

# Need of Compensatory Mechanism in Indian Criminal Justice System

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## Abstract

*The idea of compensation to the victim of crime lost its identity and importance during the end of medieval era, when State was the adequate authority to give punishment to a criminal, but victim of crime was forgotten by the rulers/ authorities. Since, Independence and the promulgation of the Constitution rapid stride have been made in almost all fields of life. The communication revolution has opened the eyes, ears and minds of millions of people. Before 2008 no active role had been played by the Indian Legislature and Judiciary in defining 'Victim of crime'.*

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## Introduction

When we talk about the provisions related to compensation to victim of any crime in Indian Criminal Justice system, we found that the term was used by the rulers from the ancient time for the rehabilitation of the victim. During the Vedic Period concept of compensation, we found in Manu Smriti<sup>1</sup> and Brahaspati Smriti. Not only in Ancient Hindu law, also in Islamic law, had we found the provisions of compensation for the victims. The idea of compensation to the victim of crime lost its identity and importance during the end of medieval era, when State was the adequate authority to give punishment to a criminal, but victim of crime was forgotten by the rulers/ authorities. Since, Independence and the promulgation of the Constitution rapid stride have been made in almost all fields of life. The communication revolution has opened the eyes, ears and minds of millions of people. Before 2008 no active role had been played by the Indian Legislature and Judiciary in defining 'Victim of crime'. It is desired by every person to get quick, fair and affordable justice for any crime happened with him. Articles 1 & 2 of United Nations General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of Power adopted in November 1985, elaborate the term<sup>2</sup> Protection of life and liberty have been given a pre-eminent position in our Constitution by enacting Article 21 as a fundamental right and imposing a duty on the State to protect life and personal liberty of every citizen. This precious fundamental right becomes mere a pipe dream to many millions to whom justice is delayed, distorted or denied. The entire existence of the orderly society depends upon sound and efficient functioning of the Criminal Justice System. Apart from the different functionaries of any Criminal Justice System, victim is one of them. Initially, under the Indian Criminal Justice System the victim whose rights were invaded by the accused was not accorded any right to participate except as a witness. The system does not afford him any opportunity to assist the court such as adducing evidence or putting questions to the witnesses. The system is thus utterly insensitive to the rights of the victim. The focus is all on the accused and none on the victim. As in every civilized society, Criminal Justice System is expected to provide the maximum sense of security to the people at large by dealing with crimes and criminals effectively, quickly and legally. The main objective is to reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused persons without delay, awarding appropriate punishments to the convicted to meet the ends of justice.

Ordinarily the prosecution places such evidence as it considers necessary during the trial of the case. The court has no means to know if there is any other evidence which can throw light on truth

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of the case. The victim not being a party has no role to play in the trial except giving evidence as a witness. In the Inquisitorial System the Judge of instructions is a part of the investigating machinery charged with the responsibility of ascertaining truth. In the Adversarial System, the Judge is not a part of the investigating machinery. The victim may have information about the evidence available in regard to commission of the crime. He would also be very much interested in the vindication of justice by securing conviction of the person who has committed the offence. He would be eager to assist the prosecution. Therefore, the victim may be made a party to assist the court in discovering truth.

Victim means a person, who has come to feel helpless and passive in the face of misfortune or ill-treatment, suffered injury, loss or any other type of loss due to any act committed by some other person. In a legal sense victim can be defined as a person, harmed, injured or killed as a result of a crime, accident, or other event and also suffered direct or indirect loss either physical mental, emotional loss due to the act of another person called the offender. They are not associated with any particular type of crime by the name or its nature. At the present in common parlance the term "victim" is understood as with the various types of crimes by the name of such crime such as-Child Victims of sexual abuse, victims of human trafficking, victims of drug trafficking, victims of mass violence, victims of economic offences, victims of acid attack etc.

The Punjab and Haryana High Court held<sup>3</sup> that the word "victim" means not only a person, who has suffered any loss or injury caused by reason of the act or omission of the offender and victim also includes his or her guardian or legal heir. The penal philosophy in India has accepted the concepts of prevention of crime and treatment and rehabilitation of criminals, which we can see by many judgments of the Supreme Court of India and High Courts but victims have no rights under the Criminal Justice System, and the State undertakes the full responsibility to prosecute and punish the offenders by treating the victims as mere witnesses. In 1983, the Supreme Court<sup>4</sup> first time recognized the petitioner's right to claim compensation for illegal detention and for that awarded a total sum of Rs. 35000 by way of compensation.

