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## RIGHTS OF THE VICTIMS: A SOCIO-LEGAL STUDY

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### ABSTRACT

The evolution of criminal justice systems globally has witnessed a paradigm shift from a purely state-centric, retributive model to one increasingly sensitive to the rights and rehabilitation of victims of crime. In India, this shift has been catalyzed by judicial activism and legislative reforms, most notably the landmark Code of Criminal Procedure (Amendment) Act, 2008, and the Victim Compensation Scheme under Section 357A CrPC. However, a significant gap persists between the *de jure* recognition of victim rights and their *de facto* realization on the ground. This research article presents a socio-legal study examining this implementation gap and socio-economically diverse region encompassing urban, peri-urban, and rural landscapes. Through an analysis of legal frameworks, secondary data from the National Crime Records Bureau (NCRB), case law, and scholarly literature, this study investigates key areas: the accessibility and awareness of victim compensation schemes, the practical enforcement of the right to participate in trials (e.g., through victim impact statements), and the challenges of witness protection and rehabilitation. The findings indicate that victims, particularly women, children, and marginalized communities, face multifaceted barriers including bureaucratic inertia, lack of legal awareness, socio-economic vulnerability, and infrastructural deficits within the justice machinery. The article concludes that effective victim justice requires a convergent, multi-stakeholder approach involving sensitization of police and judiciary, simplification of procedural formalities, and the development of robust, well-funded support services at the district level to translate statutory rights into tangible relief and empowerment.

**Keywords:** Victim Rights, Victim Compensation, Code of Criminal Procedure, Socio-Legal Study, Criminal Justice Reform.

## 1. Introduction

The position of the victim within the architecture of the Indian criminal justice system has historically been peripheral, often reduced to the role of a mere informant or a piece of evidentiary testimony for the state's case against the accused. The traditional model, encapsulated in the adage "*crime is an offence against the state,*" effectively sidelined the individual who suffered the most direct and personal harm, treating them as incidental to the state's sovereign prerogative to punish (Baxi, 2014). This state-centric, adversarial model, inherited from the colonial-era Code of Criminal Procedure (CrPC) of 1898, created a system where the victim's quest for justice, restitution, and emotional closure was secondary to securing a conviction. The victim's agency was systematically erased; they had no formal right to legal representation during trial, no guaranteed participation in proceedings, and compensation was a rare judicial afterthought rather than an enforceable entitlement (Chokalingam, 2009). This architecture rendered the victim a passive spectator in a legal drama ostensibly staged on their behalf, often leading to secondary victimization through protracted, insensitive procedures.

However, the latter half of the 20th century witnessed a profound global paradigmatic shift. The rise of the victims' rights movement, particularly in Western jurisdictions, challenged the orthodox exclusion of victims from justice processes (Maguire, 1991). This crystallized in international law with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), which explicitly outlined rights to access justice, fair treatment, restitution, compensation, and assistance. In India, this normative shift was catalysed not by immediate legislative reform but by progressive judicial activism. The Supreme Court of India, through a series of landmark judgments, began an expansive reinterpretation of the right to life and personal liberty under Article 21 of the Constitution. In cases like *Rudal Shah v. State of Bihar* (1983), the Court awarded compensation for state failure, recognizing a victim's right to remedy. Later, in *Delhi Domestic Working Women's Forum v. Union of India* (1994), it laid down broad guidelines for victim support in rape cases, underscoring the state's positive obligation. This jurisprudential evolution framed the victim's right to a speedy trial, fair investigation, and dignity as integral to Article 21 (Chokalingam, 2009). This judicial momentum provided the critical impetus for legislative change, culminating in two key milestones: the recommendations of the Justice Malimath Committee on Reforms of Criminal Justice System (2003), which strongly advocated for victim-centric reforms, and the

subsequent Code of Criminal Procedure (Amendment) Act, 2008, which sought to rebalance the scales by formally introducing statutory victim compensation and participatory rights into the procedural code.

This research article aims to critically analyse the intersection of law and society concerning victim rights. It seeks to move beyond a doctrinal analysis of statutes to empirically investigate the socio-structural and institutional filters that determine how, and for whom, these laws operate. The study is guided by the following interconnected research questions:

1. What is the legal and policy framework governing victim rights in India, and how has it evolved from a state-centric, retributive model to a more victim-inclusive, restorative-oriented one?
2. What is the primary socio-structural (e.g., poverty, gender, caste, remoteness), cultural (stigma, community pressure), and institutional (police apathy, judicial backlog, inefficacy of legal aid) barriers that impede the effective implementation of these rights?
3. Based on the identified gaps, what concrete, context-sensitive measures and multi-stakeholder policy interventions can be proposed to bridge the chasm between legal entitlements and their practical realization for victims in this heterogeneous district?

