigation by virtue of Article 21 is applicable not just for the accused but also for the victim.

**3.1.2. Trial Stage****Rights at stage of evidence**

As per the Section 273 of Cr.P.C. even though the evidence is to be taken in presence of accused, when the evidence of women of age below the eighteen years old who has allegedly been subjected to rape or sexual offence is to be taken, steps may be taken by the court so that the women don't have to confront the accused. The issue in this right is that it is based on the discretion of the judge.

**Right to in-camera trial**

As per the Section 327 of Cr.P.C. the court is to be open but inquiry and trial of certain offences like that of rape is to be conducted in-camera. The Law Commission 84th report mandated this to protect the privacy of rape victims. In the case of State of Punjab v. Gurmit Singh,<sup>6</sup> the court noted that such provision aids the victim to be more comfortable and safeguards her dignity and privacy. Further it is on discretion of court to allow any other person on application of parties and such trial to be conducted as far as practicable by a woman judge. The provision is protective in nature but the issue here is that several times even family or support person of victim may also not be allowed. Further such right is restricted to rape victims and not to even other sexual offences victim. In Sakshi v. Union of India,<sup>7</sup> the court had mandated the in-camera trial of victim of child rape.

**Right to speedy trial**

Section 309 of Cr.P.C. states that every trial should be continued on day-to-day basis without unnecessary delay.

**Right to interim Compensation**

In the case of Bodhisattwa Gautam v. Subhra Chakraborty,<sup>8</sup> the court noted that if the court is entitled to grant compensation at the final stage it should also have the power to grant interim compensation if it is satisfied about the prima facie culpability of the accused.

**3.1.3. Post Trial Stage****Right to file an appeal**

As per the Section 378 of Cr.P.C., the District Magistrate may direct the Public Prosecutor, who is essentially representing the case of the victim, to present an appeal to Court of Session and the State Government may direct for appeal in High Court. Thus, there is a provision for appeal for the victim's benefit. However, the victim herself is not the one deciding to make an appeal here. Under Section 372 of Cr.P.C., however, the victim has the right to appeal against any order passed by a court whereby the accused is acquitted or convicted for some lesser offence or there is inadequate compensation. In the case of Mallikarjun Kodagali v. State of Karnataka,<sup>9</sup> the court noted that such appeal should be treated like a regular criminal appeal.

**Right to speedy disposal of appeals from conviction**

The Section 374 of Cr.P.C. provides that in cases of rape the appeal from conviction is to be heard and disposed within six months. Thus, although a protective provision is here for victims it is restricted to only a certain class of victims.

<sup>3</sup> Jagjeet Singh v. Ashish Mishra (2022 SCC OnLine SC 453).

<sup>4</sup> Bhagwant Singh v. Commissioner of Police (1985 SCR (3) 942).

<sup>5</sup> Nirmal Singh Kahilon v. State of Punjab (2009 1 SCC 441).

<sup>6</sup> State of Punjab v. Gurmit Singh (1996 AIR 1393).

<sup>7</sup> Sakshi v. Union of India (1999 (5) SCALE 376).

<sup>8</sup> Bodhisattwa Gautam v. Subhra Chakraborty (AIR 1996 SC 922).

<sup>9</sup> (2019) 2 SCC 752.

### **Right to Compensation**

The Section 357 of Cr.P.C. provides for award of compensation. The Section 357A of Cr.P.C. provides for victim compensation schemes to be prepared by the State Governments. Further it is provided that even when the offender is not traced but the victim identified, they may make application for compensation. The legal service authorities are thereby mandated to award due compensation by completion of enquiry within two months. The issue here is that the quantum is to be decided by the legal services authority and this may take time. Further Section 357 B states that the compensation under particular cases to be in addition to the fine and thus this is also a restricted right. In the case of *Karan v. State NCT of Delhi*,<sup>10</sup> the Delhi High Court directed the legal service authorities to prepare a Victim Impact Report which would enable more appropriate award of compensation to the victims in line with the principles of restitution too.

