

# Rights of Crime Victims: A Special Reference to Women and Children

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## ABSTRACT:

Victims are the persons who are the sufferers of moral, physical or material damage as a result of crime. The term, 'victim' also covers those who have close relationship with a person who died as a result of the crime. The basic principle of Torts states that there is no wrong without a remedy. The rule of law advocates that wrongs should not remain unredressed. Compensation is the basic right of the victim. It means amends for the loss sustained. Thus, compensation means the money or kind which is either directly given to the victim of crime or to those who have close relationship with the actual victim who have died as a result of the crime. The victims of crime have some other rights like participation in the trial proceeding, right to appeal, right to protection etc. In addition to the common rights, law has provided some special rights to the women and children victims of crime in consideration of their physical, mental condition and age.

**Keywords:** Right, Victim, Crime, Compensation, Remedy, Loss.

## INTRODUCTION

Victims are the person(s), who have faced injury in physical or mental, emotional suffering or economic loss or impairment of fundamental rights. The study about victims is called, 'Victimology'. Until recently, the victims were not studied seriously and remained as the weeping beggar at the door of criminal justice. In the earlier, the development of Criminal Justice System (CJS) diagnosed the position of victims but not the victims' reputation. However, now it has been possible to describe the concept and theoretical development of victim and victim compensation. Hence, overall few years, due to fast scientific growth, the concept of victim and victim compensation has been added to a branch of 'Criminology'.

## Objectives:

The present paper is an attempt to focus on the rights of Victims of crimes in India. The basic objective of the paper is to discuss about the various rights that the victims of crimes must have. This paper specially to discuss about the protection of rights of women and children victims of crimes due to their physical, mental conditions and age.

**Methodology:**

The methodology used while writing this paper is analytical. Both the primary and secondary sources like standard reference books, law reporters, journals, committees & commissions' reports, various newspapers, e-materials, internet sources including different web sites etc. are studied and visited.

**Analysis:**

'Victim' means person who has been victimized by another person against whom legal action may be taken for compensation and allied relief. According to an amendment in Cr. PC in the year, 2008, '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' also includes the close relatives of the person who died due to the crime. Victim in relation to criminal justice administration means victims of rape, victims of murder, victims of cheating, victims of criminal breach of trust, etc.

The General Assembly of the United Nations Organization (UNO) held on 29<sup>th</sup> November, 1985 reaffirmed the importance of the protection of the rights of victims of different crimes. The major rights of the victims of crimes as recognized by the General Assembly are Right to attend the proceedings, Right to compensation, Right to be heard, Right to information, Right to restitution, Right to the expeditious return of personal property, Right to speedy trial and Right to privacy.

The UNO Declaration states rightly that negative treatment on the victims will lead to misperceptions among the victims of crime and therefore there is doubt about the importance of respect and the dignity of the victims and compassionate treatment with them.

**Constitutional protection of victims' rights:**

The Constitution of India prescribes various rights for the victims of crime. The Article 14 and 21 of the Constitution of India incorporate Fundamental Rights which to be read with the Articles 39A, 41, 46 and 51C of the Directive Principles of State Policy. Under the provision of Article 39A, the State to offer free legal service and guarantee for equal opportunity. Under the provision of Article 21 of the Constitution of India, the State to ensure the protection of life and liberty of the citizens of the country. By incorporating the rights of victims into the constitution under the provision of various Articles itself gives those rights a degree of permanence and giving the constitutional protections of the victims' right, obviously makes the rights enforceable by the state. In the event of violation of a constitutional right by an official or a state agency, an appropriate court shall have the power to direct the official or the agency for compliance of the constitutional provisions. The following are the constitutional rights of the victims of crimes :

The victims be treated with dignity, fairness and respect, be informed about the proceedings, be allowed to be present at the trial proceeding, be heard at the critical points such as sentencing or parole hearings, be awarded restitution from a convicted offender etc.

**Protection of victims' rights under IPC:**

The Indian Penal Code (IPC) states that offence is an act or omission which is punishable by law. The code is applicable to all of the Indian citizens who commit crimes within the

country. The Indian Penal Code has a list of offences for which it prescribes punishment under different sections. Section 15A of the Indian Penal Code protects the rights of the victims and witness. As stated in the said section – (i) It shall be the duty and responsibility of the State to make arrangements for the safeguard of the victims, their dependants and witness against any kind of intimidation or coercion of inducement or violence or threat of violence, (ii) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty, (iii) A victim or his dependant shall have the right to reasonable, accurate, and timely notice of any court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceeding, (iv) A victim or his dependant shall have the right to apply to the Special Court or the Exclusive Special court, as the case may be to summon the parties for production of any document or material, witness or examine the persons present, (v) A victim or his dependant shall be entitled to be heard at any proceeding in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing, etc.

