



## **Rights of the Victims**

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**Abstract:** *The most accomplished creature in our cosmos is man. He possesses intellect, action, and reason abilities that are enormously admirable, according to Shakespeare, who calls "The grandeur of the universe" inspired him People learn, observe, and hear about criminal victimization in our communities every day. For example, fights with neighbours, etc. Anyone can actually become such a victim of crime anywhere, according to reality.*

**Keywords:** Victims' Rights, Victim compensation, Role of Victims under the acts.

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## 1. Introduction

Crime victims had essentially no rights or support thirty years ago. They frequently felt that the criminal justice system did not meet their requirements. In the late modern era, victim's rights were established (1800-1970). The American criminal justice system during in the 19<sup>th</sup> and 20<sup>th</sup> centuries, crimes were regularly investigated and tried by specific victims during the colonial and revolutionary eras, which were "victim-centric," and crime had a large negative impact on society. The victim's engagement in criminal procedures drastically decreased as a result, and the justice system started to be considered as an instrument for repairing this societal hurt instead of as a means of seeking compensation for injuries sustained. A contemporary campaign for crime victim rights emerged in 1970. It starts with the Linda v. Richard D. decision from the Appellant. The complaint in this instance lacked the necessary legal standing to prevent the prosecutor's office from filing a law that makes it illegal for men to pay child support in a discriminatory manner. The court found that a crime victim cannot in this situation because "a private citizen lacks a judicial procedure lawful stake in the prosecuting or quasi interest," compel a criminal investigation. This decision substantially protected the victims' rights. In April 2014, as bill C-32, The House of Commons heard an

introduction of the Victim Bill of Rights Act. On April 23, 2015, it was given royal assent. The CVBR is established by this legislation, which also modifies the Criminal Code and the Corrections and Conditional Release Act (CCRA).

### 1.1 Marsy's Law?

In 2009, Dr. Henry Nicholas created Marsy's Law as a tribute to his sister Marsy. In 1983, her ex-boyfriend killed her. In accordance with the U.S. constitution and the constitutions of all 50 states, this statute was created to protect crime victims. As with the rights of the accused, this statute grants substantial and enforceable constitutional rights to crime victims. But as time went on, Florida residents opposed the Marsy statute because it increased the likelihood of errors, abuse, and incorrect convictions. The Marsy law makes broad promises that governments cannot keep and purports to rectify issues that the constitution is unable to address.

The Supreme Court accepted that crime victims are not nameless extras in the criminal system in its ruling in Payne v. Tennessee. In his concurring opinion in the Payne case, Justice Scalia particularly referred to "A strong feeling of justice among the general public has given victims' rights organisations a voice." Several pieces of legislation that grant rights have resulted from these attempts. These rights consist of: The ability to participate in criminal justice

proceedings is part of the right to due process, which is the obligation to be informed of crucial criminal court proceedings and given the chance to be heard. The right to defence the privilege of privacy the right to receive financial compensation, such as restitution or compensation/reparations, for losses incurred as a result of a crime [1].

By tying monetary compensation to victims' participation in the pursuit of criminal cases, the Victimology movement of 1960 provided an incentive to the government. Declaration of the United Nations on the Fundamental Principles of Justice for Victims and the Abuse of Power was unanimously endorsed by the General Assembly in 1985. One of the specific rights and entitlements for crime victims set down in the Declaration was the right to compensation. In India, The obsolete Code of Criminal Procedure, 1898 recognised the right to compensation.

## 1.2 Who is Victim?

A victim is a person who has been harmed physically, emotionally, or financially as a result of a crime [2]. The word "victim" has three definitions according to the dictionary:

- A person, animal, or object that experiences injury or is killed, or is wiped out due to a crime, bad luck, an accident, etc.
- A person who has been duped.

- A living being that has been sacrificed in a religious ceremony.

Any person, group, or entity that has experienced suffering, loss, or other negative effects as a result of someone else's criminal behaviour is referred to as a victim. A person who suffers suffering or injury that is physical, psychological, or financial is referred to as the "Primary Victim" of the crime. The individual who sustains suffering or injury as a result of the crime may be referred to as the "Secondary Victim." For instance, the children of raped women or those of an abused woman who are referred to as "Bastards" because they lack a father [3].

