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**VICTIM'S RIGHT AND VICTIMOLOGY UNDER INDIAN
CRIMINAL JUSTICE SYSTEM: AN ANALYTICAL STUDY**

SUBMITTED BY

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ABSTRACT

From a very long past, criminals are the centre of concern for justice administration system, victims are merely considered as an eye witness of the incident and they are generally entitled to the social sympathy. With the passage of time and due to recurring incidents of brutality, death threat or death of crime victims it becomes very prominent to think about the psychological, physical as well as social order of a crime victim. To study the hurdles and threats faced by a victim as well as to identify the real necessities for the rehabilitation as well as resettlement of a crime victim in the social life as well as private life, it is important to analyse the real scenario from the insights of a victim. To accomplish the objective of study over the victim, the field of victimology is developed since 1947.

Some of the past research studies over the victim rights suggests that the criminal justice system in India has taken very reformatory steps to ensure the enforcement of victims' rights and to prevent the any kind of harassment of victim during the trial procedure, victim compensation scheme as well as medical assistance to victim etc. are some of the rights incorporated through the amendments of Indian Criminal Law in 2013 and 2018. But some other past studies also disclose the real-time drawbacks and loopholes in the law. They also disclose how the laws legislated by the legislatures are mere a piece of paper without its proper implementation and execution. In recent past, the cold-blooded gang rape and murder case in Delhi which is popularly known as Nirbhaya case as well as Unnao Gang Rape case where the victim was burnt alive by the prime accused were the highlighted incidents which insisted the legislature Executive as well as Judiciary to think about the condition of victim and protection of their rights. These incidents also insisted the academicians to suggest reformatory actions through their research work. In this research study I used primary as well as secondary source of data collection to identify and analyse the real scenario of Criminal Justice System in India with specific reference to victims' rights.

During this entire research I emphasised upon study of crime victim's rights available under various criminal statutes in India. the prime concern of my study is confined to ascertain the remedial measures and other assistance available to the crime victim under Indian criminal law, apart from as a witness in the case. This study also attempts to highlight the social pressure created by the society against a crime victim as well as how and why the corruption is a prime factor in the incidents of harassment against victim and deprivation of their rights. This study suggests stringent reformation in the Anti-Corruption Law and Anti-money Laundering Law to restrict the utilization of unauthorised economic resources for effecting the victim



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of a crime. This study also suggests the ground zero implementation of laws facilitating victims' rights and its effective reporting up-to the level of highest superior authority. This research study also analysed the various global standards adopted by India through signing and rectifying various International Conventions, Deceleration and Covenants and finds that India is making all efforts to aligned with the international standards set out for protection and promotion of rights of victim of a criminal offence.



CHAPTER 1

INTRODUCTION

1.1 Origin of Victim

The offender, the crime scene, the weapons, and the witnesses who saw it happen are all equally responsible for the crime as is the victim, who makes up half of the criminal offense. “Since the dawn of human culture and civilization, the concept of being a victim has existed. Although its current meaning can vary greatly depending on the context in which it is used, its original meaning is centered on the act of making a sacrifice. During the development of victimology in the 1940s, victimologists like Mendelsohn, Von Hentig, and Wolfgang saw victims as helpless dupes who brought about their own victimization.” After the Second World War, this happened. As a result, several ideas of victim-offender and victim-precipitation dyads were created, and the victim-blame approach was developed. The victim had long gone beyond their prime, yet this was the last blow that ended their suffering for good.

When modern governments were established and took over the task of punishing offenders, the victim, who had historically had an important place within the legal system, was eliminated from the equation. The biggest coverage hole in this instance, though, was the sufferer's lack of empathy. The irony of the situation is that the system was so massively and carefully designed for the very goal of easing the pain of the victim. He has no status, no rights, and ultimately no needs. He has no credibility, no legal standing, and ultimately, no needs. Even while the situation has improved as a result of several international pronouncements and the victim movement throughout the globe, this "lost and deserted" portion of the criminal justice system is still in a black hole.

“Police, judges, and prosecutors—the people who are supposed to be the supporting pillars of a criminal justice system—most frequently display apathy. This holds true regardless of where you are on the planet, including India. The legal system cannot always serve as a shield for individuals who have been harmed, even if it is meant to be on the side of victims. To achieve real progress, it is necessary to change the thinking of the masses, the general public, governments, authorities, and the victims themselves.” Since their wants and rights are human rights just like everyone else's, they must stop agonizing and begin organizing for them. The idea of social justice, which is our constitution's signature song, can only be



achieved then and only then will we be able to continue in the footprints of Mahatma Gandhi, our country's founding father. India's criminal justice system, which incorporates fundamental principles including crime prevention, criminal rehabilitation, and criminal punishment, is based on the British model of criminal justice. The Indian criminal justice system was established by the Indian government as a means of deterring and punishing criminal activity. The criminal justice system is what is commonly referred as.

1.2 Review of literature:

1. RATANLAL AND DHEERAJLAL, THE INDIAN PENAL CODE, 35TH EDITION, 2017, EASTERN BOOK COMPANY: The review of pertinent literature has made it easier for me to conduct research on understanding the fundamental concepts of crime and victimization, including the rights that are available to women who have been victims of crime, the major benefits of the crime victim protection provided under the Criminal Law Amendment Act of 2013, the rights that the state has as a victim of crime, and some other crucial issues.

2. K.D. GAUR, TEXTBOOK ON THE CODE OF CIVIL PROCEDURE, 1ST EDITION, 2016: My research focuses on comprehending the witness procedure, the rights and obligations of crime victims during the trial of summons as well as warrant cases, the rights of victims during the filing of a FIR, the rights of a complainant before the magistrate, plea-bargaining, and some other crucial aspects of criminal procedure, the procedure of maintenance of children and parents, as well as a crime victim's right to compensation. The review of this amount of material as part of my research study allows me to do this.

3. PROF. S.R. BHANSALI. TEXTBOOK ON THE CONSTITUTION OF INDIA 1ST EDITION, 2015: I concentrate on the fundamental rights and guiding principles available to a victim of crime under the Indian Constitution when I evaluate this work. Articles 14 to 21 on basic rights are among them, as are sections 39A, 41, 46, and article 51(c), which list the directive principles of state policy.

4. O.P. MISHRA, LAW RELATING TO WOMEN AND CHILD, 6TH EDITION, 2020: The evaluation of the aforementioned corpus of literature helped my research study obtain a better knowledge of mothers and children who have been victims of crime. The Prevention of Children from Sexual Offenses Act (2012), the Domestic Violence Act (2005), and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act (2013) were all taken into consideration when examining these victims.



5. PARIDHI SHARMA, HARSHA BHALSE, PENOLOGY, AND VICTIMOLOGY 1ST EDITION, AMAR LAW PUBLICATION, INDORE: I now have a foundational understanding of victimology and the legal issues pertaining to victims as a consequence of reading this collection of work.”

1.3 Statement of problems:

The purpose of the current study is to look into the following issues:

1. What rights are granted to crime victims in India under the Indian Constitution and several legislations governing the country's criminal justice system?

2. If prisoners' rights and basic needs have been met in accordance with the Indian Constitution, the Criminal Procedure Code (CrPC), the Indian Penal Code (I.P.C.), and other laws, and if not, what types of victimization have prisoners experienced while they have been in the care of the Criminal Justice System?

1.4 Objectives of the study:

1- This study was conducted with the following objectives to gain a better understanding of the victim's situation in relation to the objectives of the criminal justice system:

2- To gather information about the safeguards provided to victims by the judicial system overseeing criminal proceedings in India.

3- To ascertain the several components that each of the rights granted to victims includes.

4- To determine how closely the current legal framework in India conforms with the standards and guidelines set in the UN Declarations.

5- To evaluate the efforts made by the judicial system to accommodate the needs of crime victims.

6- To offer some suggestions on the changes that should be done so that the system can more quickly respond to the needs of crime victims.

1.5 Research methodology:

This research was conducted using a doctrine-based technique. It entails analyzing the content of numerous legal documents, books, and publications on the subject. It will use a descriptive approach while



critically analyzing and evaluating laws and court rulings. Sources including statutes, Supreme Court decisions, and decisions from other Indian courts will be considered during the analysis. Relevant secondary sources such legal works would be sought for critical evaluation. The work will only employ accepted citation and reference formats.

1.6 Hypothesis

In the course of the investigation, the following hypotheses will be tested:

- a) India's current legal system offers a robust structure for crime victim rights, but its actual execution falls short of appropriately protecting and enforcing such rights.
- b) The legal system in India has effectively incorporated many international treaties recognizing the rights of crime victims, and the country's current statutory framework for defining such rights is sufficient.
- c) The courts have found it challenging to create any common criteria for preserving the rights of crime victims in the lack of specific provisions within Indian criminal statutes recognizing those rights.

1.7 Research Design-

The current research project focuses on investigating victimology and the legal issues of crime victims' rights in India. The six chapters that make up this full research study are described in the following manner:

Chapter 1- Introduction- The nature of the topic chosen for the study is covered in the first chapter (introduction), which also emphasizes the research methodology, research objectives, literature evaluation, and the premise upon which my research study is founded. In addition, the aforementioned chapter describes what constitutes a crime, who constitutes a victim of crime, how victims are classified, and provides an overview of the development of crime in India.

Chapter 2- Victim's Rights as Human Rights and Fundamental Rights- the study of fundamental rights guaranteed to crime victims by the Indian Constitution and as fundamental human rights is covered in the second chapter. These rights include the right to natural justice, the right to a fair trial, the right to compensation, the right to equality, the right to equal justice and free legal representation, the right to



privacy, and some other significant rights like the right to be heard.

Chapter 3-Victim's Rights Under Indian Criminal Justice System- the conceptual examination of victims' rights under the Indian Penal Code of 1860, the Code of Criminal Procedure of 1973, the Indian Evidence Act of 1872, and under specific special laws on crimes involving women and children, as well as victim's right to compensation, is covered in the third chapter.

Chapter 4- Judicial Approach on Crime Victim's Rights-the fourth Chapter of my research study focuses on understanding the judicial approach to the rights of crime victims via the analysis of several significant rulings by the Indian Supreme Court and other high courts in this area.

Chapter 5- Victimology and Its Evolution- The fifth chapter of my research study examines the idea and development of victimology as well as India's acceptance of a global perspective on victims' rights via the analysis of numerous agreements and UN resolutions.

Chapter 6- Conclusion and Suggestions- In Chapter Six, the researcher draws conclusions from the study and tries to offer a few recommendations for improving the status of victims in the Indian judicial system.



1.8 Definition and Evolution of Crime

1.8.1 Definition of Crime

The social evil of crime is against civilized society. In every civilized society, the state is largely in charge of administering the law and preventing crime, and in order to achieve this goal, the state has established several statutory laws and norms, the breaking of which may result in the commission of a crime. According to the highest court, protecting people and their property is a crucial government duty that may be accomplished with the help of the criminal justice system.¹

The definition of "crime" as given by Blackstone is "An act as committed or omitted in violation of public law forbidding or commanding it."² The difference between a criminal and civil wrong, in Salmond's words, "is based not on any difference in the nature of the right infringed, but on a difference in the nature of the remedy applied." In addition, the classic Latin proverb "Ubi jus ibi idem medium" states that where there is wrong, there is a solution. Acts of law never create harm to anybody, according to the Latin proverbs "Actus I Legis Nemini Est diagnosis" and "Actus Legis Nemini Facit injuria." All of these axioms make it very evident that a state-sponsored rule of law is necessary to deter crime and punish those who do it.

1.8.2 Evolution of Crime in India

In India, the idea of crime developed alongside the idea of a structured, ordered society in which individuals joined together to live together in a collective manner under the family system. The Indus Valley civilisation, which was the first in India (3300–1300 BCE), changed how people thought about crime in antiquity. The most prevalent types of crime, including as assault, theft, violence, and deceit, have evolved through time in the earlier era with the gathering of people in the Harrapan civilisation. The main legislation against crime at that time was the natural justice concept, which places emphasis on sin and virtue.

Later, during the Vedic time, Manusmriti was the primary compendium dealing with law, usages, religion, and custom, and Veda, Upanishad, and smriti were the main sources of legislation against crime, such as the Hindu code of crimes. "The mere ancient criminal law in India was very severe and drastic, but

¹ *Sevaka Perumal v. State of Tamil Nadu* (1991) 3 SCC 471

² O.P. Srivastava: principles of criminal law (6th edition) p 8



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from the times of Yajnavalkya and Brihaspati the rigor of punishment was lessened and softened, and fines came to be the common punishment of crimes," claims P.V. Kane.³

The Shariat law, which incorporates the concepts of the Quran, Hadis, and Ijma, became the primary rule against crime during the Delhi Sultanate era in India. According to Sharia law, the three primary kinds of crimes were crimes against private persons, the state, and God, for which the death penalty was the worst penalty. Additionally, certain principles known as Sunna came into existence with the end of the Delhi Sultanate and the start of the Mughal Empire in 1526 BCE. These principles further classified offenses as Qiyas, which means retaliation, Diyut, which means blood money, Had, which is for fixed penalties, and Tazir, which gave the court discretionary punishment power. The Mughal era was marked by very severe punishments, including the death penalty for crimes like Zina, dacoity, and wine use, as well as the cutting off of hands for stealing. Both the administration of the criminal justice system and the penalty for crimes lacked consistency.

The first action was taken during the British era with the adoption of the regulating act in 1773, which established one criminal court in each district made up of a Qazi, a Mufti, and to Molvis. Three Molvis, a Chief Qazi, and a Chief Mufti made up the criminal revision court. These courts began to employ European judges in 1793, and four appellate courts were established in Calcutta, Dacca, Patna, and Murshidabad. The Sardar Nizamat Adalat Supreme Criminal Court was then located in Calcutta.⁴

Since there was no consistency of law prior to the passage of the Charter Act 1833, Lord Macaulay was appointed chairman and three other members of the first law commission. The Indian Penal Code was the final document that this commission delivered to the legislative council in 1857. It was approved and received the Governor-General's final assent on October 6, 1860, but it didn't take into effect until January 1, 1862. The Criminal method Code of 1973, which superseded the older Code of Criminal Procedure, 1898, was also adopted in the year after India's independence to govern and regulate the method of criminal proceedings.