It is rightly observed by a great Indian legal luminary that "Tears shed for the accused are traditional and 'trendy' but has the law none for the victim of crime, the unknown martyr?"<sup>5</sup>

The Malimath Committee<sup>6</sup> in his report clearly stated that justice for victims and the Indian criminal justice system are inseparable. It stated that victims of a crime have to be participated in the criminal proceedings as the concern of their right and they must be permitted to claim the compensation for the impairment or damage suffered by them. The committee also emphasizes for holistic justice to the victims and has also accurately pointed out that the increase in the number of hostile witnesses over the years is a result of inadequacy of law in protecting the witnesses<sup>7</sup>. After the recommendations of Malimath Committee, the Criminal Procedure Code, 1973 was amended by Parliament and Sections 2(wa)<sup>8</sup> and 357A, was added in Cr. P.C.

Section 5 of the Probation of Offenders Act, 1958 tells about the power of court to direct the offender to pay such compensation as the court thinks reasonable. The Government has established a Central Victim Compensation Fund (CVCF) with an initial corpus of Rs. 200 crores to support to victims of rape, acid attacks, human trafficking and women killed or injured in the cross border firing etc<sup>9</sup>. The UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power contained one of the most important aspects to established norms and minimum standards in international law for the protection of Victims of crime<sup>10</sup>. The UN Declaration recognized four major components of the rights of Victims of crime, Access to justice and fair treatment<sup>11</sup>, Restitution<sup>12</sup>, Compensation<sup>13</sup> and Assistance<sup>14</sup>.

## Conclusion

In every crime only one person is forgotten who is known as the victim of the crime. After the crime it becomes very tough for the victim to live his life in a dignified manner. Every time they spent their life in a trauma. The question of living with proud in front of him remains open. Though the Criminal Justice system of India supports the victims of crimes and provide measures to uplift the victims, yet the victims are not getting adequate security, assistance and also not able to get the right to heard. Apart from this always they have to struggle with a problem that how they will overcome from the impact of crime.

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3. Additional Protocols to the Geneva Conventions of 1949 (1979)
4. International Covenant on Economic, Social and Cultural Rights
5. The Criminal Injuries Compensation Scheme (2008)
6. International Covenant on Civil and Political Rights, 1966

### Statutes:

1. Constitution of India, 1950
2. Code of Criminal Procedure, 1973
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4. The Probation of Offenders Act, 1958

5. The POCSO Act ,2012
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## Footnotes

<sup>1</sup> Manu Smriti Chapter III (Verses 287 and 288)

<sup>2</sup> Article 1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

<sup>3</sup> Article 2. A person may be considered a Victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the Victim. The term "Victim" also includes, where appropriate, the immediate family or dependents of the direct Victim and persons who have suffered harm in intervening to assist Victims in distress or to prevent victimization.

<sup>4</sup> Ram Kaur @ Jaswinder Kaur v. Jagbir Singh AIR 2010 (P&H).

<sup>5</sup> Rudul Sah v. State of Bihar, (1983) 4 SCC 141

<sup>6</sup> Justice Krishna Iyer, Hon'ble Judge, Supreme Court of India in his writing "The Criminal Process and Legal Aid", Published in Indian Journal of Criminology. P.10 available at <http://www.legalservicesindia.com/law/print/8>

<sup>7</sup> Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs, Vol.1, March, 2003.

<sup>8</sup> Prof. N.V. Paranjape: Criminology, Penology, Victimology, Eastern Book Company (2018), p. 763

<sup>9</sup> Criminal Procedure Code, 1973, Section 2(wa) reads: "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir.

<sup>10</sup> Central Victim Compensation Fund Scheme: <https://www.mha.gov.in/document/national-advisories/central-victim-compensation-fund-scheme-cvcf-guidelines>

<sup>11</sup> UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, November 29, 1985.

<sup>12</sup> Id. Clause 4 and 5.

<sup>13</sup> Id. Clause 8 and 11.

<sup>14</sup> Id. Clause 12.

<sup>15</sup> Id. Clause 14 (Part B).