
VICTIM'S RIGHTS: AN UNADRESSED ISSUE FROM VICTIMIZATION TO JUSTICE

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ABSTRACT

Our conventional Criminal Justice system focuses more on the rights of the accused than the victim. As prosecution has to establish its case beyond reasonable doubts and while doing so, often the victim's right, psychological status gets ignored. Despite several National laws, Constitutional provisions, International Conventions victim's rights are not addressed the way it should be. Initially though they get support from their family and society but subsequently they are faded away in the criminal justice system whereas they are the first person to set the law into motion. Our Constitution ensures equality, dignity and liberty to every individual but the victim's fundamental right to movement, privacy and dignity get compromised as they are reminded about the incidents or the offence during the stage of investigation, trial procedure etc. In our Criminal Justice system, the way criminology and penology aspects have been addressed, 'victimology' and 'victim's rights' remained unheard for quite a long time. It is in the recent past, victimology has been emerged and our legal system became victim centric. The objective of this paper is to address the rights of the victims not only from a theoretical perspective rather with a practical approach. Further, this paper will focus on victim's protection, right to be heard, right to be compensated and most importantly right to dignity and privacy specifically in the sexual offences cases. The paper identifies the lacuna in our criminal laws and suggests the methods to overcome it.

Keywords: Victims, Dignity and Privacy, Criminology and Penology, Criminal Laws

INTRODUCTION

The Indian criminal justice system is traditionally anchored in the principle that an accused is *innocent until proven guilty*, with the prosecution bearing the heavy burden of establishing guilt beyond reasonable doubt.¹ While this safeguard reflects the liberal ethos of protecting individual liberty against wrongful conviction, it inadvertently sidelines the victim. In practice, the prosecutorial focus on proving the offence often overshadows concerns relating to the victim's dignity, safety, and psychological well-being.² Prosecution becomes more focused on proving the guilt of the accused rather than safeguarding the dignity, security, and rights of the victim.

Historically, the concept of the *penal couple* emerged, treating both offender and victim as participants in the crime. Though later discredited, it delayed the recognition of victim rights in legal discourse. Victims are subjected to a parallel trial — the trial of humiliation, suffering, and secondary victimization — from the filing of an FIR to the harshness of cross-examination.

Victimhood is not restricted to crimes alone but extends to human rights violations. However, in legal practice, victims are narrowly defined as those impacted by criminal offences. This paper situates the discussion of victim rights within the framework of criminal victimization in India.

1. THE EVOLUTION OF VICTIMOLOGY

Victimology, as an academic discipline, emerged in the mid-20th century as a response to the glaring neglect of victims within the criminal justice system. The focus of criminology until then was largely offender-centric, analyzing causes of criminal behavior and devising corrective or punitive measures. The plight of victims was often relegated to the background, with their role limited to that of a passive complainant or witness in the legal process. It was only when scholars like **Hans von Hentig** and **Benjamin Mendelsohn** began to systematically study the relationship between offenders and victims that victimology gained recognition as a distinct branch of criminology.

Hans von Hentig, in his seminal work *The Criminal and His Victim* (1948), argued that certain

¹ State of U.P. v. Naresh, (2011) 4 SCC 324.

² K. Chockalingam, *Victimology: Essays on Victim Participation in Criminal Justice Administration* (National Law School of India University 1999) 14.

social, psychological, and biological characteristics made individuals more vulnerable to victimization. He classified victims into categories such as the depressed, the acquisitive, the wanton, and the tormentor, thereby shifting scholarly attention to the dynamics of victim-offender interaction³. Similarly, Benjamin Mendelsohn, often referred to as the “father of victimology,” developed the concept of the *penal couple* and later coined the term “victimology.” He highlighted that victims, by virtue of their vulnerabilities or conduct, sometimes contributed to the commission of crimes⁴. Although his classification was criticized for victim-blaming tendencies, Mendelsohn’s framework initiated discourse on the centrality of victims in criminal law.