³ P.V. Kane: History of Dharma shastra Vol. III p 390

⁴ O.P. Srivastava: Principles of criminal law (6th edition) p 3



1.9 Essentials and Stages of Crime

The key components of a crime contain a number of parts; however, the following are the most crucial characteristics that may constitute a crime:

a) Actus rea-

It refers to a deliberate, voluntarily committed act of wrongdoing. The idea of actus rea necessitates the wrongdoer's direct participation in the performance of the unlawful act.

b) Mens rea-

Its meaning is "guilty mind." When an act incorporates men's rea, or mental guilt, it might be considered criminal in nature. Men's rea might take the shape of malicious intent or egregious carelessness. When a person engages in any activity that is prohibited by criminal law, when they negligently fail to carry out a legal obligation imposed by criminal law, or when they negligently engage in any activity that is prohibited by criminal law, all three of these situations constitute acts done with men's rea.

c) Causation-

It is necessary for there to be a criminal or civil culpability. Causation simply means to cause something. The competent authority must first determine that the conduct caused some harm before deciding on a person's criminal responsibility for any act or omission. The two basic categories into which the causation may be divided are aberrant elements and human activities. For instance, a gas leak that causes a home to burn down is an anomalous factor that may or may not be related to some human behaviour. Once it is established that any purposeful human activity contributed to such an abnormal factor of leakage, a crime may be committed.

d) Malice-

it generally means evil motive or ill will. Malice may be:

- i) "Express malice or Malice in fact, or
- ii) Implied malice or malice in law"

Express malice refers to engaging in a legal action that results in harm or damage. Malice is not considered to be a legal infraction in the eyes of the law. On the other hand, an inferred malice, also known



as malice in law, is an act that amounts to a violation of the law without a justifiable justification.

Stages to Constitute a Crime

A criminal act or crime consists of four primary stages, which are as follows:

- i) "Intention to commit a crime,
- ii) Preparation for a criminal act,
- iii) Attempt to commit a crime, and
- iv) Commission of the crime"

It is crucial to emphasize that the initial stage of a crime alone does not constitute an offense; but, when combined with any or all of the succeeding phases, it results in an act that constitutes a criminal offense.

1.10 Concept and Types of Victims

1.10.1 Concepts of Victim:

According to Section 2(wa) of the CrPC, 1973, a victim is someone who has suffered loss or harm as a result of the accused person's alleged act or omission. This definition includes the victim's guardian or legal successor.⁵

"Victims" refers to individuals or groups of individuals who have been harmed, individually or collectively, as a result of acts or omissions that violate criminal laws in effect in Member States, including those that forbid criminal abuse of power. "This includes harm such as physical or mental injury, emotional suffering, economic loss, or significant impairment of one's fundamental rights. No matter whether the offender is found, detained, charged, or convicted, or if the victim and the perpetrator are related, a person may be deemed a victim under this Declaration."⁶

⁵ The Criminal Procedure Code, 1973 (Act 02 of 1973), s.2

⁶ Jhon P.J Dussich, *Victimology-Past, Present, and Future*, available at https://www.unafei.or.jp/publications/pdf/RS_No70/No70_12VE_Dussich.pdf



The word "victim" also refers to those who have experienced injury when stepping in to help distressed victims or stop the victimization, as well as the victim's immediate relatives or dependents, if appropriate.⁷ A social welfare state would use specific statutory laws in cases of crimes against women or children to safeguard these groups of the population. For instance, the Protection of Women From Domestic Violence Act of 2005, the Protection of Children from Sexual Offence Act of 2012, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013—all of which are based on the Vishaka guidelines established by the Supreme Court of India in 1997—are special statutes that have been passed by the Indian Parliament to prevent crimes against women and children and to safeguard their fundamental human rights.”

1.10.2-Types of Victims:

Some criminologists made contributions to the growth and improved conceptual understanding of victimology during the 20th century. Three criminologists in particular—Von Hentig, Mendelsohn, and Stephen Schafer—classified the various victim kinds. The term "victimology" was first used by Benjamin Mendelsohn in the year 1940. In his opinion, victimology is a brand-new, separate subject of study that is not only a subfield or branch of criminology but rather a stand-alone, distinct field of study that may be referred to as the "reverse of criminology."

Based on the degree of responsibility of the perpetrator relative to the victim, Mendelsohn divided victims into six categories, ranging from the "guiltiest victim" to the entirely innocent victim.⁸

- i) completely innocent victim,
- ii) victim with minor guilt and victim due to her own ignorance,
- iii) victim as guilty as an offender,
- iv) victim guiltier than the offender,
- v) most guilty victim and victim who is guilty alone,
- vi) simulating and imaginary victim

⁷ Ibid

⁸ Mendelsohn B.: The Victimology (1956) p. 25-26



Based on psychological and socio-biological characteristics, von Hentig divided victims into thirteen groups or categories.⁹ They are as follows:

i) the young victim ii) the elderly victim, iii) the female victim, iv) the psychologically disabled or deranged victim, v) the immigrant victim, vi) the minority victim, vii) the dull normal victim, viii) the depressed victim, ix) the acquisitive victim, x) the wanton victim, xi) the heartbroken and lonesome victim, xii) the tormentor's victim, and xiii) the fighting blocked and exempted victims.

The categorization developed by Stephen Schafer in his book "The Victim and His Criminal" is based on the victim's functional responsibility for the crime. Von Hentig made this classification in his book "The Victim and His Criminal." These are listed below. –

- i) unrelated victim (no victim responsibility)
- ii) provocative victim (shared responsibility)
- iii) precipitative victims (some degree of victim responsibility)
- iv) biologically weak victim (no victim responsibility)
- v) socially weak victims (no victim responsibility).

⁹ Hentig, Von: The criminal and his victim (Yale University press, 1981) p 35



CHAPTER 2

VICTIM'S RIGHTS AS HUMAN RIGHTS AND FUNDAMENTAL RIGHTS

2.1 Introduction

The Constitution of India is the most notable instrument that is of the highest significance and sovereign in India with regard to guaranteeing basic fundamental rights and ensuring social, economic, and political fairness in India. In the form of fundamental rights and directive principles, our constitution safeguards and guarantees fundamental rights to both the victim and the offender. "For instance, Article 39-A of the Indian Constitution contains provisions regarding equal justice and free legal aid, which are based on the principle of natural justice and are applicable to both the victim and the offender. No one shall be denied justice because of their economic or social depravity or because of insufficient mechanisms for the administration of justice, according to this clause. The Preamble of the Indian constitution is referred to as "the identity card of the constitution" by renowned Indian lawyer Nani Palkhivala.¹⁰ Concepts of social, economic, and political justice are included in the preamble of the Indian constitution, which is based on an objective resolution Pandit Jawaharlal Nehru delivered to the constituent assembly on December 13, 1946. Social justice includes the availability of justice for both the victim and the criminal.

I.C. Golaknath v. State of Punjab, the leading case, was cited by Chief Justice Subba Rao as evidence.¹¹ The preamble of the constitution outlines the main goal of the document's authors. Additionally, the Supreme Court noted in the case of Nandini Sundar v. State of Chhattisgarh that the preamble's guarantee to uphold social, economic, and political fairness cannot be ignored or disregarded. The preamble defines 'equality' as including 'civil, political, economic, and legal equality. The right to equality is recognized as a fundamental right in Article 14 of the Indian constitution, and Articles 15 (3) and (4) grant the state the authority to make special provisions for women and children as well as for the advancement of scheduled castes and scheduled tribes. As a result of this article, the Indian Parliament has passed numerous statutes that serve to protect, provide for, and preserve the basic fundamental rights as well as to guarantee equal access to justice.

¹⁰ Lashmikanth, M: Indian Polity (5th edition 2017) p 4.1

¹¹ I.C Golak Nath v State of Punjab AIR 1967 SC 1643



Criminal law excludes victims from the criminal justice system and regards them similarly to witnesses to a crime against the state. Their only function is to provide testimony. This is a key factor in victims' frustration with the criminal justice system when they seek compensation for the harm they endured. People with rights and advantages are victims. Crimes violate the rights of victims as well as having an impact on society.” Although crime victims are not directly mentioned in human rights documents like the Universal Declaration of Human Rights, the documents have still established a number of rights for them that may be seen from the victim's point of view.¹²

2.2 Fundamental Rights of Victims Under the Indian Constitution

The rights that are enforceable against the state and guaranteed by the Indian constitution are the fundamental rights of the victims. “Part III of the Indian Constitution guarantees certain rights. The major fundamental rights connected to a victim are, in particular, Articles 14 and 15 (right to equality), Article 21 (right to life), Articles 23 and 24 (rights against exploitation), and Article 32 (right to constitutional remedy) in the form of public interest litigation or in the form of locus standi through the writ of habeas corpus.”

2.2.1 Right to equality

The right to equality is granted in Articles 14 and 15 in favour of both the victim and the criminal. According to Article 14, no individual should be denied equality before the law or equal protection under the laws on Indian territory.¹³ The two ideas of "equality before the law" and "equal protection of the law" are provided by article 14 when we examine the victim's possibilities in respect to that article.” In contrast to the later notion, which talks about everyone having access to an equal remedy or protection under the law of the land, the previous concept talks about there being no special status, privileges, or discrimination in the eyes of the law. State of M.P. v. She shanker,¹⁴ The Bombay High Court's Nagpur Bench said that the principle of fair justice is one that permeates both expressions. The Universal Declaration of Human Rights, which the United Nations General Assembly ratified on December 10th, 1948, likewise makes use of these two phrases. In accordance with Article 7 of this Declaration, "all are equal before the law and are entitled without any discrimination to equal protection of the law."¹⁵ When defining equality before the law, Dr.

¹² Jayasimha, B, Protections of Victims' Rights in the Criminal Justice System a Critical Study, available at: <https://shodhganga.inflibnet.ac.in/handle/10603/226732> (last accessed on: March 3rd, 2023)

¹³ The constitution of India 1950, Article 14

¹⁴ *Sheoshanker v. State of M.P.* AIR 1951 Nagpur 53

¹⁵ Universal Declaration of human rights available at: <https://www.un.org/en/about-us/universal-declaration-of-human->



Jennings notes that "like should be treated alike" and that "equality before the law means that among equals the law should be equal and should be equally administered." All citizens of legal age and comprehension should have the same rights to bring legal action and to be brought legal action without regard to their race, religion, money, social standing, or political influence.¹⁶ No one may be treated harshly, inhumanely, or unfairly, even when the goal is to uphold the fundamental requirements of law and order, according to the rule of law.¹⁷

The idea of "equality before the law" is a component of the idea of the "rule of law" advanced by British jurist A.V. Dicey. His idea comprises the following three aspects:

i) supremacy of law or absence of arbitrary power,

ii) equality before the law, and

iii) the primacy or rights of the individual (rather than the constitution being the source of individual rights, the constitution being a result of the rights of the individual as established and upheld by the court of law through ordinary law of land. Because the Indian system derives its individual rights from the constitution, only the first and second of the three parts apply to it.¹⁸ The state is required by the rule of law to take specific action to prevent and penalize police violence.¹⁹

According to the Supreme Court of India, Article 14's emphasis on the rule of law constitutes the "basic structure" of the Indian constitution and cannot thus be changed, even in accordance with Article 368.²⁰

Additionally, the phrase "equal protection of the law" in Article 14 stipulates that likes should be treated equally rather than that opposites should be handled equally.²¹ 'It is challenging to conceive of a circumstance in which the violation of equal protection of the law would not also constitute a breach of

[rights#:~:text=Article%207,any%20incitement%20to%20such%20discrimination](#) (accessed as of 3rd march, 2023)

¹⁶ Jennings: the law of the Constitution (3rd ed) p 49

¹⁷ *Rubinder Singh v. Union of India* AIR 1983 SC 65

¹⁸ Laxmikanth, M: Indian Polity (4th ed 2017) p 7.5

¹⁹ *Raghubir Singh v. State of Haryana* AIR 1980 SC 1087

²⁰ *Indira Nehru Gandhi v. Raj Narain* AIR 1975 SC 2299

²¹ Shukla, VN: Constitution of India (5th ed 2015) p 27



equality before the law since the phrase "equal protection of the law" is a corollary to the phrase "equality before the law."²²

Additionally, "Article 15(1) of the Indian Constitution's provisions specify that no citizen may be subject to discrimination by the government solely on the basis of their caste, religion, sex, or place of birth."²³ In 1960, the Supreme Court of India invalidated a police statute of 1861 notice that designated some regions as unrest and required the locals to pay for additional police to be stationed there but exempted all Muslims and Harijans. Article 15 (1) was broken since the exemption was granted only on the basis of "caste" or "religion."²⁴ Also in the case of *Deputy I.G.P v. S. Samuthiram* Eve-teasing is gender-based discrimination against women, according to the Supreme Court, and there is legislative inertia or a lack of legislative intent to remedy the social problem. Additionally, Article 15(3) and (4), which are exceptions to the rule outlined in Article 15(1), state that nothing in Article 15 shall prevent the state from enacting special laws protecting women and children as well as advancing the interests of scheduled castes and scheduled tribes, as well as socially, economically, and educationally disadvantaged groups."²⁵ with special emphasis to the rights of women victim under article 15(3), Supreme Court of India in the *Vishaka* case,²⁶ issued directions that a complaints committee of three persons be constituted in each organization to hear the complaints of sexual harassment, and, such committee should be headed by women.

In the *D.S. Grewal* case,²⁷ According to the Supreme Court of India, "sexual harassment would include writing a sensual letter to a female employee, expressing love to her, admiring her qualities and beauty, and offering unsolicited help, as well as sexual advances." In this regard, the standards outlined in the *Vishaka* case should have been followed while investigating the complaints of female employees.

Additionally, the Juvenile Justice (care and Protection of Children) Act, 2000's provisions that set 18 as the legal maximum age to be treated as a juvenile, were upheld by the Supreme Court of India in the *Salil Bali* case as being legally legitimate. According to the Supreme Court, Article 15(3) of the Constitution gives the government the authority to pass special laws for children, and Article 1 of the Convention on the

²² *State of West Bengal v. Anwar Ali Sarkar* AIR 1952 SC 75

²³ The constitution of India 1950, Article 15 (1)

²⁴ *State of Rajasthan v. Pratap Singh* AIR 1960 SC 1208

²⁵ The constitution of India 1950, Article 15(3) and (4)

²⁶ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

²⁷ *D.S. Grewal v. Vimmi Joshi* (2009) 2 SCC 210



Rights of the Child, which sets the age limit mentioned above, must be followed by India as a signatory since it amended the convention on December 11, 1992.

