
ACCESS TO JUSTICE FOR VICTIMS OF CRIME IN INDIA: A CONSTITUTIONAL AND COMPARATIVE ANALYSIS

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ABSTRACT

In India, victims of crimes are sometimes left out of the criminal justice system because the system focuses more on punishing the guilty. However, having access to justice is a basic human right. This article looks at the legal basis for victims' rights in India, specifically under Articles 14, 21, and 39A of the Constitution, which ensure equality, the right to life, and the right to legal aid. Even though these rights are in place, victims usually have little say in the legal process, don't get proper support or advice, and are mostly treated as background figures in court cases.

The article also examines important legal tools like the victim compensation scheme, the Legal Services Authorities Act, and the Code of Criminal Procedure. It explores how the understanding of victims' needs has developed over time in India. To assess how far India has come in protecting victims' rights, the article looks at key court decisions and recent policy changes. The essay also offers a comparative analysis with countries where victim rights have developed into a more organised, participatory framework, such as the United States, the United Kingdom, and South Africa. this comparative analysis draws attention to the Indian approach's shortcomings as well as its finest practices.

The article also addresses how organizations like human rights commissions and the National Legal Services Authority (NALSA) help victims get justice. it ends with policy ideas to improve victim-centric justice, such as increased institutional accountability, improved legal aid, and victim impact statements. This article seeks to make a significant contribution to the conversation about victim empowerment in India's justice delivery system by taking a constitutional and comparative viewpoint and by proposing changes that are consistent with international norm.

Introduction

The idea that the rule of law and human dignity rely on people being able to get justice is widely accepted. In India, the Constitution protects these rights through Article 39A, which asks the government to ensure equal justice and provide free legal help.¹ This is supported by Articles 14 and 21 as well.² However, despite these protections, victims of crime are often not given enough attention in both laws and how they are applied. On the other hand, the rights of the accused are well protected in legal procedures.

In Indian law, the study of victims—called victimology—is still a new field. V.N. Rajan describes victimology as “the scientific study of the extent, nature, and causes of criminal victimization.”³ K.I. Vibhute points out that India's criminal justice system is still mostly focused on the criminal, with few protections for the victims' voices, support, or getting things right again.⁴ Mauro Cappelletti and Bryant Garth say that access to justice is the most important human right because it gives meaning to all other rights. In their book *Access to Justice* from 1978, they stress that fairness in the process must reach everyone in society, especially those who are vulnerable.⁵ In India, Justice P.N. Bhagwati, in the case *Hussainara Khatoon v. State of Bihar*, widened the meaning of Article 21 to include fast and fair trials, which helped build a justice system that focuses on the needs of victims.⁶ In this article, the constitutional framework governing victim rights in India is critically examined, and its practical implications are assessed. Using a comparative approach, the study examines models from the US, the EU, and South Africa to find possible changes that could be made to the Indian legal system. Using statutory analysis, victimology literature, legal texts, and seminal rulings, the study makes informed recommendations to strengthen victim access to justice.

1. Constitutional Framework for Victim Rights in India

The Indian Constitution does not directly mention “victim rights,” but it supports the protection of victims through various fundamental rights and directive principles. These constitutional rules are important in making sure that victims are not ignored in the legal system, but are

¹ India Const. art. 39A.

² India Const. arts. 14 & 21.

³ V.N. Rajan, *Victimology in India: An Introductory Study* 3 (Allied Publishers 1981).

⁴ K.I. Vibhute, *Law Relating to Victimology* 45 (Eastern Book Co. 2011).

⁵ Mauro Cappelletti & Bryant Garth, *Access to Justice* vol. 1, at 6 (Sijthoff and Noordhoff 1978).

⁶ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.

treated as people who deserve justice and respect. Article 14 says that everyone, including victims, should be treated equally under the law.⁷ This means victims should not be treated unfairly or ignored by the government. This idea has been supported by legal reports, such as the Malimath Committee Report (2003), which said justice should be focused on the victim.⁸

Article 21, which is about the right to life and personal freedom, covers things like dignity, fair treatment, legal help, and getting justice quickly. In a case called *Bodhisattwa Gautam v. Subhra Chakraborty*, the Supreme Court said that a rape victim has the right to compensation, and that comes from Article 21 itself.

Article 39A is a directive that asks the government to provide equal justice and free legal help. This has been put into action through organizations like NALSA, which help victims get legal advice and support. However, as K. I. Vibhute notes, these services often do not focus enough on the specific needs of victims or provide proper awareness.