### **Procedure, Protection of victims' rights under the Code of Criminal 1973:**

Through the Criminal Procedure (Amendment) Act, 2008, section 2(w) has been inserted in the code which defines the term 'Victim'. Before the said amendment only the legal term, 'Complainant' was used for victim in the Criminal Procedure Code. The Code advocates for certain rights of the victim. The Code provides the victim, the right of submitting First Information Report (FIR) before the Officer – in – Charge of a Police station and the victim also has the right to have a copy of the FIR from the Police Officer free of cost as prescribed by the Code of Criminal Procedure. It is the right of the victim to engage an advocate under the provision of section 24(8) of the Code to assist him or her in the prosecution. The Advocate engaged by the victim shall act under the instructions of the victim with necessary permission of the court under the provision of section 301(2) of Cr. PC. A lady Police official can visit the house of rape victim. The Code specifies the right of restitution to the victim. It is the right of the victim to restore to the original position get returned the stolen goods under the provision of the Code. The most important right of the victim is compensation which is well recognized in the Code of Criminal Procedure under different sections such as Section 357 : Order to pay compensation, Section 357A : Victim Compensation Scheme, Section 358 : Compensation to person (victim) arrested groundlessly, Section 359 : Order to pay costs in non-cognizable cases. Among the above all, the most important and valuable right of a victim is the right to compensation. Compensation means payment of damages, or any other act that court order to be done by a person (offender) who has caused injury to another person (Victim). In *Shantilal case (State of Gujarat v. Shantilal, AIR 1969 SC 634)* and *Smt. P. Ramadevi v. C.B. Saikrishna case [AIR 1994 Kant 8(12)]*, Supreme Court of India held that the compensation is anything given to make things equivalent, a thing given to make amends or loss, recompense, remuneration or pay. Under the provision of section 357A of the Code of Criminal Procedure, initiative has been incorporated to provide compensation to the victim or his/her legal heir(s) through different Victim Compensation Schemes (VCS) in India for the protection of the right of the victims.

### **Rights of Women and Children Victims of Crimes:**

In addition to common rights of victims as discussed above, the law of the land has provided some special protections to certain sections of the society on the basis of their age, mental and physical conditions. Accordingly, the Code of Criminal Procedure and other laws including statutory enactments have incorporated some rights specially meant for Women and Children in our country as discussed below:

1. Right in regard to recording of statement of Rape Victim : To avoid further humiliation of the victim of rape by giving statements before strangers in the incident of the offence, the victim has right to record statement at her residence or at a place of her choice. Preferably the statement to be recorded by a lady police officer in presence of her parents or close relatives or social worker of the locality under the provision of section 157(1) of Cr.PC.
2. Right in regard to medical examination of the rape victim : Medical examination of the rape victim and the accused as well play a crucial role in the conviction of the offender. The medical examination of the accused and the rape victim must be done by a registered medical practitioner in a government hospital. The medical examination of the rape victim must be done by a lady medical practitioner with strict decency under the special provision of Cr.PC., so that the court get the authentic and prompt report of the medical examination of the victim. The rape victim woman shall be sent to the registered government medical practitioner within 24 hours of the commission of the offence of rape under the provision of section 164A of the Code of Criminal Procedure, 1973
3. Right to mandatory Judicial Inquiry in case of custodial rape : Under the provision of amended section 176 of the Code of Criminal Procedure, 1973 it is mandatory to provide judicial inquiry in case of rape of a woman. In such offence in addition to the inquiry or investigation held by the police, an inquiry shall be held by a Judicial Magistrate or the Metropolitan Magistrate as the case may be within their jurisdiction under the provision of section 173 (1A)(b) of the Code of Criminal Procedure, 1973
4. Right to trial in – camera : If a trial is conducted in camera, it will be convenient for the woman victim for giving her testimony comfortably. It may produce a sense of shyness in the mind of the victim if the trial is conducted in presence of public and media for which she may not give testimony freely. Trial in – camera will keep the self-respect of the victim and also improve the quality of evidence. The better quality of evidence on the part of the victim shall certainly help the court in arriving at the truth and shifting truth from the falsehood. Section 327(2) of the Code of Criminal Procedure, 1973 prescribes that in case of inquiry into and trial of rape or custodial rape shall be conducted in camera [*Gurmeet Singh v. State of Punjab* 1996(2) SCC 384]. The trial in – camera shall be conducted as far as possible by a lady Judge or Magistrate in presence of woman trial Judge. However, there is no provision in law mandating in – camera trials particularly where the victim is happened to be a child.
5. Right in regard to Dowry : The presumption of dowry death is inserted in the Indian Evidence Act, 1872 and to read with the section 304B of IPC, 1860. Section 113A of Indian Evidence Act, 1872 and cruelty shall have the same meaning as in section 498A of IPC. The section 113B of the Indian Evidence Act, 1872 has been inserted by the Criminal Laws amendment Act, 1983. According to section 113B, when the question is whether a person has

committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment in connection with any demand for dowry. In such cases, the court shall presume that such person had caused dowry death. In explanation of section 113B of the Evidence Act, 1872 it is stated that for the purpose of this section, dowry death shall have the same meaning as in section 304B of the IPC, 1860.