Regardless The UN Declaration's provisions prohibit discrimination on the basis of race, colour, caste, sex, language, religion, nation, political opinion, cultural beliefs or practises, property, birth or familial position, ethnic or socioeconomic background, or handicap principles must be applied to everyone. In Articles I and II of the UN General Assembly Declaration on the term "Victim of Crime" is comprehensively defined in the November 1985 document According to the "Basic Principle of Justice for Victims and Abuse of Power" [4].

Article 1: "Victims" refers to those who, individually or collectively, have been harmed, including having their fundamental rights physically or mentally impair, as a result of

actions or behaviours that breach applicable criminal laws, including those that prohibit the criminal abuse of power, in member nations.

Article 2: According to this Declaration, a person may be considered a victim regardless of the identity of the perpetrator, whether they are caught, charged, or found guilty and regardless of their familial ties to the victim. When applicable, the term "victim" also refers to the victim's immediate family, dependents, and those who have been harmed but have acted to help the victim in their time of need or prevent victimisation [5].

### 1.3 Why Victims' Rights is important?

The majority of governments permit Criminal hearings are open to the relatives of crime victims. This is a crucial right since it frequently affects how criminal cases are handled and gives the victim the opportunity to hear the defence lawyer's arguments and observe how the judges, jury, and defendant react. *Victims' rights provisions outlined by many pieces of legislation including the Evidence Act, the Indian Constitution, and the Criminal Procedure Code.*

Protecting society from lawbreakers and criminals is the fundamental goal of criminal law. Both substantive and procedural criminal law is included in criminal law in its broader sense. By allowing them to participate in criminal proceedings and get compensation as a matter of ideal, the criminal law seeks to offer

equity to victims of crime. The administration of substantive law is carried out by procedural criminal law, which defines offences and sets forth punishment for the same [6].

The main motivation behind passing this legislation was to create a universal standard because, at the time, there was no set process for accusing and punishing offenders. The British Parliament approved the CRP in 1861, and the code was maintained after independence. The 1969 amendments to this code were finally replaced in 1972.

### 1.4 Who is Victim under CRPC?

Section 2(wa) of the CRPC of 1973 defines the word "victim." The term victim encompasses the accused person's guardian or legal heir as well as anyone else who has suffered a loss or injury as a result of the accused person's alleged conduct or omission [7].

The primary statute governing procedural law and substantive law in India is the code of criminal process. This law's effective date is 1 April 1974, and it was passed in 1973. This code outlines the process for investigating crimes, apprehending suspects, gathering evidence, deciding if an accusation is true or false, and punishing the guilty party appropriately. It also addresses public disturbance, crime prevention, and the upkeep of a wife, kid, or parent. The rights of the victims are protected in many ways under this code. The operation of equipment set

up for crime investigation and trial is likewise under the authority and regulation of the CRPC. The Criminal Procedure that the various criminal justice institutions, including the police and the prosecution, must adhere to & judiciary throughout the course of criminal investigations, prosecutions, and trials. The Code Criminal Procedure (Amendment) Act, 2008.

- (i) Victim has the right to retain an attorney to assist the prosecution: - The victim may choose the attorney he wants to use to represent him in proceedings under this provision, according to section 24 of the act.
- (ii) According to Section 157 of the Code, the victim has the right to make a statement in a location of her choosing and to a female police officer: This section discusses the rights of rape victims. As far as is reasonably possible, a female police officer shall record the victim's statement at the victim's home or a location of her choosing, in the presence of the a neighbourhood social worker, the victim's guardian, parents, or other close relatives.
- (iii) Utilization Sound Vision for Comments: According to Section 161 Subsection (3) of the Code, the victim's words may also be recorded via audio video electronic methods.
- (iv) Subsection (1) of Section 164 addresses the use of audiovisual confession or statement:

Provided that the accuser's statement may be electronically recorded with his or her attorney present.