In the subsequent decades, victimology evolved from a theoretical analysis of victim-offender relationships to a rights-based framework. The rise of the human rights movement in the post-World War II era contributed significantly to this transformation. International instruments such as the **Universal Declaration of Human Rights, 1948** and the **International Covenant on Civil and Political Rights, 1966** laid the foundation for recognizing the rights of individuals who suffered harm, whether from state action or private crime. This culminated in the **United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985**, which is considered a milestone in global victimology⁵. The Declaration recognized that victims are entitled to access justice, fair treatment, restitution, compensation, and assistance from the state.

In India, victimology began to gain prominence in the late 20th century, largely through judicial activism. The Indian judiciary, interpreting **Article 21 of the Constitution**, expanded the meaning of the right to life to include dignity, fair treatment, and compensation for victims of crime and state excesses. In **RudulSah v. State of Bihar**, the Supreme Court ordered compensation for unlawful detention, marking the beginning of compensation jurisprudence⁶. Similarly, in **NilabatiBehera v. State of Orissa**, the Court reiterated that monetary compensation could be awarded under Article 32 or 226 for violation of fundamental rights⁷. These judgments laid the groundwork for a victim-centric approach in Indian criminal

³Hans von Hentig, *The Criminal and His Victim* (Yale University Press 1948) 25.

⁴Benjamin Mendelsohn, ‘The Origin of the Doctrine of Victimology’ (1956) 7 *Revue Internationale de Criminologie et de Police Technique* 30.

⁵United Nations General Assembly, ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’ (29 November 1985) A/RES/40/34.

⁶RudulSah v. State of Bihar, AIR 1983 SC 1086.

⁷NilabatiBehera v. State of Orissa, AIR 1993 SC 1960.

jurisprudence.

Statutory developments also reflected this gradual shift. The **Code of Criminal Procedure (Amendment) Act, 2008** introduced **Section 357A**, mandating state governments to prepare a scheme for providing compensation to victims. This was a significant departure from the earlier discretionary power under Section 357. Moreover, the proviso to **Section 372 CrPC** granted victims the right to appeal against acquittal, enhancing their participatory role in criminal proceedings. Despite these reforms, however, victimology in India remains underdeveloped. Compensation schemes are often underfunded, victims face secondary victimization through hostile investigations and trials, and awareness of their rights is minimal.

Thus, while the discipline of victimology has travelled from offender-oriented analysis to recognition of victims' rights, its institutionalization in India is still incomplete. There is an urgent need to integrate victimology more robustly within the legal system through comprehensive legislation, effective victim assistance programs, and sensitization of stakeholders.

2. CONSTITUTIONAL FRAMEWORK FOR VICTIM'S RIGHTS

Although the Indian Constitution does not explicitly enshrine a *victim's charter of rights*, several fundamental rights and directive principles have been judicially interpreted to extend meaningful protection to victims. The constitutional framework provides the normative foundation upon which victimology has been built in India, particularly through expansive judicial interpretations of equality, life, liberty, and access to justice.

A. Article 14: Equality Before Law

Article 14 guarantees *equality before the law* and *equal protection of the laws*. For victims, this provision ensures that they are not discriminated against in accessing justice and that state authorities treat them on par with accused persons. However, equality in practice often tilts in favor of the accused due to procedural safeguards that protect the latter. The Supreme Court in **State of Rajasthan v. Balchand** observed that bail is the rule and jail the exception, highlighting how procedural protections for accused are prioritized⁸. While necessary for

⁸State of Rajasthan v. Balchand, AIR 1977 SC 2447.

fairness, such doctrines underscore the imbalance faced by victims, who frequently lack similar protections or assurances.

B. Article 21: Right to Life and Personal Liberty

Article 21, which states that “No person shall be deprived of his life or personal liberty except according to procedure established by law,” has been the cornerstone for developing victim jurisprudence. Through judicial activism, the Supreme Court expanded Article 21 to encompass the *right to dignity, privacy, fair trial, and speedy justice*.

In **BodhisattwaGautam v. Subhra Chakraborty**, the Court held that rape is not only an offence under criminal law but also a violation of the fundamental right to life and liberty under Article 21⁹. Similarly, in **Delhi Domestic Working Women's Forum v. Union of India**, the Court emphasized the need for compensation and support mechanisms for rape victims, linking them to the constitutional guarantee of dignity¹⁰. Moreover, in **P. Ramachandra Rao v. State of Karnataka**, the Court acknowledged that delayed trials amount to denial of justice under Article 21¹¹.