### **3.2. Lessons from Other Jurisdictions**

There are various progressive schemes under the laws of other jurisdiction which if inculcated in Indian legal system, can significantly improve it. For the pre-trial stage, in England, as per the Code of Practice for Victims of Crime in England and Wales the victims have the right to be informed and referred to the various services that may assist her and cater to her needs.<sup>11</sup> In U.S. there is an organization called National Organization for Victim Assistance (NOVA) which is responsible for developing schemes and programmes for spreading information about victim rights and providing support to victim assistance programmes.<sup>12</sup> In France, the victims are entitled to become parties to the proceedings from the investigation stage itself and they have a role in matters of deciding the grant or the cancellation of the bail.<sup>13</sup>

For the trial stages, in England, as per the Code of Practice for Victims of Crime in England and Wales the victims have the right to make Victim's Personal Statement that enables the court to understand how the crime affected her and such statement is considered while passing the order.<sup>14</sup> In Canada there is Victim of Crimes Act, 1996 which ensures that privacy rights of the victim are ensured and also provides for preparation of a Victim Impact Statement which is later used at the time of passing the order by the court.<sup>15</sup> Further the victim has the right to attend proceedings, to be heard, to be informed about progress of the proceedings, speedy trial and right to compensation and restitution.<sup>16</sup> In U.S. as per the Crime Victims' Rights Act, 2004 the victims are guaranteed the rights to be reasonably heard, informed about proceedings, have an attorney, restitution and safeguard from undue delay.<sup>17</sup> Similarly, there is a Victim Information and Notification Everyday (VINE) initiative which ensures information to victim about the status of their case and day to day proceedings. There is also a provision for victim impact assessment which is considered at time of sentencing.<sup>18</sup> In France, the victims have well recognized role in the trial stage and can even be appointed as the prosecutors if the prosecutors are failing to act diligently.<sup>19</sup>

Lastly, there are lessons that can be taken even for the post trial stage. In England, as per the Code of Practice for Victims of Crime in England and Wales the victims have the right to know about the progress of the accused post-conviction and if considerations are being made regarding parole or release. England also was among the first few countries to bring victim compensation scheme.<sup>20</sup>

### **4. Comparative analysis with rights of accused & Way Forward**

The accused has been provided with various rights and safeguards throughout the different stages of criminal proceedings, right from the time of his arrest to the conviction or acquittal and even several post trial rights. The accused person has been guaranteed various rights at the pre-trial stage such as the right to know about the charges against him, right against wrongful arrest, safeguards at time of arrest, right against self-incrimination & double-jeopardy, right to inform the family members and consult advocate, right to bail, right to speedy trial, right against the ex-post facto laws, right against torture, right to information about outcome of investigation, etc. Thus, the accused is safeguarded at each and every stage of investigation. In the evidence stage the accused is guaranteed the right that all the evidence & statements would be taken in front of him, right to get copies of all the necessary documents, right to cross-examination, right to be present during pronouncement of judgement, etc. Thus, the active participation in every stage of the trial process is ensured. The accused has the right to get the free copies of the judgement of the case, the right to appeal, the provisions for release on probation, parole or even commutation of sentence in the post-trial stage.

In light of the plight of the victim as well as the need for giving them a definite identity as seen in the case of accused, various changes can be made in or system throughout the different stages of the criminal trial. For this, we can also learn from the system present in other jurisdictions. The Supreme Court in the case of *Jagjeet Singh v. Ashish Mishra* case<sup>21</sup> has held that it is important to give due regard to the fact that the term 'victim' and the term 'complainant'. The court further noted that victim should have right to be informed about "the status of investigation, and take necessary steps, or to be heard at every crucial stage of the criminal

<sup>10</sup> *Karan v. State NCT of Delhi* (CrI.Appeal No.352/2020, High Court of Delhi).

<sup>11</sup> <https://blog.ipleaders.in/victims-rights-under-the-indian-criminal-law-system/> .