According to “Article 15(3) of the Constitution, which gives Parliament the authority to adopt special legislation for the protection of women and children, the POCSO Act was passed. The Act achieves a balance between the rights of the accused and those of children and society at large, and the measures have sufficient built-in protections to avoid their abuse. The regulations are essential for prosecuting pedophiles and safeguarding children.”²⁸

The Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was passed in accordance with Article 15(4) of the Constitution to safeguard the interests and rights of victims who belong to particular groups of minorities. The primary goals of this act are to fulfill the responsibilities placed on the state by Article 39-A of the Indian Constitution as a guiding principle and to provide access to justice to those in India who are most in need. A fine and a jail sentence ranging from six months to five years are both options under this law. Additionally, the Indian Constitution's articles 338 and 338-A contain provisions relating to the creation of the National Commission for Scheduled Castes and Scheduled Tribes, respectively. According to Article 338 (5) and Article 338-A (5), both of these national commissions have a responsibility to look into and monitor all matters relating to the safeguards provided for the scheduled castes or scheduled tribes under this Constitution or under any other law currently in effect or under any order of the government.” They also have a responsibility to look into specific complaints regarding the deprivation of such rights and safeguards of scheduled castes or scheduled tribes.”²⁹

2.2.2 Right to Life

The right to life and personal freedom is guaranteed by Article 21 of the Indian Constitution to both citizens and non-citizens. No individual "shall be deprived of his life or personal liberty except in accordance with the procedure established by law," according to this article.³⁰ Article 21 of the Indian Constitution has been construed by the supreme court in a number of judgments since it was first adopted into numerous dimensions and features.” Article 21 is inclusive in nature and includes principles established by apex court precedent from time to time, such as the right against handcuffing, the right against inhumane

²⁸ <https://www.deccanherald.com/opinion/in-perspective/pocso-provisions-valid-exception-1051137.html#:~:text=The%20POCSO%20Act%20was,and%20to%20protect%20children> (accessed as on 3rd march, 2023)

²⁹ The constitution of India 1950, Article 338 (5), Article 338-A (5)

³⁰ The constitution of India 1950, article 21



treatment by the police, the right to free legal assistance, the right against abuse of a child in the circus, the right to education, the right to sleep, and the right to live with human dignity becoming parts of the right to life through judicial pronouncements in various cases.

In *A.K Gopalan's* case,³¹ According to one argument, "personal liberty" as defined by Article 21 encompasses the freedom of movement guaranteed by Article 19(1)(d), and as a result, the 1950 Preventive Detention Act must adhere to the reasonable limitations outlined in Article 19(5). It was also contended in the same instance that Article 19 (1) should be interpreted in conjunction with Article 21 since it grants substantive rights. Article 21 guarantees procedural rights, and the phrase "procedure established by law" used there is the same as that used in the American Constitution's guarantee of "due process of law." All of these arguments were rejected by the Supreme Court, which determined that Articles 19 and 21 deal with separate aspects of the right to liberty. On the one hand, article 21 offers protection against the loss of the right to liberty, while article 19 does the same for limits on freedom of movement that are unjustified in their nature. The Indian Supreme Court further stated that "the procedure established by law as provided by article 21 is different from the concept of "due process of law" as the former is more specific in nature and the latter is vaguer in nature."

"In the *Kharak Singh* case³² and thereafter, in the *Maneka Gandhi* case³³ Supreme Court of India overrides the narrower approach followed by the supreme court in the *A.K. Gopalan* case and pronounced a wider approach towards Article 21. In *Kharak Singh's* case³⁴ supreme court held that the term 'personal liberty' is not only limited to bodily restrain or confinement to prisons only but is used as a compendious term including within itself all the varieties of the rights which go to make up the personal liberty of a man other than those dealt within article 19 (1)." In *Maneka Gandhi's* case,³⁵ "According to the Supreme Court, "the expression 'personal liberty' in article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man, and some of them has raised to the status of distinct fundamental rights and given additional protection under article 19." In addition, article 21 now defends the right to life and personal liberty against both legislative and executive measures as a result of the *Maneka*

³¹ *A.K. Gopalan v. Union of India*, AIR 1950 SC 27

³² *Kharak Singh v. State of U.P.* AIR 1963 SC 1295

³³ *Maneka Gandhi v. Union of India* AIR 1978 SC 597

³⁴ *Supra*, note 35

³⁵ *Supra*, note 36



Gandhi case ruling. Since this case, it is now widely accepted that two prerequisites must be met in order to violate Article 21's prohibition on deprivation of the right to life and personal liberty:

- a) There must be a valid law, and
- b) It must prescribe a fair, just, and reasonable procedure.

Later, in the year 1981 in the case of *Francis Coralie*³⁶ Supreme Court observed that the right to life does not only means physical existence like an animal but is also inclusive of the “right to live with human dignity” In *Ramlila Maidan* case³⁷ By enforcing section 144 of the Cr. P.C. 1973 at midnight on June 4, 2011, the permission that had been granted to organize the camp was revoked, and Delhi police used tear gas and lathi charges to disperse the crowd while people were peacefully sleeping at the scene. This incident involved people of all ages who had gathered in the Ramlila Maidan to support the protest and take part in the yoga camp led by Baba Ramdev. The right to privacy and the right to sleep have long been regarded as essential rights, much like the rights to breathe, eat, drink, and blink, among other things.” In this instance, the court determined that sleep is a need and not a leisure activity, and that depriving one of it would cause physical and mental torment. “The implementation appears to have been done in an unlawful and derogatory manner that did violate the crowd's fundamental right to a sound sleep, which is also a constitutional freedom recognized under article 21 of the Indian constitution. Any suspicious or conspiratorial activity on the part of the assembly could have been investigated by the appropriate forum.”

“As far as the right to privacy as a fundamental right of a victim is concerned, in the case of *Surjit Singh Thind v. Kanwaljit Kaur*,³⁸ Punjab and Haryana High Court, and, in the case of *Sharda v. Dharmpal*,³⁹ the Supreme Court of India held that allowing virginity test of a victim would amount to a violation of her fundamental right including the right to privacy and right to personal liberty under article 21 of the Indian constitution. Also, in the case of *Madhulkar Narain*,⁴⁰ The supreme court ruled that everyone has the right to privacy, including women with simple morals. In this case, a police officer broke into a woman's home and demanded sex. During the case's trial, he argued that the court shouldn't rely on the testimony of such

³⁶ *Francis Coralie v. Union Territory of Delhi* AIR 1981 SC 746

³⁷ *Ramlila Maidan v. Home Secretary, union of India* 2012 Cr LJ 3516 (SC)

³⁸ *Surjit Singh Thind v. Kanwaljit Kaur* AIR 2003 P&H 353

³⁹ *Sharda v. Dharmpal* AIR 2003 SCW 1950

⁴⁰ *State of Maharashtra v. Madhulkar Narain* AIR 1991 SC 207



women because she was a woman of easy virtue, but the apex court rejected all of his arguments and ruled that it violated the women's right to privacy.

The Supreme Court of India finally made a ruling regarding the right to privacy as a basic right in the case of *Justice K.S. Putt swami (Retd.)* in 2017.⁴¹ The 'Right to Privacy' doctrine in India is founded on this decision. In this instance, the nine-judge bench unanimously reiterated that everyone has the constitutional right to privacy.” According to the Supreme Court, the right to privacy was a necessary component of the liberties protected by the other basic rights and was a natural part of human dignity, autonomy, and liberty.⁴²

2.2.3 Right Against Exploitation

The victim's fundamental rights are safeguarded by Article 23 of the Indian Constitution from being violated by forced labour and human trafficking. “Trafficking in human beings, employing beggars, and other similar types of forced labour are forbidden by clause (1) of article 23, and any violation of this rule is a crime subject to legal sanctions.⁴³ According to the Calcutta High Court's ruling in *Raj Bahadur v. Legal Remembrancer*, "traffic in human beings means selling and buying men and women like goods and includes immoral trafficking in women and children for immoral or other purposes." In the case of *Peoples Union for Democratic Rights*, the Supreme Court of India discussed the purpose and application of Article 23.”⁴⁴ It was noted that Article 23 has a broad and unrestricted reach and targets "human trafficking" and "beggar and other forms of forced labour" wherever they may be located. Article 23 forbids not just "Beggar" but all other types of restricted labour. The term "beggar" refers to a type of forced labour in which an individual is required to work without being paid. This article criticizes all forms of forced labour because they violate core human principles and are an affront to human dignity. Despite not being specifically specified in Article 23, slavery is included in the phrase "traffic in human beings."

2.2.4 Right to Constitutional Remedies

When asked to name one particular article in the constitution as the most important—an article without which this constitution would be void—the chairman of the drafting committee, Dr. Bhim Rao Ambedkar, said, "If I were asked to name any particular Article in the Constitution as the Most Important—

⁴¹ *Justice K.S. Putt swami (Retd.) & Anr. v. Union of India & Ors.* AIR 2017 4161

⁴² Available at: <https://privacylibrary.ccgmlud.org/case/justice-ks-puttaswamy-ors-vs-union-of-india-ors>

⁴³ The constitution of India 1950, Article 23 (1)

⁴⁴ *Peoples Union for Democratic Rights v. Union of India* AIR 1982 SC 1943



an article without which this Constitution would be nullity—I could not refer to any other article except this one. It is both the heart and the soul of the Constitution.⁴⁵

Infractions of the basic rights outlined in Part III of the Indian Constitution are subject to redress under Article 32 of that document. Every individual whose basic rights granted under Part III are violated has the right to petition the supreme court through suitable actions for the enforcement of such rights, according to Clause (1) of Article 32.⁴⁶ The supreme court shall also have the authority to issue writs, including writs like Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari, as may be appropriate, for the enforcement of any of the rights conferred by this part, according to clause (2) of this article.⁴⁷

Justice PN Bhagwati is revered as the inventor of "Public Interest Litigation" in India, a novel strategy authorized under Article 32 that replaces the conventional locus standi norm. The locus standi rule stipulates that only aggrieved parties whose fundamental rights have been violated may petition the supreme court, whereas the new PIL rule stipulates that anyone may petition the supreme court under Article 32 or the High Court under Article 226 in the interest of the general public if part III rights are violated.”

It is significant to remember that, in accordance with Article 226 of the Constitution, the High courts of various states are also authorized to issue writs in the categories of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. “Because the High Court may issue these writs in cases involving the enforcement of basic rights as well as other constitutional rights guaranteed under the Indian constitution, the High Court's authority under Article 226 is greater than the supreme court's authority under Article 32.

The Supreme Court ruled in the *A.B.S.K. Sangh (Rly)* case that although though the Akhil Bhartiya Soshit Karmachari Sangh (Railway) was not a registered forum, it was nonetheless permitted to file a writ petition under Article 32 as a "class action" involving some common complaints. The current constitutional doctrine allows for access to justice through "class actions," "public interest litigation," and "representative proceedings."⁴⁸

⁴⁵ Constituent Assembly Debates, Vol. VII, p. 953

⁴⁶ The constitution of India 1950, Article 32 (1)

⁴⁷ The constitution of India 1950, Article 32 (2)

⁴⁸ *A.B.S.K. Sangh (Rly) v. Union of India* AIR 1981 SC 298



In *Pooja Pal v. Union of India*⁴⁹ the Supreme Court noted that an order for additional investigation, reinvestigation, additional evidence, trial, etc. is a dynamic component of judicial review, a fundamental future of the constitution, which is related to the Raju Pal murder case of 2005 on the Public Interest Litigation filed by the wife of Pooja Pal. The competence or plenitude of such powers cannot ever be put to a vote and cannot be limited by any legislation, even though they must be used with proper care, prudence, and self-imposed restriction.

Family (association) of extrajudicial execution victims v. Union of India,⁵⁰ where it was claimed by the petitioners that the Manipur police, some central security forces, and especially the Indian army and the assam rifles committed extrajudicial execution of 1258 people, the majority of whom were in their custody and were killed after being brutally harassed and physically tortured. Both the Union and the state refuted these accusations, and the Manipur police did not file a FIR. Later, when this Public Interest Litigation was brought before the supreme court, the court determined that the writ petition is maintainable under Article 32 of the constitution since it wasn't just a straightforward instance of a FIR not being recorded after hearing from both sides.” The claim involves a flagrant breach of human rights for which the typical criminal law remedies cannot offer a convincing defense. Regardless of how uncomfortable it may be for the petitioner or the responder, the truth must be discovered. This court should adopt an open-door policy in cases involving flagrant violations of human rights, as should every constitutional court..⁵¹ In the case of *Shri Bhim Singh, MLA v. State of Jammu and Kashmir and Ors.*,⁵² The petitioner was unlawfully detained because he delivered a provocative speech at a public meeting on September 8, 1985, at 7 PM in Jammu, while enroute to Srinagar to attend a legislative assembly session, and he was not brought before the magistrate within 24 hours of his arrest. The Supreme Court ordered the Inspector General of Police to tell the petitioner's wife of where the petitioner was being held in prison after the wife of Bhim Singh filed a Public Interest Litigation asking for the issuance of a writ of habeas corpus.

In this case, the supreme court ruled that the arrest and detention of the petitioner by the police, as well as the petitioner's failure to appear before the magistrate within the allotted time, constituted grave violations of the petitioner's fundamental rights under articles 21 and 22 clause (2) and wrongful detention under section 340 of the Indian Penal Code, 1860. It was the first instance in which the petitioner was

⁴⁹ *Pooja Pal v. Union of India* AIR 2016 SC 1345

⁵⁰ *Extra judicial execution victims family (association) v. Union of India*, AIR 2016 SC 3400

⁵¹ *Extra judicial execution victims family (association) v. Union of India*, AIR 2016 SC3400 at p 3430

⁵² *Bhim Singh, MLA v. State of Jammu and Kashmir & Ors.* AIR 1986 SC 494



awarded a monetary settlement of Rs. 50,000 by the Supreme Court. In this instance, the supreme court added the following comment: “If a member of the legislative assembly's personal liberty is to be played in this way, one can only wonder what may happen to lesser mortals.”⁵³

2.3 Rights of Victims as Human Right

“Both national and international concerns are raised by the preservation and protection of human rights. At the national level, different states work to uphold human rights through their constitutions and other local laws pertaining to it, while at the international level, various conventions, covenants, and declarations have been ratified by international forums for the protection and promotion of human rights globally.

Article IV of The Convention on the Prevention and Punishment of the Crime of Genocide, which was ratified by the UN general assembly on December 9, 1948, further places direct responsibility on individuals by outlining the punishments that may be meted out to those who commit genocide, regardless of whether they are legally responsible rulers, public servants, or private citizens.”⁵⁴

In accordance with Articles 56 and 55(c) of the 1945 United Nations Charter, all members of the organization agreed to work together to ensure that all people's fundamental rights and liberties be respected and upheld.⁵⁵

A comprehensive international document that is regarded as the first to deal with the preservation, protection, and promotion of human rights among the member states of the United Nations is The Universal Declaration of Human Rights, also known as the International Bill of Rights, which was adopted by the UN General Assembly in 1948. According to this Declaration, human rights include:

- a) civil and Political rights, and
- b) economic, social, and cultural rights.

The rights to life and personal liberty are guaranteed by Articles 3 and 4 of the Universal Declaration, which also forbid torture and other cruel or inhumane treatment. In contrast, Article 7 addresses

⁵³ Ibid.