By addressing these questions, this study will contribute a grounded, district-level perspective to the national discourse on criminal justice reform. It will offer evidence-based recommendations for strengthening the justice delivery ecosystem at the local level, aiming to transform victims from passive subjects of the state's punitive action into active rights-holders within a more humane and effective system.

## **2. The Legal Framework for Victim Rights in India**

The legal framework governing victim rights in India has undergone a transformative, albeit uneven, evolution—from a system of scant and discretionary provisions rooted in a colonial, state-centric model to one that increasingly acknowledges victims as rights-bearing participants in the justice process. This evolution is not the product of a single legislative act but of a dynamic, decades-long interplay between constitutional interpretation, judicial innovation, and eventual, often reactive, legislative codification (Chokalingam, 2009). This triadic

development reflects a gradual, contested shift from viewing crime purely as a public wrong requiring state vengeance to acknowledging it as a personal trauma demanding redress, restitution, and recognition.

## 2.1 Constitutional Foundations and Judicial Activism

The Indian Constitution of 1950, while a transformative document guaranteeing fundamental rights, did not explicitly enumerate rights for victims of crime. Its primary focus was on protecting individuals from state excesses (rights *against* the state) and establishing the procedural rights of the accused, as seen in Articles 20 and 22. The victim remained a spectre in the constitutional text, their welfare seemingly relegated to the unenforceable Directive Principles of State Policy.

It was through judicial activism, particularly via the instrument of Public Interest Litigation (PIL), that the Supreme Court of India ingeniously bridged this constitutional silence. The Court performed a radical reinterpretation of Article 21, which states, "No person shall be deprived of his life or personal liberty except according to procedure established by law." In a landmark expansion, the Court in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi (1981)* held that the right to life is not confined to mere animal existence but includes the right to live with human dignity. This purposive interpretation became the jurisprudential springboard for deriving a comprehensive suite of victim rights, transforming Article 21 into a source of positive state obligations towards those harmed by crime or state failure (Satish, 2014).

From this foundational principle, the Court deduced a bundle of specific, enforceable rights for victims:

**The Right to a Speedy Trial:** In *Hussainara Khatoon v. State of Bihar (1979)*, the Court confronted the scandal of undertrial prisoners languishing in jail for periods longer than the maximum sentence for their alleged offences. It held that a speedy trial is an intrinsic part of Article 21. For victims, this right is not merely procedural; prolonged delays deny closure, force repeated traumatic court appearances and can lead to the erosion of evidence and witness testimony, effectively denying justice ("justice delayed is justice denied").

**The Right to a Fair Investigation and Trial:** The Court extended the guarantee of fairness

beyond the accused to encompass the victim's experience. In *State of Punjab v. Gurmit Singh (1996)*, a case involving the rape of a minor, the Court laid down guidelines to protect victims from hostile and humiliating courtroom procedures. It emphasized that the victim's testimony must be treated with sensitivity, and the environment of the trial must not amount to a second assault. This right implies a duty on the state to create conditions where the victim can participate without fear or intimidation (Baxi, 2014).

**The Right to Compensation:** Perhaps the most radical judicial innovation was the creation of a constitutional tort—holding the state monetarily liable for violations of fundamental rights. In *Rudal Shah v. State of Bihar (1983)*, the Court awarded compensation to a man illegally detained for 14 years after his acquittal, declaring that Article 21 would be a mere “paper promise” without this remedy. This was powerfully reaffirmed in *Nilabati Behera v. State of Orissa (1993)*, where compensation was awarded for a custodial death, distinguishing it from private law damages and establishing it as a public law remedy for the state’s failure to protect. This jurisprudence established that compensation is not charity but a victim’s constitutional right when the state’s apparatus fails or when the crime results in a severe infringement of dignity.

The judiciary’s most profound conceptual contribution was redefining the very telos of a criminal trial. In the landmark case of *Zahira Habibulla H. Sheikh v. State of Gujarat (2004)*, concerning the mass miscarriage of justice in the Best Bakery case, the Supreme Court authoritatively declared that a “fair trial...would entail the triangulation of interests of the accused, the victim, and the society.” This formulation was revolutionary. It dismantled the simplistic binary of “State vs. Accused” and formally inscribed the victim as the third indispensable vertex in the justice triangle (Gangoli, 2016). The victim’s interest in truth, reparations, and participation was now constitutionally recognized as a legitimate component of societal interest, not subordinate to it. This judicial philosophy, crafted over three decades, effectively laid the indispensable constitutional and normative groundwork. It created the pressure and provided the blueprint for Parliament to eventually codify victim-centric reforms through legislative amendments, moving from judicial doctrine to statutory right.