Although the courts have used these rights to support victims in some ways, there is still no clear law or constitutional change that guarantees victim rights. While the accused have clearly defined legal rights, victims' rights are not well organized and are still in early stages. This shows that the moral values in India's Constitution, especially the basic rights, require that victims be treated with dignity, allowed to take part in the justice process, and get protection — not just as a kind gesture, but as a right they are entitled to.²

2. Statutory Provisions and Judicial Developments in Victim Rights

Besides the rights given by the Constitution, there are also laws in India that help protect victims' rights. Some of the most important ones are in the Code of Criminal Procedure (CrPC), 1973, and the Legal Services Authorities Act, 1987, along with other initiatives like the Victim Compensation Scheme. Section 357 of the CrPC allows courts to give compensation to victims from the fines collected from the person who did wrong, but only if that person is found guilty and the court decides it's necessary.⁹ In 2009, a new

⁷ India Const. art. 14.

⁸ Government of India, Report of the Committee on Reforms of Criminal Justice System (Malimath Committee Report, 2003), available at: https://mha.gov.in/sites/default/files/criminal_justice_system.pdf [<https://perma.cc/EF2B-5URV>].

rule was added — Section 357A, which requires State Legal Services Authorities to create victim compensation schemes.¹⁰

In the case of *Delhi Domestic Working Women's Forum v. Union of India*, the Supreme Court said that victims need support like compensation, legal help, and recovery — especially for those who were raped.¹¹ The court said these services must be in place and that victims shouldn't have to depend only on kindhearted people. Also, Section 154 of the CrPC now lets victims report crimes through electronic means, especially in cases of sexual violence, thanks to rulings like the *Lalita Kumari v. Government of U.P.* case.¹²

³Even though these laws are in place, they are not always followed properly. K.I. Vibhute points out that although laws have changed on paper, victims still don't get much say in legal processes, like being heard when someone is granted bail or sentenced.¹³

3. Institutional Support and Statutory Bodies for Victim Justice in India

India has established a number of significant institutions and statutory authorities to assist victims in obtaining justice and legal services. Human Rights Commissions, Women's Commissions, State Legal Services Authorities (SLSAs), District Legal Services Authorities (DLSAs), and the National Legal Services Authority (NALSA) are a few of these. They are crucial in offering free legal assistance, restitution, therapy, housing, and rehabilitation.

NALSA, a national organization established under the Legal Services Authorities Act of 1987, works to guarantee that no one is denied justice because of financial or other limitations.¹⁵ In addition to supporting victim compensation programs under Section 357A of the CrPC, NALSA operates programs for victims of sexual violence, domestic abuse, trafficking, and acid attacks. In addition to supporting victim compensation programs under Section 357A of the CrPC, NALSA operates programs for victims of sexual assault, domestic violence, trafficking, and acid attacks. SLSAs and DLSAs carry out these programs at the state and district levels,

⁹ Code of Criminal Procedure, 1973, § 357.

¹⁰ Code of Criminal Procedure, 1973, § 357A (inserted by Act 5 of 2009).

¹¹ *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14.

¹² *Lalita Kumari v. Government of U.P.*, (2014) 2 SCC 1.

¹³ K.I. Vibhute, *Law Relating to Victimology* 98 (Eastern Book Company, 2011).

operate legal aid clinics, and organize awareness campaigns in rural, jail, and school settings. Numerous NALSA evaluation reports, however, demonstrate that these organizations frequently struggle with inadequate staff training, a lack of resources, and a lack of coordination.¹⁶

Monitoring violations and suggesting reparations for significant offenses, particularly those involving custodial fatalities, police abuse, and violations by public authorities, are important tasks for the National Human Rights Commission (NHRC).¹⁷ Similar to this, the National Commission for Women (NCW) and State Women's Commissions offer fast-track recommendations, legal aid, and counseling to victims of gender-based offenses.^{18 4}

4. Comparative Analysis: Global Approaches to Victim Rights

In most nations, victims have moved from being passive witnesses to active stakeholders in the criminal justice system. A comparative examination of the United States, South Africa, and the European Union shows how India can enhance its model by incorporating more structured and rights-oriented models for victims.

United States

The development of victim rights in the United States exemplifies effective grassroots advocacy resulting in institutional reform. Before the 1970s, victims didn't play a big role in the justice system. But as the Victims' Rights Movement grew, with groups like the National Organization for Victim Assistance (NOVA) and Mothers Against Drunk Driving (MADD) at the forefront, states started to make it official that victims could take part.