⁵⁴ Tandon, Mahesh Prasad and Tandon, Rajesh: Public International Law (18th ed 2017) Pg 241

⁵⁵ Ibid



the right to equal protection under the law and equality before the law without any form of discrimination. Additionally, Article 10 guarantees the right to a public hearing and a fair trial. The International Covenant on Civil and Political Rights, 1966, and the International Covenant on Economic, Social, and Cultural Rights, 1966, two international covenants that are annexed to this universal declaration, were both adopted by the UN General Assembly on December 16, 1966.

After that, on November 29, 1985, the UN General Assembly passed a resolution titled "Deceleration of Basic Principle of Justice for Victims of Crime and Abuse of Power." These decelerations' paragraphs 1 and 2 define "victim of crime," whereas this deceleration's paragraph 18 defines "victim of abuse of power."

According to paragraph 1, "Victim" refers to people who have been hurt, individually or collectively, as a result of acts or omissions that violate criminal laws in force within the Member States, including those that forbid criminal abuse of power, and who may have experienced physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights. A person may be deemed a victim under this Declaration regardless of whether the offender is found, arrested, charged, or found guilty, as well as regardless of the victim's family ties, according to section 2 of the declaration. When applicable, the term "victim" also refers to the direct victim's immediate relatives or dependents as well as those who have been harmed while trying to help distressed victims or stop victimization..⁵⁶

According to paragraph 18, "victim" refers to people who have been harmed, individually or collectively, by acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized standards relating to human rights. Harm includes physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights..⁵⁷ Furthermore, this deceleration's paragraph 4 states that victims have a right to access the legal system and that they must be treated properly, with the highest regard for their dignity. Additionally, according to paragraph 5, the victim's right to information should be supported, and administrative and judicial processes shall adhere to procedures that are swift, economical, and just to give victims with a remedy, whether that remedy is official or informal.

⁵⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse> (accessed as on 10th march, 2023)

⁵⁷ Ibid



The following should be done to make it easier for judicial and administrative systems to be sensitive to the needs of victims:

- a) Giving victims information on their part in the proceedings, their case's scope, timing, and status, especially in instances involving serious offenses and in which they have specifically requested this information;
- b) Respecting the national criminal justice system in question and without prejudice to the accused, allowing victims' opinions and concerns to be submitted and taken into account at pertinent points in the proceedings where their personal interests are involved;
- c) Giving victims the necessary support during the judicial procedure;
- d) Taking action to prevent intimidation and retribution against victims, safeguard their privacy where required, and secure their safety as well as the protection of their families and any witnesses acting on their behalf;
- e) Preventing needless delays in case resolution and the implementation of decisions or decrees allocating compensation to victims.⁵⁸

The state shall review its laws, regulations, and practices to include the right of restitution as punishment against criminal offenses along with other punishment for such criminal offenses. These provisions are also included in this deceleration under paragraphs 8 and 9, which state that the offenders should be required to fairly compensate the victim for any harm he has suffered.

⁵⁸ Deceleration of Basic Principle of Justice for Victims of Crime and Abuse of Power, 1985, para 6



CHAPTER 3

VICTIM'S RIGHTS UNDER THE INDIAN CRIMINAL JUSTICE SYSTEM

3.1 Introduction

The idea of crime is fluid and subject to change depending on a variety of factors, including custom, religious convictions, ideologies, forms of governance, and social, economic, and political structures. An action that is prohibited in one social organization could be permitted in another. What is acceptable in a liberal, prosperous society may be a poisonous vice in a religiously orthodox one.⁵⁹ The criminal justice system in India pays close attention to preserving and defending both the victims' and offenders' rights. It is concerned with effective access to justice and prompt delivery of justice, but it is also concerned that no one should go unheard or have their rights violated without a fair chance to be heard. as demonstrated by Ajmal Amir Kasab's case⁶⁰ the apex court of India seated and heard the case in the midnight for providing the accused every legal opportunity to protect himself. Also, the rights of the speedy trial of the under-trial prisoners were recognized by the supreme court in the *Sunil Batra case*⁶¹.

When it comes to victim rights, there are many early ones that are granted by the Indian criminal justice system, including the right to privacy, the right to information, the right to a private defense, the right to a fair trial, the right to restitution, and the right to compensation. It's also crucial to remember that a crime today could not be one tomorrow. For instance, in the Joseph Shine case, the Supreme Court decriminalized adultery, which was formerly a crime.⁶² In this chapter, we'll go over some of the legal protections that crime victims have as a result of the criminal laws that govern and run the Indian criminal justice system. A victim in our Indian criminal justice system suffers every day when the crime is perpetrated against him/her and also because they have to go through a lot of systemic manipulation, despite the fact that they have access to all these rights. Whereas the individual who is found guilty gets housed, cared for, kept warm, and

⁵⁹ Krishna Iyer, VR: Perspectives in Criminology Law and Social Changes, Allied publishers, 1980, p 7,8

⁶⁰ *Mohammad Ajmal Amir Keshab v State of Maharashtra*, (2012) 9 SCC 1

⁶¹ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 409

⁶² *Joseph Shine v. Union of India*, 2018 SCC 1676



entertained in jail, expenses that the state pays out of taxes but do not provide for crime victims.⁶³ In the case of *Rattan Singh v State of Punjab*⁶⁴ Justice Krishna Iyer observed that:

The fact that the victim of a crime and their dependents' suffering are not taken into account by the law is a flaw in our jurisprudence. Compensation for victims is still a vanishing notion in our criminal law, nevertheless.

3.2 Victim Rights Under Indian Penal Code, 1860

The Indian Penal Code of 1860 is the country's most important substantive legislation, outlining both victim rights and penalties for criminal actions. In the year 2005, this criminal law had several amendments. Criminal Law (Amendment) Act of 2005 introduced section 195-A into this code. Additionally, the Information Technology (Amendment) Act of 2008 updated this legislation in 2008. The Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973, both underwent significant revisions as a result of the Criminal Law (Amendment) Act of 2013.”

3.2.1 Right to Private Defence

To begin with, every victim has the right to defend his body and possessions against any illegal activity. According to Section 97, this privilege is granted⁶⁵ “Every person has a right, subject to the restrictions contained in section 99, to defend:

- I. Protecting his own body and any other person's body from any offense that affects the human body;
- II. Against any conduct that constitutes theft, robbery, mischief, or criminal trespass, or that is an attempt to commit theft, robbery, mischief, or criminal trespass, whether the property is mobile or immovable, belongs to him or to any other person.

In the case of *Bhagwan Singh v State of Punjab*,⁶⁶ The Supreme Court ruled that under Section 97, everyone has the right to protect their properties against attacks that would be considered theft, robbery, mischief, or criminal trespass, subject to the limitations in Section 99. An aggressor is not eligible for this

⁶³ Available at: [https://www.legalserviceindia.com/legal/article-5591-rights-of-victims-in-indian-criminal-justice-system.html#:~:text=According%20to%20section%20357\(3,Harikishan%20%26%20State%20of%20Haryana%20v](https://www.legalserviceindia.com/legal/article-5591-rights-of-victims-in-indian-criminal-justice-system.html#:~:text=According%20to%20section%20357(3,Harikishan%20%26%20State%20of%20Haryana%20v)

⁶⁴ *Rattan Singh v State of Punjab*, AIR 1980 SC 84

⁶⁵ Indian Penal Code, 1860 (Act 45 of 1860)

⁶⁶ *Bhagwan Singh v State of Punjab*, 1994 SCC (Cri) 1473



privilege. In the *Ram Rattan v. State of U.P.* case, as well.⁶⁷ The Apex Court ruled that while a trespasser is still in the act or process of trespassing and has not yet completed his act of possession, the actual owner has every right to dispose of or throw away the trespasser. However, if the trespasser has been successful in achieving his possession to the knowledge of the genuine owner, the true owner does not have access to this privilege.

If A's house was destroyed by fire and B, A's neighbour, broke into A's home to prevent B from entering A's child's home, then A is ineligible to invoke the right of private property defense against B in this situation.” Additionally, Section 99 states that the right to private defense in no circumstance includes the ability to injure another person beyond what is necessary to defend oneself.⁶⁸

Further, “section 98 indicates that if a criminal act is exempted to be a criminal act due to minority of age, lack of maturity, intoxication, or unsoundness of mind then also it will not affect the right of private defence of a person to protect his body or body of his person or his property or the property which belongs to any other person.” The right to private defence to the body may also extend to the causing of death or harm other than death to the attacker in the following circumstances:⁶⁹

- I. a physical attack that raises the possibility of death;
- II. an assault that raises the possibility of serious injury;
- III. a robbery with the purpose to rape the victim;
- IV. a physical attack committed to satisfying an abnormal passion;
- V. a physical attack with the goal to kidnap or abduct;
- VI. an assault with the purpose to imprison him wrongfully, which makes it seem like he won't be able to get in touch with the proper authorities to be released;
- VII. a hurling or managing acid act, or an attempt to throw or manage throwing of acid, which might potentially result in severe injury.

When interpreting the scope of this section, the SC noted that the accused must demonstrate that there were circumstances giving rise to an appropriate ground for fearing either death or great bodily harm

⁶⁷ *Ram Rattan v State of U.P.* AIR 1977 SC 619

⁶⁸ Indian Penal Code, 1860 (Act 45 of 1860)

⁶⁹ The Indian Penal code, 1860 (Act 45 of 1860) s. 100



would befall him in order to proclaim a right of private defence that extends to intentionally causing death.⁷⁰ In a different instance, the highest court ruled that the reasonable fear of the accused that great harm may befall him must be assessed from the accused's subjective viewpoint and cannot be scrutinized minutely and minutiae.⁷¹

3.2.2 Dowry Death and Abetment to Suicide

Sections 304-B and 306 of IPC, 1860 which were introduced to give posthumous justice for the victim, are two Penal Provisions that grant the victim redress even after their death. The criminal legislation (Amendment) Act of 1986 added Section 304-B to the IPC in an effort to reduce the nation's epidemic of bride burnings, suicides, and dowry deaths.⁷² Apex Court, In the case of *Shanti v. State of Haryana*,⁷³ held that section 304-B has been inserted in the IPC to battle the increasing threat of dowry deaths. Also, in the *Rajinder Singh case*⁷⁴, The highest court stated in 2015 that a woman's death had to be a "dowry death" in order for it to be a crime under section 304-B. It is clear that section 304-B is a strict regulation designed to address a societal ill with frightening dimensions.

Dowry Death is defined in section 304-B (1), and the punishment is in subsection (2). In Section 304-B (1)⁷⁵, "dowry death" is defined as the death of a woman who was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. "In these cases, the husband or relative is assumed to have been the cause of the woman's death. This includes deaths of women who are caused by burns, bodily injuries, or who occur under unusual circumstances within seven years of marriage. Furthermore, according to subsection 2, anybody found guilty of causing a dowry death faces a minimum punishment of 7 years in jail and a maximum sentence of life in prison. The offense specified in section 304-B is a cognizable, non-bailable offense that must be tried by the session court and is non-compoundable in nature. In *Wazir Chand case*⁷⁶ According to the supreme court, section 304-B is prospective in character and not retrospective.

⁷⁰ *Vishvas Aba Kurane v State of Maharashtra*, AIR 1978 SC 414

⁷¹ *Wassan Singh v State of Punjab*, (1996) 1 SCC 458

⁷² Gaur, K D: Criminal law cases and materials (8th ed 2015) p 516

⁷³ *Shanti v State of Haryana*, AIR 1991 SC 1226

⁷⁴ *Rajinder Singh v State of Punjab*, AIR 2015 SC 1359

⁷⁵ Indian Penal Code, 1860, (Act 45 of 1860) s.304-B (1)

⁷⁶ *Wazir Chand v State of Haryana*, AIR 1989 SC 378



Here, it's crucial to remember that sections 498-A, which deals with cruelty, and 306, which deals with aiding suicide, are crucial components in the offence of dowry death. According to Section 304-B, a "dowry death" is when a bride dies after being treated cruelly by her husband or any of his family about the demand for a dowry. In *Gurbachan Singh* case⁷⁷ supreme court observed that if the facts and circumstances of a case establish suicide in connection with dowry demand then section 306 which deals with abetment to suicide is also attracted.” Additionally, it was decided in, *Rajbir @ Raju v. State of Haryana* that a charge under Section 302 of the IPC, 1860 might be added to a case under Section 304-B in order to carry the death penalty for such horrific and barbaric acts against women.

3.2.3 Right against Wrongful Restrain and Confinement

Because they infringe on both the rights to personal freedom and Privacy as conferred by Article 21 of the Constitution of India and the right to free movement as conferred by Article 19(1)(d), unlawful restraint and wrongful imprisonment are considered crimes under sections 339 and 340 of the IPC, 1860. Under sections 341 and 342 of the IPC, a victim may seek redress in the form of punishment against the perpetrator for the act of unlawful restraint or detention. According to Section 339, unlawful restraint is defined as a person intentionally obstructing someone else so they cannot move in the direction they are legally allowed to go.⁷⁸ Section 339 offenses are cognizable, although they are also bailable and compoundable. Any person who engages in unlawful restraints shall be penalized through simple imprisonment for any such time which is not to exceed one month, a fine not to exceed 500 Indian rupees, or both.⁷⁹ Also, section 340⁸⁰ defines “wrongful confinement” as an act of a person to wrongfully restrain any person in such a way as to prevent or stop that person from proceeding beyond certain circumscribing boundaries. Under the Indian penal code, a victim may seek redress for unlawful detention. According to section 342 of the IPC, anybody who engages in wrongful detention is subject to a sentence of up to one year in jail, a fine of up to 1,000 Indian Rupees, or both.

victim may file a writ petition for habeas corpus under Article 226 in the respected high courts or through Article 32 in the Apex Court of India to seek these remedies. Regarding *MLA Bhim Singh*⁸¹ supreme, court granted monetary compensation of rupees 50000 to the victim and remarked that wrongful

⁷⁷ *Gurbachan Singh v Satpal Singh* AIR 1990 SC 209

⁷⁸ Indian Penal Code, 1860, (Act 45 of 1860) s.339

⁷⁹ Indian Penal Code, 1860, (Act 45 of 1860) s.341

⁸⁰ Indian Penal Code, 1860, (Act 45 of 1860) s,340

⁸¹ *Bhim Singh MLA V State of Jammu Kashmir* AIR 1986 SC 494



confinement is not only a criminal act but it is also a breach of the basic rights of the victim granted by Article 19 and 21 of the Indian constitution. Also, in the case of *Raja Ram*⁸² When interpreting the phrase "obstructs" in Section 339, the Supreme Court noted that, although physical, obstruction may also be produced by verbal or psychological intimidation.