Thus, Article 21 serves as the bedrock for victim-centric rights in India, moving the focus beyond procedural fairness for the accused to substantive justice for victims.

C. Article 39A: Free Legal Aid

Article 39A, inserted by the 42nd Amendment (1976), mandates the State to provide free legal aid to ensure access to justice for all citizens, particularly the weaker sections. While it falls under the Directive Principles of State Policy, the Supreme Court has read it into the guarantee of Article 21, thereby making it enforceable.

In **Hussainara Khatoon v. State of Bihar**, the Court recognized the right to free legal aid and speedy trial as fundamental rights under Article 21, particularly for indigent prisoners and victims of systemic injustice¹². Free legal aid is critical for victims, especially women, children, and marginalized communities, who otherwise lack resources to pursue justice. However,

⁹BodhisattwaGautam v. Subhra Chakraborty, (1996) 1 SCC 490.

¹⁰Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14.

¹¹P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578.

¹²Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81

implementation gaps persist as legal aid services remain underfunded and underutilized.

D. Constitutional Lacunae and Challenges

Despite these progressive interpretations, the constitutional framework has inherent limitations. The Constitution is more accused-centric, ensuring protections against state excesses rather than providing proactive rights to victims. Procedural rights such as cross-examination, presumption of innocence, and double jeopardy are well-developed for the accused, while the victim's role remains secondary.

Victims are often reduced to *informants* or *witnesses* in the criminal justice process rather than recognized as rights-bearing participants. The absence of an explicit constitutional recognition of victim rights means reliance on judicial creativity, which though expansive, remains inconsistent.

3. INTERNATIONAL PERSPECTIVES

The recognition of victims' rights on the international stage is a relatively recent phenomenon, gaining traction in the latter half of the 20th century. Historically, international criminal law and human rights law were primarily concerned with state responsibility and the rights of the accused. However, the neglect of victims—who often bore the greatest burden of crime—gradually led to a paradigm shift. Today, international instruments, conventions, and tribunals acknowledge that justice is incomplete unless victims are given recognition, protection, and participation in the legal process.

A. The United Nations Framework

The most significant milestone was the **United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985**¹³. This declaration defined "victims" broadly, including those who suffered physical or mental injury, emotional suffering, economic loss, or impairment of rights through acts or omissions that violated criminal laws. It laid down four key entitlements:

- 1. Access to justice and fair treatment** – States must provide mechanisms for victims to

¹³UNGA, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' (29 November 1985) A/RES/40/34.

present their views and obtain remedies.

2. **Restitution** – Offenders or third parties should restore victims, including returning property or paying damages.
3. **Compensation** – Where restitution is unavailable, the State has an obligation to compensate victims.
4. **Assistance** – Victims should receive material, medical, psychological, and social support.

Though non-binding, the declaration has had persuasive influence worldwide, including in India, where courts have relied on it in framing victim-centric jurisprudence.¹⁴

B. Regional Instruments

Regional conventions have further strengthened victim protection. The **European Convention on the Compensation of Victims of Violent Crimes, 1983**, obligates signatory states to compensate victims of intentional violent crimes when offenders are unable or unwilling to pay.¹⁵ This recognition of the State's vicarious responsibility highlights a victim-first approach, ensuring that lack of offender resources does not leave victims remediless.

In the **Inter-American system**, the jurisprudence of the Inter-American Court of Human Rights has been particularly victim-centric. In cases like *Velásquez Rodríguez v. Honduras*, the Court emphasized that states have a duty not only to investigate and punish offenders but also to compensate victims for violations of fundamental rights.¹⁶

C. International Criminal Court and Victim Participation

A groundbreaking development came with the **Rome Statute of the International Criminal Court (ICC), 1998**, which moved beyond symbolic recognition to procedural inclusion. For the first time in international criminal law, victims were granted the right to **participate**

¹⁴ Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14.

¹⁵ Council of Europe, *European Convention on the Compensation of Victims of Violent Crimes* (Strasbourg, 24 November 1983).