- (v) Provided Additional Police officers are not allowed to record confessions without a magistrate's permission. Child sex abuse investigations must be completed on schedule: The investigation of child sex abuse is covered under section 173 of this act. According to Section 173(1A), a raped child investigation must be completed within three months after the police officer's date of recording the data.
- (vi) When an investigation relates to an offence under Sections 376, 376A, 376B, 376C, and 376D, Section 173(2h) specifies if the evidence of the women's medical examination has been attached. In accordance with Section 275 Subsection (1) of the Code, a witness' testimony may also be recorded using audio or video equipment while the accuser's attorney is present.
  - (A) The Camera Trail and Identity Protection are covered by Section 327: (a) Subsection (2) specifies that the Camera Trial shall be presided over by a female Judge or Magistrate whenever possible.
  - (B) Section (3) states that the confidentiality of the parties' names and addresses must be maintained in order to lift the prohibition on printing or publishing trial proceedings related to an offence of rape.

Compensation for Victims: Section 357 of the code discusses victims' rights to compensation. According to section 357A (1), the State Government must work with the Central Government to provide funds must make restitution to the victim or his dependents for losses or harms sustained as a result of criminal activity and who need rehabilitation.

Section 357 applies to the court's suggestion for payment [2]. The amount of compensation to be paid under this subsection shall be determined by the district legal services authority or the state legal authority [1].

If the trial's outcome is satisfied but the amount of compensation is insufficient for the victim's rehabilitation or the case ends in an acquittal or discharge, the trial court may suggest compensation and the victim has to be rehabilitated.

According to section 357(4), the state or district legal service body must provide reasonable compensation within two months after conducting a thorough investigation.

According to 357(5), the state or district legal service authority must conduct an investigation of the award after receiving these either the application or the suggestions.

The essential first aid facility, medical benefits, or any other temporary relief must be provided without charge by the state or district legal service authority on the certificate of the police not below the rank of charge of the police station that the appropriate authority deems appropriate.

Right of the victim to appeal the trial court's judgement: Section 372 of the act states that the victim has the right to contest any judgement that absolves the accused of all accusations, convicts them of a lesser offence, or denies them adequate restitution.

The Criminal Procedure Code's Section 154 mandates that before acting on information provided by a victim of a cognizable offence, the police must put it in writing and the reporter, read it. To sign it and receive a free copy of the FIR, the data is necessary. The informant claims that the initial information report's main goal is to involve the criminal justice system. The police cannot refuse to submit a report; instead, the state must pursue the perpetrator [8].

In the event of a non-cognizable offence, police officers are not permitted to make any arrests without a warrant, and they are also not permitted to conduct investigations without a court magistrate's order for the jurisdiction in which the crime was committed. Due to the fact that non-cognizable offences are typically seen as private wrongs.

## **2. The Indian Evidence Act**

Around 1872, during in the British Raj, the Imperial Legislative Council established the Indian Evidence Act. It was enacted on March 15<sup>th</sup>, 1872, and went into effect on September 1<sup>st</sup>, 1872. This act's primary goal is to alter the entire framework of ideas governing the evidence's admissibility in Indian legal processes. The laws

governing evidence were based on the diverse social classes and communities of India's traditional legal systems. In order to offer a single legal standard that applies to all Indians, the Indian Evidence Act was developed [9].

Every time a crime is reported in our nation, it is investigated and prosecuted in accordance with the Criminal Procedure Code's rules. Whether the accused is guilty or not depends on the evidence presented in the case. Since everyone in India has the right to freedom, the accused can only be declared guilty based on the evidence that was presented; if the evidence was not against him, he could not have been found guilty. The enforcement of a right or liability that is dependent on specific facts is the goal of every court investigation. The law of evidence is the body of rules that govern situations in which it is possible to resolve a factual dispute.

### **2.1 Victims' Rights under This Act**

A number of terminologies that appear throughout the Act are discussed in Section 3 of this Act. One of those words is "document," which is defined as any matter that is stated or depicted on any substance using letters, figures, or marks or that is used to record that matter. All papers, including electronic records, produced for court inspection are defined by the Evidence Act.