3.3 Rights of Women Victims

The IPC, 1860 grants women victims a number of rights, and other specific laws that are intended to safeguard, uphold, and advance women's modesty and their legal rights in India have also been passed. "The Indian Constitution's Article 15(3) gives the state the authority to enact specific laws protecting women and children. The Indecent Representation of Women (Prohibition) Act of 1986, the Prevention of Domestic Violence Act of 2005, and the Prevention of Sexual Harassment at Workplace Act of 2013 were all passed by the Indian parliament as a result of this authority." A woman's victim has the right to judicial recourse under sections 326A and 326B in addition to section 354, sections 354-A to 354-D, section 375, sections 376A to 376D, and section 375.

3.3.1 Rights Under Indian Penal Code, 1860

Section 354 gives female victims the right to seek redress for any unlawful force or attack that is designed to offend their modesty. According to this clause, a sentence may include a fine and a term of imprisonment that ranges from one year to five years. Whenever someone assaults or practices illegal force against a woman with the intention to offend her modesty or with knowledge that it could do so. In, *Rupan Deol Bajaj*⁸³ case The Apex Court ruled that the accused's behaviour amounted to outraging the modesty of women in the case where he smacked the back of a female I.A.S. officer of the Punjab Cadre in a public setting. Additionally, the IPC, 1860's section 354-A through section 354-D, which deals with penalty for offenses against women, was added in 2013 by the 55th Criminal Law (Amendment) Act. Sexual harassment is addressed under Section 354-A, as well as its penalties. According to section 354-A⁸⁴

1. A man who engages in any of the following behaviours—

i) unwanted and explicit sexual advances made via physical contact; or

⁸² *Raja Ram v State of Haryana* (1971) 3 SCC 945

⁸³ *Rupan Deol Bajaj v K.P.S. Gill* (1995) 6 SCC 194

⁸⁴ The Indian Penal Code, 1860 (Act 45 of 1860)



ii) an appeal for sexual favours; or

iii) displaying pornography against a woman's will; or

iv) Making sexually suggestive comments is the crime of sexual harassment.¹

2. Any man who violates the provisions of sub-section (1) in clauses (i), (ii), or (iii) must be punished with harsh imprisonment for a term that may not exceed three years, with a fine, or with both.

3. Any man who violates the terms of clause (iv) of subsection (1) is subject to a fine, either type of imprisonment for a time that may not exceed one year, or both.

Additionally, section 354-B grants the right to submit a criminal complaint against an offender to a woman victim who is being forced to be necked, assaulted, or subjected to unlawful force with the aim to strip her off her clothes. Any individual found guilty under section 354-B faces a minimum sentence of 3 years in jail, which may be increased to 7 years, as well as a fine. Additionally, Section 354-C defines voyeurism as the unlawful act of spying on, collecting, or disseminating private photos of a woman in situations where she would reasonably expect not to be observed by anybody, including the perpetrator or anyone acting at his or her command.” It carries a least imprisonment of 3 years with a potential extension to 7 years, and a fine.

Explanation 1 of the term "private act" makes it clear that spying on or watching a woman at her place of privacy, where the victim's genitalia, posterior, or breasts are exposed or covered only by undergarments, during the victim's use of the restroom, or when the victim engages in sexual activity that is not typically permitted in a public setting, constitutes a "private act." According to section 354-C's Explanation 2, if the victim gave her approval for an image or act to be taken, but she did not grant that consent or permission for it to be circulated or distributed to other parties, then such circulation or dissemination constitutes a violation of section 354-C.

The 2013 amendment also included restrictions under section 354-D that prohibited stalking of women. According to sub-section 1 of section 354-D, a man is guilty of stalking if he follows a woman and makes personal contact with her or tries to do so, despite her resistance or indications of displeasure. He is also guilty of stalking if he follows a woman's online activities, including those on social media and email. Anyone found guilty of such an offense faces a fine and a sentence of up to three years in jail for the first



offense, but if found guilty of a second offense under section 354-D, the sentence increases to five years in prison and a fine. It is crucial to note that while the first offense under Section 354-D is cognizable and subject to bail, the second or subsequent offense is not.

After the horrifying Delhi gang rape case occurred, the Union legislature has passed “The Criminal Law Amendment Act, 2013”, which added provisions to the IPC, 1860 that address acid assaults and attempted acid attacks. The accused in some acid assaults that occurred before to the establishment of these regulations received punishment that was less severe than the seriousness of their criminal crime. Including in the case of *Ravinder Singh v. State of Haryana*⁸⁵ the husband thrown acid on the face of his wife due to the denial of giving divorce by the wife. The victim died later but the accused was not punished with even a life sentence. In another case of *Ramesh Dey*,⁸⁶ The victim refused to pay back the accused's overtures, so the accused threw acid on her a second time. The accused later passed away as a result of this occurrence, however owing to the lack of specific laws surrounding acid assaults, they only received a 2-month sentence under section 324 of the IPC, 1860.

Sections 326-A and 326-B were adopted in 2013 as a result of all these recurrent instances. Chapter 16 of the IPC, 1860, which deals with offences harming the human body, includes Sections 326A and 326B. In contrast to Section 326A of the IPC, which deals with intentionally employing acid to cause serious injury, Section 326B of the IPC addresses intentionally throwing or trying to hurl acid. The real cause of the victim's injury is the main distinction between sections 326A and 326B of the IPC. In violation of Section 326A, the offender successfully harms the victim; in violation of Section 326B, the criminal only throws or makes an effort to hurl acid, but is unable to harm the intended victim.⁸⁷

Section 326-A's punishment for an acid assault includes a fine and a minimum term of 10 years in prison that may be increased to life. When the minimum sentence for attempting an acid assault under Section 326-B is 5 years in jail, with a possible extension to 7 years, along with a fine. In Laxmi's case, it was 2014,⁸⁸ The supreme court established model regulations for the sale and ownership of acids and

⁸⁵ AIR 1975 SC 856

⁸⁶ *Ramesh Dey v. State of West Bengal*, 2007 (3) CHN 775

⁸⁷ Srilakshmi G., Do You Know The Difference Between Acid Attack and Attempt To Acid Attack available at:

[https://lawbriefcase.com/acid-attack-attempt-to-attack-with-](https://lawbriefcase.com/acid-attack-attempt-to-attack-with-acid/#:~:text=Sections%20326A%20and%20326B%20fall,or%20attempting%20to%20throw%20acid)

[acid/#:~:text=Sections%20326A%20and%20326B%20fall,or%20attempting%20to%20throw%20acid](https://lawbriefcase.com/acid/#:~:text=Sections%20326A%20and%20326B%20fall,or%20attempting%20to%20throw%20acid) (accessed as on 14th march)

⁸⁸ *Laxmi v Union of India* (2014) 4 SCC 427



ordered all states and union territories to provide each victim of an acid assault with compensation in the amount of rupees three lakhs.

In addition, section 376 grants a woman victim of rape the right to judicial redress, while section 376-D does the same for gang rape victims. In this case, it's crucial to keep in mind that while the crimes listed under Section 375 of the IPC constitute "Rape" when carried out by a single person, "Gang Rape" refers to the commission of such crimes by many individuals with the same goal. Any individual who commits the crime of rape will be sentenced to the least imprisonment of 10 years in jail, with the chances of an additional 10 years or perhaps life in prison, as well as a fine.⁸⁹ Additionally, anybody convicted of the crime of gang rape faces a mandatory least imprisonment of 20 years, with the chances of an additional 20 years or perhaps life in prison, as well as a fine.⁹⁰

3.3.2 Rights Under Protection of Women from Domestic Violence Act, 2005

As it is a proven fact that, domestic violence is a societal ill that has long existed in our culture. "Domestic violence" is defined as any action, deed, omission, or behaviour that endangers the health or safety of a person, whether physically or mentally.⁹¹ In India, spousal abuse has been experienced by 4% of pregnant women, and 30% of women have suffered domestic violence at least once since the age of 15, according to statistics.⁹² In order to protect women from the effects of domestic abuse, this act includes a number of requirements. Some of the most significant sections are highlighted below:

- i. The protection officer is the first person a victim of domestic violence should call. The protection officer is responsible for preparing an incident report and submitting it to the magistrate as well as sending a copy of the report to the in-charge police officer of the police station where the incident took place. In addition, it is the responsibility of the protection officer to arrange for the victim to receive medical attention, to submit a medical report to the magistrate and the in-charge police officer, and to submit a proper application to the magistrate for the issuance of a protection order and, if the victim so requests, an order for monetary relief.⁹³

⁸⁹ The Indian Penal Code, 1860, (Act 45 of 1860) s.376

⁹⁰ The Indian Penal Code, 1860, (Act 45 of 1860) s.376-D

⁹¹ protection of women from domestic violence act, 2005, section 3

⁹² Abanti Bose, Available at: <https://blog.iplers.in/the-protection-of-women-from-domestic-violence-act-2005/>

⁹³ protection of women from domestic violence act, 2005, (Act 43 of 2005) s. 9



- ii. Upon receiving a domestic violence complaint, the magistrate and police officer have a responsibility to inform the victim that she has access to the services of the service provider and that she is eligible to apply for a protection order, custody order, compensation order, or residence order. The victim should also be made aware of their entitlement to free legal representation and their ability to report acts of cruelty in accordance with section 498-A of the IPC, 1860.⁹⁴
- iii. The victim may ask the in-charge of a medical facility for help with medical issues.⁹⁵
- iv. If any domestic violence victim needs a shelter house, the owner of the shelter home will provide the victim(s) of domestic abuse an appropriate place to stay in the shelter home.⁹⁶
- v. If the victim suffers any harm, including mental torture and emotional anguish, as ordered by the magistrate, the accused will be required to compensate the victim.⁹⁷
- vi. The proprietor of the shelter home will provide the victim(s) of domestic abuse a suitable place to remain in the shelter home if they require one.⁹⁸

3.3.3 Rights Under the Code of Criminal Procedure Code, 1973

According to several sections of the CrPC, 1973, victims who are women also have some particular rights. While section 357, together with sections 357-A, 357-B, and 357-C, guarantees the right to compensation to a woman victim, section 125 gives the wife the right to alimony or maintenance. “In addition to section 125 of the CrPC from 1973, section 24 of the Hindu Marriage Act from 1955 specifies the terms permanent maintenance and maintenance pendent lite (temporary maintenance), and section 25 of this act stipulates that any spouse has the right to alimony claims. In accordance with Section 125 Clause 1 of the 1973 Criminal Procedure Code, if a person has sufficient means to support his wife, children, and parents but neglects or refuses to support his wife, his legitimate or illegitimate minor child, whether married or unmarried, or his legitimate or illegitimate major child, with the exception of a married daughter, who is suffering from any physical or physiological abnormality or injury, or his father or mother, if any of the foregoing are If the first-class magistrate is satisfied with the negligence or refusal, he or she may next order the individual to provide a monthly maintenance payment at a level the magistrate deems appropriate.

⁹⁴ protection of women from domestic violence act, 2005, (Act 43 of 2005) s.5

⁹⁵ protection of women from domestic violence act, 2005, (Act 43 of 2005) s.7

⁹⁶ protection of women from domestic violence act, 2005, (Act 43 of 2005) s. 6

⁹⁷ protection of women from domestic violence act, 2005, (Act 43 of 2005) s. 22

⁹⁸ protection of women from domestic violence act, 2005, (Act 43 of 2005) s.21



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The amount of maintenance, interim maintenance, or proceeding expenses is payable starting on the date of the order or the date of the application, as the court sees proper, according to sub-sections 2 and 3 of Section 125. The court may issue a warrant for the levy of the amount owing as a fine and sentence the person to imprisonment for the entirety of each month's allowance or the interim maintenance and expense of proceedings if they fail to pay maintenance, interim maintenance, or expense of proceedings.⁹⁹ in case of *Om Prakash v Vidhya Devi*¹⁰⁰ The Punjab and Haryana High Court ruled that the court may not issue an arrest warrant in the event of maintenance arrears without first using coercive means allowed under Section 421 of the Code, such as property attachment. *Kuldeep Kaur v. Surinder Singh* is the matter at hand.”¹⁰¹ The highest court ruled that just choosing to go to jail would not relieve a person of their responsibility if they choose not to follow the maintenance order. Jail time is a "mode of enforcement" as opposed to a "mode of satisfaction".

Regarding the court's ability to order the payment of compensation, Section 357 contains a provision. According to Section 357's Subsection (1), when a court sentences someone to pay a fine or another type of punishment that includes a fine, it may order that the money from the fine be used to cover the costs of the case or to compensate the victim for any losses or harm they have endured. Additionally, section 357's subsection (3) if the Court imposes a sentence that does not include a fine, it may direct the accused to make for the victim's losses or injuries as part of the judgment process.

Victim Compensation Scheme is discussed in Section 357-A. In order to pay the victim or the victim's dependents who have suffered any loss or harm, the government of each state must work with the Union government to develop a plan for allocating funds under the victim compensation program.¹⁰² When a court recommends compensation in any circumstance, the Legal Services Authority at the district and state level must determine how much should be granted as compensation. If the damages provided by section 357 is insufficient for rehabilitation, compensation under this section may be paid in addition to that provision. The crime victim or his legal heirs may file a petition to the legal services authority for a grant of compensation under section 357-A even if the perpetrator is unidentified or impossible to find.

⁹⁹ Code of Criminal Procedure, 1973, (Act 02 of 1973) s.125(2), 125(3)

¹⁰⁰ Cri. LJ 658 (P&H)

¹⁰¹ 1989 Cri. LJ 794 (S.C.)

¹⁰² Code of Criminal Procedure, 1973, (Act 02 of 1973) section 357A (1)



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According to Section 357-B, the amount of damages provided to a Crime Victim by the government of the concerned state under the victim compensation program must be additional to the fine that the accused is required to pay under Sections 326-A, 376-AB, 376-D, 376-DA, and 376-DB of the IPC, 1860.¹⁰³

Every victim of an offense listed in section 326-A, 376-AB, 376-D, 376-DA, 376-DB, or section 376-E of the IPC, 1860, is entitled to immediate medical support or treatment at no fee from all hospitals run by the union government or governments of each state as well as all private hospitals or hospitals run by local bodies.¹⁰⁴

¹⁰³Code of Criminal Procedure, 1973, (Act 02 of 1973) s.357B

¹⁰⁴ Code of Criminal Procedure, 1973, (Act 02 of 1973) s.357C



CHAPTER 4

JUDICIAL APPROACH TO CRIME VICTIM'S RIGHT

4.1 Introduction

As is well known, the legislative branch, executive branch, and judicial branch make up the three main pillars of a democratic government. "In India's democratic system, the judiciary serves a number of functions. It is the keeper and protector of the fundamental rights and legal rights, but it is also accountable for the administration of the Indian court system and ensuring that people have access to justice. It is also significant to remember that Article 50 of the 1950 Indian Constitution addresses the division of powers between the executive, which is an elected administration led by the President in name only and the Prime Minister in actuality, and the judiciary. The executive is the entity that answers as a policy maker, and the judiciary cannot meddle in the realm of policy making, but it does have the authority to evaluate judicially such policies, the supreme court reaffirmed in a number of cases brought before it.