¹⁶ *Velásquez Rodríguez v. Honduras*, Inter-American Court of Human Rights (Judgment of 29 July 1988, Series C No. 4).

directly in proceedings and seek reparations.¹⁷ Under Article 68, victims may present their views and concerns at stages deemed appropriate by the Court. Article 75 further empowers the ICC to order reparations to victims, including restitution, compensation, and rehabilitation.

The ICC's victim-centric approach contrasts with earlier tribunals such as the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), where victims were primarily witnesses and had no participatory rights. This shift demonstrates the evolving global consensus that justice must be holistic, addressing both offender accountability and victim restoration.

D. Impact on India

International standards have influenced India to reconsider its victim justice framework. The incorporation of **Section 357A CrPC (2008 Amendment)** mandating victim compensation schemes can be seen as reflecting the principles of the 1985 UN Declaration. Similarly, judicial recognition of victim dignity and privacy, especially in sexual offence cases, resonates with international human rights jurisprudence. However, India's progress has been piecemeal, with implementation gaps in victim compensation schemes, weak witness protection, and minimal awareness of rights at the grassroots level.

Thus, while international instruments provide an aspirational framework, India is yet to fully operationalize these norms into a cohesive victim rights regime.

4. LEGISLATIVE FRAMEWORK IN INDIA

Victims' rights in India find fragmented recognition across multiple legislations:

- **Bharatiya Nagarik Surakshaya Sanhita, 2023**
 - Section 395, BNSS deals with the provisions regarding compensation to victims. Under this Section the trial court is empowered to order the accused to pay compensation to the victims for the loss or the injury he/she has been sustained.

¹⁷Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 3.

- Section 396, BNSS: This Section plays a very crucial role to identify the victim's right to compensation by establishing Victim's Compensation Scheme. Under this Section the State and the Central Govt are under the obligation to create rehabilitation fund, involving DLSA /SLSA and to provide funds, interim relief and medical assistance to the victim despite the accused is untraceable or gets acquittal. This Section serves as a protective umbrella to the victim as here, not only the victim but the defendant can also apply for the compensation.
- The BNSS has broader the victim's right by providing protection to the witnesses also and compensation to those who are wrongfully arrested under Section 397-399.
- **Protection of Women from Domestic Violence Act, 2005:** Provides protection, residence, and maintenance rights to victims.
- **Juvenile Justice Act, 2015:** Focuses on rehabilitative care for child victims.

While these laws are important, they remain scattered and lack a comprehensive victim-rights charter.

5. JUDICIAL RECOGNITION OF VICTIMS' RIGHTS

The Indian judiciary has been instrumental in bridging the constitutional and legislative gaps in victim protection. While statutory law remained largely offender-oriented, judicial pronouncements progressively expanded the ambit of *Article 21* to include the rights of victims to dignity, compensation, participation, and privacy. The courts have not only drawn inspiration from international instruments but also interpreted constitutional provisions in a manner that elevates victims from passive witnesses to rights-bearing participants in the criminal process.

A. Compensation Jurisprudence

The jurisprudence of compensation for victims was pioneered through landmark decisions. In **Nilabati Behera v. State of Orissa**, the Supreme Court held that the award of monetary compensation is not merely a remedy under tort law but a constitutional remedy under Articles

32 and 226 for the enforcement of fundamental rights.¹⁸ The Court emphasized that where the State fails in its duty to protect life and liberty, it has a constitutional obligation to provide compensation to the victims or their families. This decision marked a watershed in victim-centric justice, laying the foundation for subsequent compensation jurisprudence.

In **BodhisattwaGautam v. Subhra Chakraborty**, the Court went a step further, holding that rape is not only an offence under criminal law but also a violation of the fundamental right to life and liberty under Article 21.¹⁹ It recognized compensation as a remedy available even during the pendency of criminal proceedings, thereby prioritizing victim restoration over procedural finality.

B. Victim Compensation Schemes

The case of **Delhi Domestic Working Women's Forum v. Union of India** highlighted the plight of rape victims who suffered secondary victimization through insensitive investigation and trials.²⁰ The Supreme Court directed the formulation of victim compensation schemes and emphasized the need for legal and medical assistance for survivors. This case was one of the earliest judicial acknowledgments of the systemic inadequacies faced by victims, especially women. The Court's observations later influenced the introduction of **Section 357A, CrPC** (2008), mandating state governments to create victim compensation schemes.