This act's Section 155(4), which allowed a prosecutrix's credibility to be called into question

based on her overall "immoral character," has since been abolished. The Act also forbids the victim's identify from being revealed in any publications about the crime. There is now no legal requirement for "in-camera" trials, especially where a kid or woman is the victim [10].

After filing a complaint and receiving a magistrate's cognizance of the case, Section 9 of the Act states: "Victim afterward does not engage in investigative process except by being called to confirm the identity of the accused or the material objects, if any recovered during the study," reads the statement. "There is no special protection given to victim not to participate in investigation process to avoid his trouble."

As long as they are innocent, proven guilty proven guilty beyond a reasonable doubt, which is the fundamental tenet of the legal system. For this reason, the burden of proof has moved to the prosecution attorney to establish the accuser's guilt beyond all reasonable doubts. However, several of this Act's clauses place the burden of proof on the accused party to demonstrate their innocence. The burden of proof shifts to the accused in cases of rape because consent is essential to proving the case. However, where women are raped, there is a presumption that there was no consent, thus the accused must now show that there was permission.

### **2.2 Rights of Victims under Indian Constitutional Law**

Even though it was drafted after "raiding all the known Constitutions of the World" and the majority of its contents are mostly lifted from other documents, the Indian Constitution is notable for numerous distinguishing qualities that set it apart from other constitutions.

There is nothing that supersedes the Indian Constitution as the supreme law of the land. This law protects the rights of every segment of society while also putting restrictions on the state's ability to infringe on those of individuals whose rights are guaranteed by the Constitution. The Indian Constitution provides everyone the same level of protection and prohibits the state from denying anyone their life or personal freedom unless it is authorised by law. Equal justice is also guaranteed under the Indian Constitution. Apart from their caste and religion, all Indians are guaranteed equal justice under the country's constitution.

### **2.3 Rights of Victims under this Law**

Article 14: Guarantees everyone's equality before the law.

Article 21: Protection of each person's life and freedom.

Article 38: Enables the government to maintain social order in order to advance public benefit.

Article 39A: Guarantees equal justice and free legal assistance.

Article 41: In some circumstances, the right to labour, to an education, and to public aid.

Article 51A, clause (g), requires compassion.

### **2.4 The victim's rights under special law**

The Prohibition of Offender Act of 1958 aims to prevent young offenders from developing a criminal mindset by connection with more experienced, hardened criminals. The Prohibition of Offender Act gives trial courts the discretionary authority to release an offender after proper reprimand and on prohibition of good behaviour in appropriate circumstances.

According to Sections 3 and 4 of the Act, the court has the authority to award "appropriate compensation" for "loss or injury" caused to a person by an offence, as well as for "costs" of the proceedings that the court deems reasonable. If the offender is released by the court after being warned or placed on probation for good behaviour, pay compensation and case expenses as necessary.

### **2.5 Fatal Accident Act, 1855**

Only the procedure and legal heirs' right to reimbursement from the negligent party were covered by this act.

### **2.6 Motor Vehicles Act, 1988**

To prevent hardship on the dependents namely, the victim's wife, kids, and parents due to the death of the victim or the victim's permanent becoming incapacitated, this act provides compensation to victims, even in situations where they are not at fault.



### 2.7 Protection of Women from Domestic Violence Act, 2005

According to the Code, "domestic violence" As long as they are innocent, as any behaviour that puts women in risk or harms them, abuses them physically or emotionally, or compels them to perform any prohibited acts, such as paying dowry, or threatens the woman or her family.

### 3. Critical Analysis

Researchers attempt to study and analyse the unique laws that are in place to safeguard the rights and interests of particular social targets in this way.

According to the Indian Constitution, the State has the authority to create special provisions to safeguard the rights of the most vulnerable members of society. There is no question that these rules will not violate the right to equality. However, none of these laws are sufficient to safeguard the victim's rights. The government must put these rules into effect taking into account the victims' current circumstances. The state's limited ability to provide meaningful support in the form of a victim assistance & fund is no longer acceptable.

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