The 2004 Crime Victims' Rights Act (CVRA) changed the way the federal government works. It made a bill of rights for victims official, giving them the right to be heard, the right to timely notice of proceedings, and the right to talk to prosecutors. The Department of Justice has a Victim Notification System (VNS) to keep victims informed, and almost every federal office has victim advocates on staff.

¹⁵ The Legal Services Authorities Act, 1987, § 3.

¹⁶ NALSA, *Annual Report 2021–22*, available at <https://nalsa.gov.in>.

¹⁷ The Protection of Human Rights Act, 1993, §§ 12, 18.

¹⁸ National Commission for Women, *Annual Report 2021–22*, <https://ncw.nic.in>.

The Victims' Rights Movement in the United States took place in the 1970s, which culminated in the Crime Victims' Rights Act, 2004 (CVRA). Here, victims are given rights under the law to:

- Be informed
- Be present at all phases
- Be heard at sentencing and parole
- Seek restitution.

A few U.S. states have gone so far as to enact Victims' Rights Amendments to their constitutions. These allow victims to lodge complaints when their rights are breached, something which at present does not exist in Indian law.

What is especially strong in the U.S. model is procedural standing: if victim rights are not considered, they can go to a federal appellate court on a writ of mandamus. This enhances enforceability. Victim impact statements also have to be given at sentencing for violent crimes — a tool that not only personalizes the victim's narrative but affects judicial outcomes. Several other states have also passed Marsy's Law, which aims to strengthen protections for victims by placing them on a co-equal footing with the rights of the accused.

South Africa

Post-apartheid South Africa did much to advance social justice, and that of victims of crime. The Victims' Charter (2004) rests on constitutional guarantees of equality and dignity under Sections 9 and 10 of the South African Constitution. The Charter enumerates seven victim rights specifically:

- Right to be treated equally and with dignity
- Right to give information and take feedback
- The right to protection
- The right to legal counsel

- The right to restoration and compensation
- Right to care and assistance services

The right to redress through complaints procedures. The Department of Justice and Constitutional Development, the National Prosecuting Authority, and the South African Police Service (SAPS) are the entities that administer the Charter and all have victim support units. Restorative justice is also promoted in South Africa, especially through community justice forums and diversion. Victims are involved in mediation with the offender to talk about the harm caused and to agree on restitution — highly successful with juveniles and property offenses. This aligns with African customary justice principles and promotes healing in the community. Besides, victim impact statements are also on the increase in the South African courts, and victims also get a chance to testify before parole

European Union-

The Directive 2012/29/EU is a binding instrument that revolutionized victim rights across all member states of the EU. It gives a general definition of a "victim," including the indirect victims (e.g., the relatives of a murdered victim) and addresses procedural rights and support services. The principal rights under this Directive are:

- Right to know and be known (translations and simplified information)
- Right to receive information from the first contact with authorities
- Right of interpretation and translation
- Right to access victim support services free of charge
- Right to participate actively in any stage of proceedings
- Right not to look at the offender
- Right to protection of privacy
- Right of appeal against a refusal to prosecute

- The Directive also places focus on individual victim need assessment, with specific vulnerabilities emphasized (e.g., children, disabled individuals, victims of sexual assault).

Germany, France, and Sweden have gone beyond the minimum. France's Code of Criminal Procedure, for example, allows victims (parties civiles) to initiate criminal proceedings on their own, "private prosecution". Victims of serious crime in Germany are afforded legal representation at public expense and can even appeal acquittals in some cases.

Further, the EU has promoted the utilization of e-Justice tools, where cross-border victims are helped through multilingual portals, complaint filing, and monitoring of compensation claims.

What India Can Learn

The comparative analysis of the United States, South Africa, and the European Union reveals several strengths in the legal systems from which India can learn to design a more victim-centered, inclusive justice system. With contextual sensitivity, these lessons will play a valuable role in enhancing access to justice for victims in India.

1. Consolidation of Victim Rights in a Single Statute

One of the most urgent reforms India requires is the enacting of victim rights into a distinct law, such as the Crime Victims' Rights Act (2004) in the United States or the Victims' Charter (2004) in South Africa. Such legislations enact and implement a stated list of participatory and procedural rights, making victims to be heard not as informants but as legitimate stakeholders in the justice process.???? Indian rights of victims are scattered over a number of provisions — Constitution articles 14, 21, and 39A, CrPC sections 357 and 357A, and judicial interpretations. It is an incoherent patchwork system that is not transparent or accountable.