C. Right to Dignity and Privacy

Judicial recognition of the victim's right to dignity and privacy, especially in sexual offence cases, has been significant. In **Nipun Saxena v. Union of India**, the Court issued detailed guidelines to protect the identity of rape survivors, prohibiting disclosure of their names in media and judicial records.²¹ The Court emphasized that protecting the dignity and privacy of victims is integral to Article 21, and non-compliance could retraumatize victims. The guidelines were later incorporated into statutory provisions such as **Section 228A IPC** and **Section 327(2) CrPC**.

¹⁸NilabatiBehera v. State of Orissa, AIR 1993 SC 1960.

¹⁹BodhisattwaGautam v. Subhra Chakraborty, (1996) 1 SCC 490.

²⁰Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14.

²¹Nipun Saxena v. Union of India, (2019) 2 SCC 703.

D. Right to Participate in Criminal Proceedings

The judiciary has also recognized the participatory role of victims in criminal trials. In **PrafullGoradia v. Union of India**, the Court upheld the right of victims to appeal against acquittals under the proviso to Section 372, CrPC, noting that victims cannot be denied an effective voice in proceedings that directly concern them.²² Similarly, in **MallikarjunKodagali v. State of Karnataka**, the Supreme Court held that the right of appeal given to victims under Section 372 is substantive, not procedural, and thus must be liberally interpreted in their favor.²³

E. Consolidation of Victim-Centric Jurisprudence

Collectively, these judicial pronouncements underscore a decisive shift in Indian jurisprudence from an accused-centric to a victim-inclusive approach. By interpreting Article 21 expansively, the courts have ensured that victims are not mere spectators but stakeholders in the pursuit of justice. However, despite these progressive rulings, practical enforcement remains inconsistent due to lack of awareness, procedural delays, and inadequate institutional support.

6. CHALLENGES IN VICTIM PROTECTION

Despite progress, several challenges persist:

1. **Secondary Victimization:** Victims suffer repeated trauma through insensitive investigation, media trials, and hostile cross-examination.
2. **Lack of Awareness:** Many victims remain unaware of their rights to compensation, appeal, or legal aid.
3. **Inadequate Compensation Schemes:** State-run victim compensation schemes are often poorly funded and inconsistently applied.
4. **Privacy Concerns:** Particularly in sexual offences, the identity of victims is frequently leaked, leading to social stigma.

²²PrafullGoradia v. Union of India, (2011) 2 SCC 568.

²³MallikarjunKodagali v. State of Karnataka, (2018) 14 SCC 6.

5. **Delayed Justice:** Prolonged trials exacerbate victims' suffering, undermining their faith in the justice system.

7. WAY FORWARD: TOWARDS A VICTIM-CENTRIC JUSTICE SYSTEM

To bridge the gaps, the following reforms are necessary:

1. **Comprehensive Victim Rights Legislation:** India should enact a victim rights charter consolidating existing provisions.
2. **Victim Support Services:** Establish victim assistance cells providing psychological, legal, and financial support.
3. **Strengthening Compensation Mechanisms:** Ensure uniform, timely, and adequate disbursal of victim compensation.
4. **Witness Protection Programmes:** Safeguard victims and witnesses from intimidation and retribution.
5. **Judicial Sensitization:** Train judges, police, and prosecutors to adopt victim-sensitive practices.
6. **Community Participation:** NGOs and civil society should be actively involved in victim rehabilitation.

CONCLUSION

The journey of Indian criminal jurisprudence has largely revolved around protecting the accused, often overlooking the silent sufferer—the victim. The victims run pillar to post to get justice but unfortunately they confront with both legal and social challenges. Things get more worse when they held responsible for their own victimization. While victimology has recently emerged as a growing discipline, its integration into practice is still inadequate. Constitutional provisions, judicial pronouncements, and international conventions provide a solid foundation, but systemic reform is urgently needed. Ensuring protection, dignity, compensation, and meaningful participation of victims in the criminal justice process will not only strengthen justice delivery but also restore societal faith in the system.