In *L. Chandra Kumar v Union of India*¹⁰⁵ The supreme court ruled that the judicial review authority granted to the high courts and Supreme court under articles 32 and 226 of the Indian constitution is a fundamental part of the document and cannot be changed by statute amendment under article 368. The judiciary is a watching tower over all the large structures of the other limbs of the state as to whether they are operating in accordance with the law and the constitution, the latter of which is paramount, the justice said in the case of *Union of India v. Sankal Chand Himatlal Sheth Untwalia*. In the recent past, there have been several instances where the supreme court went beyond the bounds of the constitution and took Suo-motto cognizance of or heard public interest litigations involving government policies as well as topics of public concern." For instance, the Vishaka guidelines, the guidelines for acid attack victims, the guidelines for the death penalty, and the guidelines for curative petitions were all instances when the SC sets out landmarks in the development of the legal system in India.

4.2 Judicial Approach Towards Crime Victim's Rights Under the Indian Constitution

The Indian constitution's Articles 32 and 226 are two crucial corrective tools that a victim of crime can utilize to seek in court for the restoration of or compensation for basic rights and other legal rights that

¹⁰⁵ AIR 1997 SC 1125



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the crime accused has infringed. In terms of judicial correction and enforcement of rights that are violated as a result of government action or individual citizen activity, these two articles are of particular importance. While Article 226 of the Constitution of India provides a remedy against the violation of both basic fundamental rights and any other statutory rights available to Indian citizens, article 32 of the Constitution of India, is available against the violation of fundamental rights. Ambedkar, Dr. The constitutional assembly said that while analyzing the relevance of article 32 that "if I were asked to describe any single item in this constitution as the most important-an article without which constitution would be nullity-I could not refer to any other provision save this one...It is the very heart and spirit of the Constitution."¹⁰⁶ In the case of, *Calcutta Gas Company v State of West Bengal*,¹⁰⁷ According to the Supreme Court, Article 226's inclusion of the phrase "for any other purpose" gives the top court the authority to uphold any legal rights.

P.N. Bhagwati Justice deserves all the credit for introducing the idea of "Public Interest Litigation" as an alternative to the idea of "Locus Standi" in the Indian court system. The *Union of India v. S.P. Gupta* case¹⁰⁸ P.N. Bhagwati, dealing with public interest litigation in the court is "a fascinating exercise because it is a new jurisprudence that the court is evolving, a jurisdiction that demands judicial statesmanship and high creative ability." In *Narmada Bachoo Andolan v. Union of India*, it was said that "the frontiers of public law are expanding far and wide, and new concepts and doctrines which will change the complexion of the law and which were so far embedded in the womb of the future are beginning to be born."¹⁰⁹ The public interest lawsuit, according to the Supreme Court, was created to defend and uphold the human rights of individuals who are unable to do so for themselves. By virtue of Article 32, the Supreme Court has actively intervened and rendered several landmark decisions in a variety of cases of public significance, such as *Rudal Shah v. State of Bihar*¹¹⁰ The Supreme Court noted that in relevant cases of article 2 violations, courts have the authority to give compensation.

Later, in 1986, the supreme court awarded compensation against unjust incarceration in the case of Bhim Singh, a member of the legislature. Additionally, in 1993, the supreme court granted money compensation for the first time to the family of the deceased in a case involving custodial death due to a

¹⁰⁶ Constitutional Assembly Debate, vol. II, p 953

¹⁰⁷ AIR 1962 SC 1044

¹⁰⁸ AIR 1982 SC 149

¹⁰⁹ (2000) 4 SCJ 261

¹¹⁰ (1983) 4 SCC 141



breach of article 21¹¹¹ in the case of *M.H. Hoskot v State of Maharashtra*¹¹² supreme court interpreted “right to free legal aid” as a part and parcel of the right to life and personal liberty under article 21. Apart from this, in the case of *Hussainara Khatoon v State of Bihar*¹¹³, the supreme court declares the “right to a speedy trial” as a part of Article 21. In another matter, the apex court concluded that the right to a fair trial includes the right to a fair investigation.¹¹⁴ In *Sunil Bhatra's* case, the Supreme Court ruled that putting the under-trial detainees in the same prison as the criminal defendants violates their Article 21 fundamental rights. The situation and preservation of victims' rights have been examined by the Supreme Court in a number of cases that have come before it, including *Ratan Singh v. State of Punjab*, when it rendered judgment and issued obiter dictum.¹¹⁵ "It is a weakness of our jurisprudence that victims of crime and the distress of the victim's dependents do not command the attention of the law," the highest court stated. In actuality, victim compensation remains the tipping point of our criminal code. This is the systemic flaw that has to be fixed by the legislation. In yet another significant decision, the Supreme Court made the observation that while imposing punishment on offenders, courts must take the pain of the victims of crimes into consideration.¹¹⁶ Further, in the year 1998 in the landmark judgment of *State of Gujrat v Hon'ble high court of Gujarat*,¹¹⁷ The supreme court established the rule that courts cannot disregard the victim and his family regarding the loss suffered by him and his family in case of the victim's death or inability to earn a living as a result of the crime committed against such victim while making efforts to protect the rights of convicts and to provide appropriate opportunities. In *Lillu v. State of Haryana*, the supreme court rules that a rape victim's right to a life with dignity and integrity is violated by the two-finger test. in addition to her Article 21 privacy rights.

4.3 Judicial Approach Towards Crime Victim Under Criminal Law

By extending its authority to act, when necessary, by the law, the Indian court delivered several important judgments. By virtue of Articles 32 and 226 of the Indian Constitution, the court has frequently intervened when it becomes clear that the governmental apparatus has flagrantly violated the norm of natural justice.

¹¹¹ *Nilabati Behra v State of Orissa*, (1993) 2 SCC 746

¹¹² AIR 1978 SC 1548

¹¹³ AIR 1979 SC 1360

¹¹⁴ *Nirmal Singh Khalon v State of Punjab* AIR 2009 SC 984

¹¹⁵ (1974)4 SCC 719

¹¹⁶ *Maru Ram v Union of India and other*, AIR 1980 SC 2147

¹¹⁷ (1998) 7 SCC 392



The supreme court has issued a number of important criminal law decisions in which it lays forth the key principles that become law. For instance, in *Vishaka v. State of Rajasthan*, often known as the *Bhanwari Devi gang rape case*,¹¹⁸ According to a PIL filed by the women's rights group "Vishaka," the supreme court has recognized that because there is no law prohibiting sexual harassment at work, there have been serious violations of a victim's fundamental rights under Articles 14, 15, and 21 of the Indian Constitution. No gang rape event was reported to the police in this case, and no investigation or medical examination was carried out until 52 hours had passed after the occurrence.

The victim also lost her work and her family was shunned by the townspeople. All of these incidents happened as a result of the victim's employment at the Women's Development Project and her promotion of the government's campaign against child marriage while at work in this case. The supreme court has ruled that workplace sexual harassment is a grave violation of the victim's fundamental rights under articles 14, 15, 19, and 21. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was passed into law by the Indian Parliament after the Supreme Court's bench, led by Justice J.S. Verma, issued this landmark decision outlining major guidelines for the prevention of sexual harassment at the workplace. The apex court established various provisions under these guidelines, including the obligation of the employer, preventive measures to be taken by the employer, disciplinary action, an internal complaints committee, a local complaints committee, provisions regarding district officers, as well as the definition of sexual harassment and a program to raise awareness of sexual harassment. It is also crucial to remember that the committee recommended by J.S. Verma J., whose recommendations led to the criminal law (Amendment) Act of 2013, was also adopted.

On May 11, 2022, a division bench of the Delhi High Court issued a split decision in a case involving the constitutional validity of marital rape as provided under exception II to sections 375 and 376-B. As a result, the supreme court will now decide whether or not these provisions are constitutional.¹¹⁹ As is well known, Section 375's exemption II states that a man's sexual activity with his own wife—provided she is not under 15 years old—is not rape.¹²⁰ When someone engages in sexual activity or commits a sexual act with a female between the ages of 15 and 18, they are subject to the provisions of the POSCO Act, 2012, but

¹¹⁸ (1997) 6 SCC 24

¹¹⁹ *RIT Foundation through Ms Karuna Nundy and ors v Union of India* 2022 SCC online Del 1404

¹²⁰ The Indian Penal code, 1860, (Act 45 of 1860) s.375, exception 2



if they do the same thing with their spouse, who is between the ages of 15 and 20, they are not in violation of the law.

The court must make a decision about the detrimental effects of exception 2 to section 375. However, the Amendment Act of 2013 and the 2018 legislature explicitly stated their intention to punish those who are accused of rape and gang rape by amending the penal legislation. For instance, newly established measures that penalize sexual harassment and rape include sections 376-A, 376-B, and 376-D that were added to the Indian Penal Code, 1860 by an amendment in 2013 and section 376-AB that was added through an amendment act in 2018. According to Sections 376-A and 376-AB, anyone who commits rape on a woman under the age of 12 is punishable by rigorous imprisonment for at least 20 years, which may be extended to life imprisonment, which means imprisonment for the remainder of the person's natural life or a death sentence, if they cause the victim's death or put them in a persistent vegetative state during the commission of the rape under Section 376.¹²¹ Additionally, according to section 376-B, anybody who has had sex with his own wife—whether she is living separately as a result of a divorce or not—without getting her consent faces a minimum sentence of two years in jail and a maximum of seven years in prison as well as a fine.

In addition, in the case of *Madhukar Narayan v. State of Maharashtra*¹²² The Supreme Court ruled that *everyone* has the right to a woman's sexual privacy and that this right cannot be violated at any time. In the landmark decision in the case *Barendra Kumar Ghosh v. Emperor*¹²³ The Supreme Court's interpretation of the scope of common purpose in regard to any crime is generally known as the "post office case." The court noted that "they also serve those who only stand and wait." Through the 2013 Criminal Law Amendment Act, the Indian Parliament included measures under Sections 326-A and 326-B regarding acid attacks. Due to the frequent occurrences of such assaults, the supreme court of India in a PIL petitioned by an acid attack victim called *Laxmi's case* decided that notwithstanding the implementation of penalty against acid attacks or attempts to commit acid attacks under these provisions¹²⁴ published a number of significant rules involving acid attack prevention, acid possession, and victim compensation.

¹²¹ The Indian penal code, 1860 (Act 45 of 1860) s.376-A and s.376-AB

¹²² AIR 1991 SC 207

¹²³ 52 I.A. 40 (P.C.)

¹²⁴ *Laxmi v. Union of India* (2014) 4 SCC 427



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In this case, the supreme court ordered all states to provide victims of acid attacks with compensation of at least 3 lakh rupees for medical care and rehabilitation. Additionally, the court ordered that of the three lakh rupees, one lakh rupees must be paid within fifteen days of the occurrence date and the other two lakh rupees must be paid within two months. In this judgment, the supreme court also mandated that "all institutions shall maintain a register of usage of acid and file the same with local police and the concerned sub-divisional magistrate" in order to avoid acid assaults.

Additionally, institutions should assign a responsible party to the custody and safekeeping of acid; acid should be maintained under this person's supervision, and students and staff who leave laboratories using acid should be subject to mandatory inspections.¹²⁵ The court also ordered that anyone who disobeyed these instructions would be subject to a fine of 50,000 rupees and legal action under the 1919 Poisons Act. Regarding the sale of acid and other caustic substances, the highest court further ordered the union government to develop model regulations in accordance with the Poisons Act of 1919.

The horrifying case of *Mukesh and anrs. v. NCT of Delhi & Ors* is related to a gang rape that occurred in India's national city of Delhi in 2013.¹²⁶ however commonly referred to as the Nirbhaya gang rape case. A 23-year-old lady was viciously attacked and gang raped by six men on December 6, 2012, in New Delhi. This tragedy rocked the whole nation, including the legislature and the courts. In this case, four defendants received death sentences, making it a "Rarest of the Rare Case" in 2017, while one defendant committed suicide and another was given a five-year term and sent to a juvenile detention facility. Due to this tragedy, the parliament has been forced to make significant changes to the penal code, including re-examining the legal age of consent for minors who commit the most heinous of crimes. Following this occurrence, the union government established Justice J.S. Verma's committee, which made a number of recommendations for changes to the Indian Evidence Act of 1872, the Code of Criminal Procedure of 1973, and the Juvenile Justice (Care and Protection) Act of 2015.

On the basis of these recommendations, some notable provisions that are time-bound requirements were added or modified, including the age of juvenile responsibility for the rarest of rare crimes being lowered from 18 to 16 years, the addition of sections 354-A to 354-D that address sexual harassment and the

¹²⁵ Ibid note 128

¹²⁶ (2017) 6 SCC 1



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violation of women's modesty, the punishment for acid attacks and attempts to commit them, sections 326-A to 326-B that address gang rape, and sections 376-D and 376-DA that address



CHAPTER 5

VICTIMOLOGY AND ITS EVOLUTION

5.1 Introduction

As is well known, India's criminal justice system developed throughout the more than 200 years of British rule. The majority of the rules regulating the administration of criminal justice were written by Englishmen in British India during their anarchic control over the people of India with the main goals of putting down any rebellion against their arbitrary actions and punishing political prisoners. We are often reminded of the colonial mindset with which the British drafted this important penal statute when we see provisions like sedition and marital rape as exceptions to rape within the Indian Penal Code of 1860. In addition to this, we continue to abide by several other laws that were written with a draconian attitude, such as the Indian Police Act of 1861, the Indian Evidence Act of 1872, and many more. Although the Indian parliament significantly altered these laws after India gained its independence, the clamour for their repeal is growing every day as time goes on.

It is a fact that the policing system is the foundation of the criminal justice system in every country, as police are always the first to respond to a crime scene and are tasked with determining whether a crime has been committed or not in accordance with local criminal laws. Our policing system in India is still governed by the colonial law of 1861, which requires significant reforms in order to advance, train, and develop the police departments in various scientific and information technology fields, so they can track down and maintain control over the new era of crimes and criminals in India, including white collar crimes committed by the elite and professional classes as well as cyber-crime, trafficking in human organs, and more. Since organized crime and disorganized crime are two common kinds of crimes from the 20th century, each of these categories have roughly the same proportion of negative effects on society. In addition to this, there have been several instances recently when people in positions of authority have committed crimes.