<sup>12</sup> <http://docs.manupatra.in/newslines/articles/Upload/D4A9C7F0-8A98-4E34-B88E-0145775149D7.pdf> .

<sup>13</sup> *Ibid.*

<sup>14</sup> *Supra* at 11.

<sup>15</sup> *Ibid.*

<sup>16</sup> <https://blog.ipleaders.in/concept-victim-justice-aspiration-progressing-society/> .

<sup>17</sup> *Supra* at 12.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Supra* at 11.

<sup>21</sup> *Supra* at 3.

proceedings.” Further if we analyze the rights of the accused, the accused is kept informed about the outcome of the investigation as a right but similar right is not available for the victim. The Section 207 provides for supply of copy of police report and other documents which includes police report, FIR, statements and confessions and all relevant documents to the accused without any delay free of cost. But there is no provision which entitles the victim to get these documents free of cost by default. Further there is also need to increase the victim participation at different stages of the investigation to aid the police to work in more efficient manner and should definitely have a say at stages of dropping the investigation of preparing the final report. Even under Section 167 stage the victim may be consulted for aiding in the investigation. Thus, there is need to address all the loopholes in the existing rights and incorporate the progressive provisions from other jurisdiction as discussed above.

The victim’s rights are ignored even at the trial stage. For example, while accused under Section 363 is entitled to have free copy of the judgment without any unnecessary delay. Such right to be available also for the victim. Further as per Section 353 the presence of the accused is mandated for the pronouncing of the judgement and steps are ensured to bring the accused for it. However, there are neither steps to inform the victim about the pronouncement nor step to ensure their presence. The absence of the victim from the trial to present her case or conditions also leads to ignorance of her welfare by the courts. The Supreme Court in the case of Jagjeet Singh v. Ashish Mishra<sup>22</sup> held that presence of State in the proceedings is not same as hearing the victim and these two are different entities and there is need to recognize participatory rights of the victims. In the case of Delhi Domestic Working Women’s Forum v. Union of India<sup>23</sup> also the court emphasized the need for representation in court separately. Thus, these loopholes need to be addressed and changes be made.

Under Section 363 the accused is also entitled to be informed about his right to appeal. But no similar provision is present to inform the victim about her various rights and thus there is need for such provisions. Further if we see at the stages of Parole, the decision is made by the authorities totally based on the activities of the accused and the effect of the society but there is no say for the victim against who the crime was committed in first place. Thus, there is a need to incorporate victim’s say even at this stage. Even if we see the law regarding the probation, there is similar situation. So, there is need for hearing the victim in this also. Therefore, these lacunae need to be addressed and all the progressive suggestions made in these cases redressing the plight of victim needs to be implemented in true spirit.

## 5. Conclusions

“It is a weakness of our jurisprudence that victim of crime and the distress of the dependents of the victim do not attract the attention of law” Justice V. R Krishna Iyer noted the above state of affairs in the case of Rattan Singh v. State of Punjab. The crime has been always seen as a wrong against the State in general and not just the victim in particular. Thus, the State was given the right to represent the victim in the case. However, in due course the conflict got stolen in totality and the victim were reduced to mere witnesses. With the rise of the victim right’s movement across the globe our law has also undergone several changes to give due recognition to the victims of the crime. Still there remains loopholes in the existing framework and issues in the implementation. Thus, there is need for proper awareness of law, bringing about the desired changes and learning from successful steps taken by the other jurisdictions like the victim awareness programs and the impact statement in order to ensure the fair trial in true sense. While victim justice does not intend to infringe the rights of the accused, the way our law takes note of accused’s flight at every stage, the same is to be done for victims. Recently, even in India there has been lots of emphasis laid down by various political leaders or courts for protecting the rights of victim as well as giving them speedy justice. The guardian of our constitution, the courts have already been re-emphasizing the need for victim justice again and again. Thus, its high time to bring these suggestions in implementation and bring true victim justice.

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<sup>22</sup> Supra at 3.

<sup>23</sup> Delhi Domestic Working Women’s Forum v. Union of India (1995 SCC (1) 14).