6. Right in regard to abetment of suicide of child, protection of unborn or new-born girl child : Under the provision of sections 312 – 318 of IPC, 1860, in the event of committing suicide by a person under the age of 18 years, whoever abets the commission of such suicide shall be punished with death or imprisonment for life term or for term not exceeding 10 years and shall be liable to fine. IPC sections 312 – 318 have the provisions that the offences relating to children include causing of miscarriage, injuries to unborn children, concealment of births and disposal of dead bodies of children. These provisions are meant for the protection of right of the children. To prevent the misuse of sex determination techniques for the purpose of pre – natal determination leading to female foeticide, the Indian Parliament in 1994 enacted the ‘ Pre – natal Diagnostic Techniques ( Regulation and prevention of Misuse) Act., 1994
7. Rights in regard to sexual offences against Women and Children : In some of our orthodox Indian societies, the chastity of a woman and virginity of a girl is a paramount consideration. There is humiliating situation which is to be faced by girl victim of rape. A rapist not only violates the personal integrity of the victim but also makes an indelible marks on the very soul of the innocent female as observed in the case of ‘*The State of Maharashtra – Vs – Rajendra J. Gandhi, (1997) 8 SCC 150*’. The punishment of rape is prescribed under the provision of section 376 IPC as punishable with imprisonment for a term not less than 7 years or life or for a term which may be extended to 10 years and fine. In case of custodial rape, the convicted person shall be punished with imprisonment of not less than 10 years. With a view to protect the rights of women and children against sexual offences, the legal provisions of both the substantive and the procedural laws were amended by inserting sections 376A to 376D in the Indian Penal Code, 1860.
8. Right to Compensation : The Code of Criminal Procedure, 1973 under the provision of sections 357 and 357A which are inserted by the Code of Criminal Procedure ( Amendment ) Act, 2008 provides compensation to the victims of crimes. Also under the provision of section 5 of the Probation of Offenders Act, 1958 compensation is prescribed to crime victims by order. These sections are equally applicable to the women and children victims of crimes. Therefore, the women and children victims of crimes have rights to get compensation under the provision of above sections.
9. Right to Appeal : Appeal against an order of acquittal is a special remedy. A woman and a child victim have the right to appeal against an order of acquittal of the accused person. A Constitutional Bench in *P.S.R. Sadhanantham – Vs – Arunachalam [(1980) 3 SCC 141]* expressly recognised that ‘ The right of a victim’s near relative, who was not a party to the proceedings, to file a Special Leave petition under Article 136 of the Constitution of India in the Supreme Court challenging an order of acquittal by the High Court.’

In addition to above, the rights of women and children victims of crimes in regard to power to compel restoration of abducted females, completion of investigation within three months, relaxation in time limit for taking cognizance of matrimonial offences, prosecution for offence against marriage, sale or purchase of minors for immoral purposes, offences relating to marriage, cruelty by husband and/or his relatives, indecent representation or insult to the modesty of a woman, etc. are protected under the provisions of various enactments of laws in India.

### **Suggestions:**

In the last decade, the scenario of the protection of the rights of victims of crimes in general and in particular rights of the women and children victims has been drastically changed all over the world. However, in comparison to other developed countries, the position of India is lower in this field. There are some suggestions forwarded below to upgrade the position of India in this regard:

- There is extensive need of the enactment of legislations in regard to the protection of the rights of victims with some special provisions for women and children victims in India.
- Active participation of victims in the Criminal Justice System (CJS) is needed.
- The victim of sexual assault should be provided with legal representation. Legal assistance needs to be started at the police station and so on.
- A list of legal Counsel should be kept at the police station for the victim(s) who did not have a particular lawyer available. The legal Counsel should be engaged at the earliest.
- In the cases of rape trials, anonymity of the victims must be maintained.
- To set up criminal injuries compensation monitoring boards.
- Provision of recording the reason of not providing compensation by the Judges.
- In the event of not conviction of the accused, the victims also to be provided with necessary compensation.
- Sufficient fund needs to be created and kept ready for providing compensation which can prevent further victimization.
- Awareness programmes to be adopted in regard to the protection of the rights of the victims specially for the women and children victims of crimes in the society.

### **Conclusion:**

The studies about the rights of victims of crimes reveal that a very little has been done to address the problems faced by the victims except in the area of awarding compensation. The Indian Criminal Justice System (CJS) is still accused oriented based on the principle that ten offenders are justified to be acquitted than hanging or prosecution of an innocent one. Accordingly, the rights of victims of crimes are often overlooked. Sometimes attempts are made for the benefit of the accused even at the cost of the sentiments of the victims. The Indian Criminal Justice System though is called pro – accused, it gives certain rights to the victims of crimes. However, those rights are scattered in various enactments like IPC, Cr.PC and Indian Evidence Act. Further, these rights are not exercised in respect of the victims due to lack of knowledge and awareness. Hence, the State agencies to take adequate measures for the proper enforcement of the relevant enactments and to spread awareness among the stakeholders in order to the protection of the various rights including the right of compensation of the victims of crimes in general and rights of the women and children victims in particular.

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