All of these crimes demand that the administration of the criminal justice system consider the rights of the victims of such crimes. For a very long time, victimology was not given the same priority as criminology within the Indian criminal justice system, despite the fact that criminology deals with crimes



and their jurisprudential implications. Since a few decades ago, the problem of the rights of crime victims has been more prominent thanks to the court system, the work of several distinguished jurists, and the initiatives of numerous social and non-governmental groups. Governments created the criminal justice system as a tool to punish and penalize people who break the law in an effort to reduce crime.¹²⁷

5.2 Concept of Victimology

In the year 1947, Benjamin Mendelsohn is credited with being the first to use the term "victimology." Victimology is generally regarded as a study of the causes, characteristics, and effects of criminal victimization. It examines how society and politics treat victims and how it affects their psychological well-being. The victim is frequently regarded as a key witness in the Indian criminal justice system, but even in that capacity, the system falls short of providing adequate protection for the victim and his family. This has been demonstrated in numerous high-profile cases where the accused were freed because witnesses or victims refused to testify in court because they feared for their safety or that of their families. Victimology describes the relationship between the victim and the legal system, as well as the government administration, who are not only responsible for ensuring that a victim receives proper justice within the appropriate timeframe, but also for ensuring a safe and secure environment free from any further threat or apprehension from any evil elements of society. It is also acknowledged as the study of the dynamics between the offender and the victim.

5.3 National Prospective of Victimology

In *Maru, Ram v Union of India*¹²⁸ injustice According to Krishna Iyer, while the criminal's societal obligation to make up for what was lost or heal a damage is a component of the punitive exercise, the length of the prisoner's term is not a kind of atonement for the disabled or the bereaved, but rather futility exacerbated by cruelty. Victimology must find fulfillment via forced reparation of the harm caused by the wrongdoer, not by the infliction of further suffering on the criminal, but rather through lessening the loss of the bereaved.

Additionally, we have seen that the highest court rigorously forbade the revealing of a victim's identify and mandated closed-door hearings, particularly in situations of crimes against women and

¹²⁷ Paranjape, N.V.: Criminology, Penology, Victimology (2018) p. 763

¹²⁸(1981) 1 SCC 107



children.¹²⁹ Any disregard for these rules may be considered criminal or civil contempt of court. Victimology is a broad field that includes not just criminology and law but also the study of health, politics, public administration, and psychology. These fields are linked by the usage of victimology, which examines how different elements interact to affect a victim. The word "victim" comes from the Latin "victima," which denotes an unhappy individual who experiences unfavourable conditions.¹³⁰

Victimology is regarded as a science that focuses on the study of the offender's victim in relation to various other factors, from the victim's perspective, such as the relationship between the victim and the offender, the victim's role in achieving justice, and the victim's plight throughout the course of a criminal case at various stages, including the inquiry, investigation, and stage of the trial. It also highlights the various social and cultural issues that have contributed to harassment that repeats and obstacles to the victim and his or her family's ability to live a peaceful life moving forward, such as the boycott, khaap panchayats, and marriage difficulties experienced by rape or gang rape victims. Character slander and insults directed at rape victims both within and outside of court processes constantly bring up the crime's details in the victim's memory, which has a negative impact on their ability to recover and lead normal lives.

In *Surjit Singh Thind v Kanwal Jit Kaur*¹³¹ when the petitioner filed a writ petition to have the marriage declared null and invalid on the grounds that her husband's impotence prevented the marriage from being complete. The Punjab and Haryana High Court ruled that the medical examination of a woman for a virginity test constitutes a violation of her fundamental rights to privacy, life with dignity, and personal liberty under Article 21 of the Indian Constitution when the respondent objected to this claim and demanded a virginity test of the petitioner to back up his claims. In the case of *Sharda v. Dharmपाल*, the Supreme Court also upheld this judgment.¹³² When people, groups, or institutions suffer serious harm or damage, the term "victimization" is used. People or events that have an influence on them violate their rights or seriously impair their well-being.¹³³ In yet another precedent-setting decision, the Supreme Court established the rule that each rape case being heard by the court had the potential for interim compensation as well as final reparation.¹³⁴ Additionally, while determining the amount of a punishment or compensation, the court is

¹²⁹ *Sakshi v Union of India* A.I.R. 2004 SC 3566

¹³⁰ <https://www.vocabulary.com/dictionary/undefined/v%EDctima>

¹³¹ AIR 2003 P&H 353

¹³² 2003 AIR SCW 1950

¹³³ https://www.unafei.or.jp/publications/pdf/RS_No70/No70_12VE_Dussich.pdf

¹³⁴ *Bodhi Sattva Gautama v Sobhra Chakraborty* AIR 1996 SCC 922



required to consider the nature of the offense, the harm sustained, the legitimacy of the compensation claim, the accused's financial capacity, and other pertinent factors..¹³⁵

Mendelsohn divided victims into the following groups depending on their involvement in crimes:¹³⁶

1. A victim who is totally innocent, such as a kid or someone who is asleep.
2. Victims who choose to end their lives, such as suicide victims.
3. Victims who bear greater blame than their perpetrators.

In the case of *Baskaran v. Sankaran Vaidhyan Balan*¹³⁷ When determining the scope and application of Section 357(3) of the Code on Criminal Procedure, 1973, the supreme court noted that the Magistrate might award any amount of compensation and could not limit themselves in doing so under Section 357(3) because sub-section (3) contains no cap. The magistrate must determine the amount of compensation based on reasonableness. In the case of *Chandrima Das*,¹³⁸ The victim compensation program was extensively discussed by the Supreme Court.

The two most significant revisions in the year 2008 were to Section 357A, which gives provisions for victim compensation programs, and Section 357C, which offers laws about first aid and medical assistance to victims.¹³⁹ to assist and provide compensatory relief to a victim or his/her family. In, *Delhi Domestic Working Women's Forum v Union of India*¹⁴⁰ The Indian Supreme Court emphasized when it drafted certain recommendations in support of rape victims that the Criminal Injuries Compensation Board must be established, provided that it adheres to the Directive Principles set out in Article 38(1) of the Indian Constitution. The rules state that regardless of whether the culprit has been convicted, the court must order the Criminal Injuries Compensation Board to compensate the victims when the defendant is found guilty.

When a crime is first reported to a public body, section 154 of the 1973 Criminal Procedure Code (CrPC) gives victims of such crime very important rights. Section 154¹⁴¹ The victim has the right under clauses (1) and (2) to report the commission of any cognizable offense orally or in writing, with his

¹³⁵ *Hari Singh v Sukhbir Singh* (1988) 4 SCC 551

¹³⁶ Rajan, VM, *Victimology in India*, pp.10-11

¹³⁷ (1990) 7 SCC 510

¹³⁸ *Chairman, Railway Board and ors. v. Chandrima das and ors.*, AIR 2000 SC 98

¹³⁹ The criminal law (Amendment) Act, 2008

¹⁴⁰ (1995) 1SCC 14

¹⁴¹ The code on criminal procedure, 1973, (Act 02 of 1973) s.154 (1) and (2)



signature, and to get a copy of the police record (FIR). Additionally, section 154, clause (3), applies when the police authority declines to record the FIR.¹⁴² comes into effect to defend the victim's rights, which states that anybody who is resentful of the refusal to file a FIR may contact the concerned superintendent of police by providing written and postal copies of the FIR's contents to the superintendent of police in question.

The victim has the right to submit a statement to the relevant police authority for recording in the way described for evidence records.¹⁴³ The victim has the option to go to the magistrate court and lodge a complaint with the appropriate magistrate if the superintendent of police did not take cognizance of the situation. Any first-class magistrate and any second-class magistrate authorized by a chief judicial magistrate in this regard are permitted to take cognizance of any offense upon receipt of the complaint, upon receipt of the police report, upon receipt of information from a source other than a police officer, or upon his own knowledge, according to Section 190 of the CrPC, 1973.¹⁴⁴ When a magistrate receives such a complaint, he or she must handle it in accordance with the steps outlined in sections 200 to 210 of the CrPC, 1973.

5.4 International Perspective of Victimology

There have been numerous conventions, agreements, and treaties signed between nations that are United Nations members throughout the world to uphold and defend the fundamental human rights of all peoples and to support the ideas of equal justice, the rule of law, and fair trials and investigations. Initially, it was believed that the Latin maxim *ubi jus ibi remedium* was sufficient to provide a remedy, but as time went on, it became clear that there was a need for some fundamental statutory standards and provisions to be applied consistently in order to recognize, preserve, and facilitate the availability of basic human rights to every person, including those who are the victim or who are the culprit of a criminal offense.

Later, a number of international agreements were signed by United Nations members, including the Universal Declaration of Human Rights and the United Nations Charter of 1945. 1948, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, and the Convention on the Elimination of All Forms of Discrimination Against Women, 1979. These agreements and conventions

¹⁴² The code on criminal procedure, 1973, (Act 02 of 1973) s.154 (3)

¹⁴³ The code on criminal procedure, 1973, (Act 02 of 1973) s.164 (1), 164(5)

¹⁴⁴ The code on criminal procedure, 1973, (Act 02 of 1973) s.190



aided in the global community's recognition and implementation of fundamental rights for all citizens of member states. All United Nations members vowed to work with the organization to achieve universal respect for and observance of human rights and basic freedoms for all people without regard to race, sex, language, or religion.¹⁴⁵ The emergence and advancement of victimology and victim rights were considerably aided by these developments.

The first person to analyze the role of victims was Dr. Hans Von Hentig, who discovered certain common characteristics among victims, including the following:¹⁴⁶

1. People who are poor, uninformed, and greedy are the victims of fraud-related offenses.
2. Someone who has been the victim of theft, or someone who is drunk or asleep.
3. Sensual or wanton individuals may suffer as a result of self-inflicted circumstances.

The 1948 Universal Declaration of Human Rights (UDHR) contains a number of articles pertaining to the rights to life, equal justice, and certain other fundamental human rights, including freedom of marriage and nationality. Some provisions offer important rights to victims, such as Article 3.¹⁴⁷ provides everyone the right to life liberty and security of a person. Article 5¹⁴⁸ Additionally, it places duties on the state to ensure that no torture or other cruel, inhuman, or degrading punishment or treatment is tolerated and is prevented in all member states. In accordance with Article 14 of the Indian Constitution of 1950, this deceleration also guarantees equality before the law and equal protection from the law, as well as equal defense against any attempted or real infringement of this deceleration.¹⁴⁹

Article 8¹⁵⁰ of this declaration states that every state shall ensure that every person has the right to an effective remedy and justice through competent national tribunals in the event of any violation of a fundamental right granted to him under the nation's constitution or any other law, such as unlawful preventive detention, wrongfully imprisoned, bounded labour, victimization through human trafficking, etc.

¹⁴⁵ The United Nation charter, 1945, Article 55(c),56

¹⁴⁶ The Criminal and his Victim, (1948) pp.384-388

¹⁴⁷ The Universal Declaration of Human Rights, 1948, article 3 available at, <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2012,against%20such%20interference%20or%20attacks>

¹⁴⁸ The Universal Declaration of Human Rights, 1948, article 5 available at, <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2012,against%20such%20interference%20or%20attacks>

¹⁴⁹ The Universal Declaration of Human Rights, 1948, article 7 available at, <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2012,against%20such%20interference%20or%20attacks>

¹⁵⁰ The Universal Declaration of Human Rights, 1948, article 8 available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2012,against%20such%20interference%20or%20attacks>



Both the right to privacy and the right against arbitrary interference are guaranteed under Article 12 of this decree. According to this article, no one may be the target of arbitrary intrusions into their personal space, relationships with their family, homes, or communications, as well as attacks on their reputation and honour. Everyone has a right to legal protection from these types of intrusions or assaults. Through its articles 6, 7, 10, 14, and 17, the second covenant to this pact, the International Covenant on Civil and Political Rights, which was approved by the UN General Assembly in 1966, offers the following protections and restrictions.¹⁵¹ :

- A) upholding one's right to life and freedom;
- B) the avoidance of torture and other inhumane, humiliating, or cruel treatment or punishment;
- C) Everyone who is denied their own freedom must be treated with decency;
- D) fairness for both the victim and the offender in civil and criminal actions before courts and tribunals;
- E) a prohibition on wilful and unauthorized intrusion into a person's privacy, family, home, or communication, as well as an unlawful attack on their honour and reputation.

1985 places a strong emphasis on the rights of victims in another deceleration known as the deceleration of the fundamental concept of justice for victims of crime and abuse of power. Under Regulation 1, victims are divided into two categories: "victims of crime" and "victims of abuse of power".¹⁵² The fourth regulation of this deceleration guarantees that victims will be handled kindly and with dignity. According to national law, they have a right to swift remedy and access to the legal system.¹⁵³ The judicial and administrative system in charge of meeting the victim's needs must make sure that.¹⁵⁴

- a) Victims are informed of their position and scope, as well as the time and development of the case, including how it will be resolved;
- b) Victims' rights to freedom of speech and expression are upheld, and they are permitted to voice a variety of issues where their personal interests are at stake;
- c) Assistance must be given to a victim throughout the course of the lawsuit;
- d) Steps must be made to safeguard the victim's safety and privacy as well as the protection of their family and witnesses from any unjustified intimidation.

¹⁵¹ International covenant on the civil and political right, 1966, articles 6,7,10,14 and 17

¹⁵² deceleration of the basic principle of justice for victims of crime and abuse of power, 1985, regulation 1

¹⁵³ deceleration of the basic principle of justice for victims of crime and abuse of power, 1985, regulation 4

¹⁵⁴ deceleration of the basic principle of justice for victims of crime and abuse of power, 1985, regulation 6



- e) There must be no needless delay in the court case's resolution or the implementation of judgments awarding victims' compensation.

Restitution for victims is covered under Regulations 8 through 11 of this decelerations. It requires that any offenders or third parties who are accountable for their actions repay the victim and their family. It also requires that national governments evaluate their laws and procedures to include restitution as a possible punishment for criminal offenses. Regulations 12 and 13 stated that states must provide financial assistance to victims of serious criminal offenses when the compensation provided by the offender or third party is insufficient. States must also place a strong emphasis on promoting organizations that can use and promote national funds for compensation of crime victims.

The United Nations General Assembly established an international convention against torture and any form of cruel or humiliating treatment or punishment in the year 1984, furthering article 55 of the United Nations Charter from 1945 and articles 5 and 7 of the UDHR from 1948. Paragraph 2¹⁵⁵ each party to the convention to ensure that there are effective legislative, administrative, or judicial safeguards in place to limit and prevent the use of torture and other inhumane treatment. There cannot be no exceptions to the ban against torture or other inhumane treatment, and even a higher officer's or a governmental authority's command cannot serve as a legal defense for breaking this rule. The principle of non-refoulment is discussed in Article 3 (1) of this convention as well as Article 33 (1) of the 1951 Refugee Convention. It limits the refoulment or expelling of refugees to the territories from which they have come and where there would be a threat to their life or freedom. Every state that is a party to the convention is required by this deceleration to make sure that any attempt at or involvement in acts of torture or inhumane treatment constitutes a crime that carries the relevant consequences. These treaties forbid torture and other inhumane treatment in all settings, including on land, at sea, and in airplanes.