2. Finding the Right to Participate

India's criminal procedure remains accused-centric with minimal procedural space provided to the victim. The U.S. CVRA and EU Directive 2012/29/EU, on the other hand, provide victims with clear rights to: Take note of proceedings, Be present during hearings, and be heard on bail, sentencing, and parole hearings. Indian victims are mostly excluded from plea bargains and sentencing proceedings. Although Section 301 and 302 CrPC allow victims to assist

prosecutors or to retain a private lawyer, it must be sanctioned by the court and is effectively never applied. India should grant automatic participatory rights to victims in all serious offenses — most importantly, at the time of bail proceedings, framing of charges, and sentencing — without specific court orders.

3. Institutionalize Victim Impact Statements

Victim Impact Statements (VIS) allow victims to explain in their own words how their life was affected by the crime, emotionally, physically, and financially. VIS personalize the criminal process, inform sentencing, and offer a therapeutic function for the victim. Indian courts do make occasional reference to VIS in cases related to sexual violence or juvenile justice, but there is no official or standardized mandate to do so. The application of compulsory VIS in serious and violent crime cases would align Indian practice with international practice.

4. Ensure Victim Rights Enforceability

The most striking aspect of the U.S. model is that the victims can appeal a writ of mandamus to courts of appeal in case their rights have been infringed. EU member states provide the victims with a right to appeal a refusal to prosecute, thus empowering them where the State defaults. Victims in India have no enforceable remedy if they are denied legal aid, if compensation is delayed, or if they are not even considered during prosecution. The law shall institute remedies, sanctions, or the right to complain to a Victim Rights Ombudsman, modeled after NHRC or NCW, with quasi-judicial powers.

5. Challenges to Accessing Justice for Victims in India

1. Insufficient Legal Standing

Victims must rely on the State prosecutor and are not considered parties to the proceeding. Despite the fact that Sections 301 and 302 CrPC permit private involvement, victims can only take action with the court's approval, and even then, the public prosecutor has priority. This reduces the victim's influence over sentence, bail, and plea negotiations.

2. Inadequate Compensation Scheme Implementation

Despite the fact that victim compensation is required by Section 357A of the CrPC, NALSA's

yearly reports continuously demonstrate underutilization of funds, protracted delays, and a lack of aggressive outreach. Tribal and rural victims are particularly ignorant of the existence of such schemes.

3. Authorities' Secondary Victimization

Police officers and medical personnel frequently handle victims insensitively. Particularly in situations involving sexual offenses, investigations are either mismanaged or delayed. Numerous victims claim that they are deterred from submitting FIRs or that they are interrogated in hostile settings without receiving legal or counseling assistance.

4. Insufficient Knowledge and Instruction

Victims frequently are unaware of their rights, particularly those who belong to oppressed groups including women, children, Dalits, and LGBTQ+ people. There are few legal literacy initiatives, and the majority of the resources are not accessible in simpler formats or in local languages.

5. No Right to Review or Appeal

The victim has no legal recourse if the case is dropped, withdrawn, or results in an acquittal. Particularly when the State does not vigorously pursue prosecution, this produces a profound sense of injustice.

6. Lack of Infrastructure for Victim Support

India does not have court-based victim support services like the US or the EU have. Most courts lack legal navigators, psychological counselors, or professional victim coordinators. This leaves victims to handle the convoluted legal system by themselves.

Conclusion

The principle of access to justice is central to any democratic jurisprudence. While the Indian Constitution guarantees equality, dignity, and legal assistance under Articles 14, 21, and 39A, the ground reality for victims of crime is dismal. In spite of the presence of enlightened judicial judgments and legislation like Section 357A of the CrPC and NALSA's victim compensation

schemes, Indian law is heavily tipped in the favor of the accused, with the victim being relegated to a marginal position, delayed justice, and poor institutional facilitation

The comparative analysis of the United States, South Africa, and the European Union shows that a more formal, rights-based, and enforceable system is not only viable but also indispensable. Victim participation, protection, compensation, and enforceable remedies must be guaranteed by law—not discretion or charity. India must now move beyond stand-alone legal provisions and judicial activism and adopt a consistent, victim-centered legal approach.

This consists of enacting victims' rights by law, making their participation mandatory, making restorative justice institutionalized, and providing victims standing to be heard and to claim redress.

True access to justice entails more than punishing the criminals—it entails recognition, healing, empowerment, and justice to the victims. Only then can India's criminal justice system proudly claim to adhere to the values of constitutional morality, human dignity, and equal justice to all.