## 2.2 Statutory Provisions under the Code of Criminal Procedure, 1973

The **Code of Criminal Procedure, 1973 (CrPC)** remains the primary procedural statute governing criminal justice in India. For decades, its architecture was overwhelmingly tilted

towards defining the rights of the accused and the powers of the state, with the victim occupying a marginal, procedural role. The watershed **Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009)**, enacted largely in response to judicial directives and recommendations like the Justice Malimath Committee Report (2003), sought to recalibrate this imbalance. This amendment inserted victim-centric provisions that now form the core statutory architecture for victim rights, transitioning from judicial benevolence to legally enforceable entitlements.

### **A. The Compensation Framework: From Discretionary Relief to a Structured Right**

The pre-2008 statutory landscape for victim compensation was defined by the archaic and grossly inadequate Section 357 of the CrPC, which empowered a court, only upon securing a conviction, to direct that a portion of the recovered fine be paid to the victim, creating a framework that was fundamentally symbolic due to its threefold failure: it was conviction-centric, leaving victims of acquitted or unidentified offenders with nothing; fine-dependent, tethering compensation to often nominal fines in serious crimes where imprisonment was the primary punishment; and purely discretionary, leading to inconsistent application and a complete inability to address victims' immediate and long-term needs for medical care, rehabilitation, and livelihood support (Chokalingam, 2009).

### **Section 357A: A Watershed Provision for Victim Compensation Schemes**

The insertion of Section 357A of the CrPC marked a transformative paradigm shift by imposing a positive obligation on the state and establishing a structured, victim-centric mechanism through the mandatory creation of state-led Victim Compensation Schemes (VCS), which fundamentally redefined compensation as a right independent of prosecution outcomes by allowing awards even where the offender is unconvicted or unidentified, thereby addressing critical gaps in cases of acquittal, unsolved crimes, or juvenile offenders; it innovatively provided for immediate interim relief to cover urgent medical and rehabilitation costs, acknowledging that delayed relief constitutes denied justice, and it designated the District Legal Services Authority (DLSA) for quasi-administrative adjudication, aiming to create a more accessible, less intimidating, and expedited process outside the adversarial courtroom (Gangoli, 2016; Satish, 2017; Kumar, 2015).

## **B. Rights to Participation and Representation: From Invisibility to Presence**

The 2008 amendments to the CrPC statutorily embedded the victim's voice within the criminal justice process, marking a decisive shift from institutional invisibility to recognized presence through three key provisions: the right to be heard on bail for specified serious offences (Section 439(1A)), acknowledging the victim's security concerns; the transformative right to file an appeal against acquittal, conviction for a lesser offence, or inadequate sentence (Proviso to Section 372), empowering victims as active stakeholders to challenge unjust outcomes; and the right to engage a private pleader to assist the prosecution (Section 301(2)), ensuring specialized representation; however, a critical legislative gap persists in the absence of a statutory right to present a Victim Impact Statement during sentencing, leaving this vital opportunity for conveying the full scope of harm to judicial discretion despite the post-facto appellate remedy (Singh, 2020).

### **2.3 Special Legislation: Parallel Victim-Centric Frameworks**

Beyond the general provisions of the CrPC, India has enacted a corpus of special legislation designed to address the specific vulnerabilities of particular victim groups. These laws create parallel, and often more robust, legal frameworks that operate alongside the CrPC. They reflect a legislative recognition that a "one-size-fits-all" approach is inadequate for victims of domestic violence, caste-based atrocities, or child sexual abuse. However, this multiplicity also generates a complex, multi-layered legal landscape that can be challenging for victims and practitioners to navigate.

#### **A. The Protection of Women from Domestic Violence Act, 2005 (PWDVA)**

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) represents a radical, victim-centric departure from punitive criminal law by establishing a comprehensive civil mechanism focused on protection, economic relief, and preserving the victim's right to residence, offering a holistic suite of orders—including protection orders, residence orders, monetary relief, and compensation for trauma—and creating an innovative support infrastructure through state-appointed Protection Officers and formally recognized NGO Service Providers, while granting the victim direct agency as the primary applicant; however, its transformative potential is critically undermined in practice by chronically under-resourced Protection Officers, pervasive lack of awareness, and judicial attitudes that often

mischaracterize it as a private “family dispute” rather than a serious rights violation (Ghosh & Choudhuri, 2011; Agnes, 2020).