Each State Party should guarantee in its legal system that the victim of an act of torture achieves redress and has an enforceable right to fair and appropriate compensation, including the means for as thorough rehabilitation as feasible, according to Article 14(1) of this convention against torture. His dependents are entitled to compensation in the event that the victim dies as a result of an act of torture.

¹⁵⁵ Convention against the Torture and any kind of Inhuman or degrading Treatment or Punishment, 1984, Article 2 (1)



Additionally, Article 15 stipulates that each member state that ratified the agreement must prohibit any statements obtained by torture.¹⁵⁶

In addition to these conventions, the United Nations general assembly adopted a convention on December 18, 1979, known as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is dedicated to reducing and eliminating all forms of discrimination and inequality against women. Inequalities and discrimination that deny or limit women's right to political, social, cultural, or economic equality are the focus of the convention. The International Bill of Rights for Women is another name for this conference. The United Nations strives to promote gender parity and equal rights for all women and girls through this treaty. Discrimination against women and girls is defined in Article 1 of this treaty as when boys or men treat a girl or woman differently in private or public. According to Article 2, the state that amended the convention was required to take all necessary steps to end inequality and all forms of discrimination against women. This included repealing any existing laws, policies, or practices that were founded on discrimination and enacting new laws and policies that were suitable and sufficient to outlaw and eliminate all forms of discrimination against women.¹⁵⁷

According to Article 15 of this treaty, the following obligations were placed on the state parties:¹⁵⁸

- A. States Parties must treat women equally to males in court.
- B. States Parties must grant women the same legal power and opportunity to use such capacity in civil affairs as they do for men. In particular, they must treat women equally at all levels of court and tribunal proceedings and grant them equal rights to enter into contracts and manage property.
- C. The States Parties concur that any agreements or other private documents of any sort with a purpose to limit the legal standing of women shall be deemed null and void.
- D. States Parties must grant men and women the equal legal rights regarding freedom of movement and the ability to choose their place of residence and domicile.

As they lay out the international legal standards that are consistently applicable to all the member nations that are party to these conventions, all of the conventions we've covered above are highly important sources for victim's rights and the growth of victimology. Regardless of the victim's gender, social,

¹⁵⁶ Convention against the Torture and any kind of Inhuman or degrading Treatment or Punishment, 1984, Article 14 (1) and 15

¹⁵⁷ convention on the elimination of all forms of discrimination against women, 1979, Article 1 & 2

¹⁵⁸ convention on the elimination of all forms of discrimination against women, 1979, Article 15



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economic, or political status, this international instrument supports and directs national governments in the enactment and implementation of municipal or national laws to curtail any form of injustice or discrimination against the victim and to ensure that they are receiving their rights in a proper and meaningful manner.



CHAPTER 6

CONCLUSION AND SUGGESTION

“The criminal law in India is not victim-oriented and the suffering of the victim often immeasurable is entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooked as the by-product of crime the victims”¹⁵⁹

Justice Krishna Iyer

Through an analysis of the statutory rights of crime victims under the existing criminal justice system in India, it is shown that the whole system—including the court as the body responsible for administering justice and the police as the administrative body—works to ensure the safety and protection of criminal suspects. Compared to victimology, criminology has a greater impact on the Indian legal and judicial systems. Our judicial system constantly works to guarantee that a criminally accused person has access or reach up until the availability of final corrective remedies. In the *Mohammad Ajmal Amir Kasab v. State of Maharashtra*¹⁶⁰ case, for example, to guarantee that the natural justice delivery system of India was followed, the supreme court of India stayed open till three in the morning to provide the prisoner the chance to be heard as the final corrective action. Some well-known and established principles of defence mechanisms in favour of the accused or culprit, such as "Innocent until proven guilty," which is an assumption of guiltlessness, and the Latin maxim *Ei Incumbent Probatio Qui Dicit, non-que Negat*," which states that the burden of proof lies on the person making the allegation and not on the person who is denying such allegation, are a barrier to a victim's right to obtain justice.

In the 21st century, crime is far more varied and sophisticated in both kind and severity than it was in earlier eras. Crimes are divided into two categories: organized crime and unorganized crime. Additionally, several new types of criminal offenses are included in the list, including white-collar crimes like

¹⁵⁹ <https://www.google.com/amp/s/timesofindia.indiatimes.com/blogs/voices/need-for-victim-oriented-criminal-justice-system/%3ffrmapp=ves>

¹⁶⁰ (2012) 9 SCC 1



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cybercrimes, crimes committed by people in positions of public power, false encounters, and trafficking in both children and women.

The judiciary is also overburdened with cases that are still pending, which results in crimes against prompt administration and delivery of justice to the victim of the crime as well as the accused who are still being tried but have been imprisoned for many years while awaiting the court's ruling. As we've seen in the past, many inmates who were held without charges were eventually freed after serving twenty or thirty years or more. These victim groups, who spend half their lives in prison owing to certain false accusations made against them, have no legal protections for rehabilitation or compensation. This study contends that in our rush to ensure the safety, protection, and rehabilitation of crime victims, especially in cases of serious crimes like rape, gang-rape, murder, acid attack, sexual assault, child pornography, abatement to suicide, etc., we have forgotten to provide for their needs in terms of safety, protection, and rehabilitation. This researcher wants to draw your attention to the fact that many crimes go unreported even after such prolonged cases are pending in courts at all levels owing to fears for the safety of the victims or their witnesses who are testifying against the accused. Many times, the accused has been freed because there is insufficient proof or a witness has declined to testify. due to the political influence and resources these accused and their families have access to. Due to this, in the *Gurbaksh Singh Sibba v. State of Punjab* case¹⁶¹ The Supreme Court has ruled that anticipatory bail is not appropriate. In order to exercise the right to grant anticipatory bail under section 438 of the CrPC, 1973, a blanket order and the registration of a FIR under section 154 (1) are not prerequisites.

In the case of *Gurcharan Singh v. State*, the Supreme Court¹⁶² a belief that the likelihood that the perpetrator would elude justice and his or her ability to manipulate the witnesses and evidence are the two main reasons why bail should not be granted. The need to protect victims' rights and identify obstacles has gained significant attention in recent years. the protection of a victim of crime's dignity and rehabilitation. A victim of a crime should not simply be viewed as a witness to the act, and receiving compensation or damages should not be the final resort. Analyzing a victim's daily life via the study and advancement of victimology is crucial to improving understanding and concern about the health, safety, and survival of victims. It is a cruel truth that victims of sexual offenses, such as rape, gang rape, voyeurism, and sexual harassment, must contend with a number of difficulties and setbacks not only throughout the course of the

¹⁶¹ (1980) 2 SCC 565

¹⁶² AIR 1978 SC 179



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case's legal proceedings but also at the level of societal acceptance. Consequently, to enable real justice for a crime victim. It will be immediately advantageous for the elimination of the psychological effects of crime over a crime victim's intellect. Two of the most important and fundamental rights of any crime victim are immediate medical attention as well as protection and security from the threat to life, from the point of reporting the crime to the point of delivering justice.

However, it cannot be denied that there have been significant changes to Indian criminal law in recent years. Sections 326 A and 326 B of the IPC, 1860, which deal with acid attacks, Section 354 B sexual harassment, Section 354 A sexual assault, Section 354 C stalking, were introduced in year 2013 and 2018 post to the Delhi Gang Rape and Murder Case of 2012, as per the suggestion made by Justice J.S. Verma Committee, which brought significant changes to the criminal code. A few already-existing clauses, like the definition of rape under section 375 and clauses pertaining to human trafficking under section 370, were also changed. In 1973, the Code of Criminal Procedure underwent significant amendments as well. For example, sections 154 and 161 were changed to clarify that any female police officer must record any female victim's account. Additionally, the 2013 amendment added a new section 375 C that mandates rapid medical help and treatment for victims of sexual offenses as well as the responsibility of medical authorities to report such instances to the relevant police station. Section 390's clause (1) was likewise changed.

According to the new requirements, all trial or inquiry processes in cases involving sexual offenses must be completed within two months of the day the charge sheet was filed. By amending Section 42 of the POSCO Act, 2012, it was made clear that, in the event that an offense is committed that is punishable under both the POSCO Act, 2012 and the Indian Penal Code, 1860, the accused will be held accountable under the more severe punishment provision of one of the two statutes. In order to make the penalties for sexual offenses more severe and harsh, significant changes to the criminal legislation were again made in 2018. Sections 376AB, 376DA, and 376DB, which impose penalties against rape or gang rape with a girl under the age of 12 and gang rape with a girl under the age of 16, were introduced for this aim to the Penal Code of 1860. A new adjustment was also made to Section 376, which governs the penalty for rape victims. The altered clause of Section 376 increased the minimum term from seven years to 10 years.

These revisions represented the efforts undertaken by the legislative and executive branches of government in India to prevent and reduce crime, especially against women and children. The most important concern that emerges, however, is whether these changes and protections are sufficient to



safeguard victims' rights and ensure their future security. According to the study, these improvements and regulations are not significant enough to guarantee that victims' rights would be upheld and that they will obtain safe and secure characteristics.

It is impossible to disregard the second stage of trauma that a victim experiences while the lawsuit is being tried. In the 1972 gang rape case of Mathura, two police officers were found guilty by the Bombay High Court of engaging in custodial rape; in the 1992 gang rape case of Bhanwari Devi, we saw that the treatment given by the police officer to a victim of gang rape was extremely cruel, inhumane, and unlawful; and more recently, we witnessed the well-known Unnao gang rape case, where the victim was brutally beaten. Were used as an example of the victims' lack of protection and security and the loss of their rights. The government and legislature should guarantee that measures enabling the rights and remedies of crime victims are carried out in practice. It's also vital to note that one of the main factors contributing to judicial system delays is corruption. It destroys the public's confidence in the administration of justice. Money or the paying of bribes are not the sole means of corruption. Other kinds, such as psychological and societal corruption, may also be present. We all know that a corrupt mind is always open to dishonest, morally tainted, or otherwise degraded behaviors and activities. Political corruption includes being silent on a matter of public concern in the sake of vote-bank politics, while social corruption at the level of society includes accepting a bribe. Previously, corruption in the legal system mainly affected the level of court employees, but current developments show that both higher and lower court judges have been investigated for professional misconduct or even arrested on corruption-related charges.

For instance, the Central Bureau of Investigation (CBI) detained senior civil judge M.S. Rachna Lathaupal and her spouse in July 2022 for possessing excessive undeclared assets of Rs. 2.99 crores. Similar to this, we are familiar with the well-known Lal Bihari identification case, which is formally known as *Association of Dead People v. State of U.P. and others*.¹⁶³ when the victim's uncle paid a bribe to get the victim's death recorded in official records so that his uncle could claim the victim's whole inherent inheritance. Victim has engaged in a number of activities and endeavours to demonstrate his existence, including providing a bribe and filing a false police report (FIR) against himself for running against Rajiv Gandhi in the election for the lower house of parliament. Through Suo moto cognizance, the Allahabad High Court transformed the media story into a Writ petition in 1999. And after a protracted legal struggle, Lal

¹⁶³ 2000 (1) AWC 663



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Bihari has established his innocence in court. The above-discussed facts make it clear that corruption is the primary cause of all societal ills in the administration of justice. Aside from other significant factors, abuse of social and economic position and political influence has a catastrophic impact on the implementation of justice. To combat the evil of corruption in order to guarantee that victims receive justice in a timely and efficient manner and that their rights are upheld on a practical basis. In the current situation, it is very essential that all the participants in a civilized society work together. Enforcement agencies like the CBI, Enforcement directorate, NIA, and CID of each state will inevitably be accountable for the protection, security, and dignified treatment of the crime victim at the level of the legislative and executive. As is common knowledge, the police are the first state machinery to respond to and report a crime as soon as it occurs. As a result, the police officer's first and primary responsibility is to directly aid the victim by making preparations for the victim's protection and security as well as giving the necessary medical care.

Additionally, the policing system should embrace a futuristic mindset and cultivate a scientific temperament while responding to crimes in order to guarantee every crime victim receives professional care and access to justice. Social rights, legal rights, or even moral rights may be included in the victim's rights. However, it is quite commendable that India has ratified several conventions, agreements, and treaties since regaining its independence in order to comply with the standards established by international law. on the rights of crime victims. The UN Charter of 1945 and the Universal Declaration of Human Rights of 1948 are two significant international agreements that India has ratified in order to preserve and advance the fundamental human rights of all individuals on its soil. India signed and corrected in 1985 in addition to these. UN Deceleration of Basic Principles of Justice for Victims of Crime, 1985, for providing and putting into practice access to justice, dignified and equitable treatment, as well as rehabilitation via restitution, medical support, and compensation to a victim of crime and abuse of power. The Convention and Elimination of all forms of Discrimination against Women, 1979, and The Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment, 1984, were the two other significant conventions that India ratified in order to ensure that all cruel or inhumane acts against a crime victim, a crime suspect, or any other citizen are prohibited, as well as to ensure equality between men and women's rights, including fundamental human rights.

They are the flip side of the same coin, however, is that India consistently records a high number of fatalities in custody and inhumane treatment of crime victims, particularly when it comes to female sexual



assault victims. Therefore, merely passing legislation or signing an international agreement would not be sufficient; it would also be required for all of the Indian Criminal Justice System's organs and agencies to work together to ensure that the law is properly implemented at the ground level.

6.1 SUGGESTIONS

The following are some comments and recommendations that the author of this research paper would like to make on the rights of crime victims under the Indian Criminal Justice System:

- I. In order to effectively protect and facilitate the rights of crime victims, the existing legal framework relating to criminal offenses needs to undergo a number of significant reforms. The legislature must draft the new, specific, and effective legal framework with a focus on protecting victims and witnesses. Additionally, stricter anti-corruption measures are needed. in order to prevent victim exploitation, which is greatly influenced by corruption.
- II. The social structure of society needs to adopt a forward-looking and supportive attitude toward sexual assault victims. It will lessen the victim's post-incident psychological anguish and harassment and assist the sufferer in the recovery process.
- III. The government must start specific training and counselling programs for the technical and scientific advancement of crime investigators, such as police officers, forensic teams, and investigation organizations. Additionally, these staff must undergo routine evaluations, at which time they must be made aware of their moral and ethical obligations to crime victims.
- IV. Non-governmental organizations and civil society groups that deal with the problem of human rights must step up to inform and inform the victims about their rights. These groups ought to take proactive action. to carry out awareness campaigns, sign petitions, and engage in legal advocacy on behalf of crime victims who are unable to obtain justice because of their social or economic disadvantages or impediments.
- V. Prompt and proper action must be made to conclude the pending litigation in Indian courts. According to the National Judicial Data Grid's records from December 2022, the Indian Court is now handling more than 4.3 crore cases, which must be resolved quickly and effectively.



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