### **B. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (PoA Act) & Rules, 1995**

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (PoA Act) and its accompanying Rules of 1995 recognize caste-based crimes as instruments of social subjugation and establish a framework that is both deterrent, through enhanced punishments and strict procedural safeguards, and explicitly restorative, most notably by mandating a comprehensive right to compensation that includes immediate interim relief within seven days of an FIR, standardized final compensation amounts to eliminate judicial discretion, and restorative components for economic rehabilitation, while imposing direct administrative accountability on District Magistrates for disbursement—a level of structured victim-centric provision often absent in the general criminal procedure (Kannabiran, 2012).

### **C. Legislation for Child Victims**

Special legislation for child victims, namely the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Juvenile Justice (Care and Protection of Children) Act, 2015, explicitly recognizes the unique vulnerability of children by instituting child-friendly procedures—such as recorded testimony in a supportive environment and the accompaniment of a support person—and by mandating compensation and rehabilitation through state mechanisms and specialized bodies like Child Welfare Committees; however, the efficacy of these provisions is often undermined by systemic failures, such as the frequent non-adherence to POCSO’s mandated one-year trial timeline, which exacerbates the child’s trauma (Mazumdar, 2018).

#### **3.1 Awareness and Accessibility of the Victim Compensation Scheme (VCS)**

India’s Victim Compensation Scheme (VCS), established under Section 357A of the Code of Criminal Procedure, represents a legislative promise of restorative justice. However, in practice across many states and districts, this promise remains largely theoretical, obstructed by a formidable triad of barriers: profound informational asymmetry, a labyrinthine bureaucratic process, and systemic inefficiencies in fund disbursement. These barriers collectively ensure

that the scheme often fails to reach its most intended beneficiaries—the poor, the marginalized, and the geographically isolated.

### **A. Profound Awareness Deficit: The First and Foremost Barrier**

The most fundamental impediment to accessing the Victim Compensation Scheme (VCS) is a profound and stratified awareness deficit, where a near-total lack of knowledge about the Scheme's existence and provisions follows the district's socio-geographic fault lines, leaving rural and peri-urban populations—as evidenced by a study showing over 80% unaware in the industrial belt—reliant on informal and often exploitative community mediation, disproportionately impacting marginalized SC, ST, religious minority, and migrant labourer communities who, due to lower literacy, limited media access, and institutional distrust, view the VCS as an abstraction, a situation exacerbated by the systemic failure of official outreach from both the District Legal Services Authority and the police, who are frequently ill-informed and perceive their duty as ending with FIR registration rather than victim empowerment (Paschim Banga Garment Shramik Union, 2022; Kumar & Das, 2021; Sarkar, 2020).

### **B. Complex and Intimidating Process: Bureaucracy as a Deterrent**

For the minority of victims who become aware of the Victim Compensation Scheme, the application process itself functions as a formidable bureaucratic deterrent, prioritizing administrative convenience over victim access through onerous documentary hurdles—such as obtaining certified FIR copies and detailed medico-legal reports from often uncooperative police stations and remote hospitals—coupled with the daunting geographic and psychological barrier of physically navigating the formal, intimidating environment of the distant DLSA office in Barasat, all without the crucial support of dedicated victim welfare officers or paralegal volunteers to provide step-by-step guidance, thereby placing the entire burden of navigation on the traumatized individual and transforming the quest for justice into a secondary ordeal (Nandi & Bhowmick, 2019; State Legal Services Authority, West Bengal, 2020).

### **C. Inadequate and Delayed Disbursement**

Even when victims overcome the formidable barriers of awareness and bureaucratic application, the Victim Compensation Scheme ultimately fails its restorative purpose due to statically fixed and grossly inadequate compensation amounts that ignore inflation and the

long-term costs of severe trauma, endemic disbursement delays of 18 months to three years that nullify the urgency of interim relief, and a complete lack of transparency and grievance redressal, collectively creating a hollow promise that demands high legal consciousness and perseverance from individuals in crisis, thereby functioning as a rights-based policy whose implementation is engineered to fail its primary stakeholders (Gangoli, 2016; Paschim Banga Garment Shramik Union, 2022).

#### **4. Conclusion**

The journey towards meaningful victim justice in India represents a profound normative shift—from a state-dominated, retributive paradigm focused on punishing the offender to a restorative, rights-based model that centers the dignity, participation, and recovery of the victim. As this socio-legal study demonstrates, the staggering socio-economic diversity, complex crime profile, and overburdened institutions, serves as a critical microcosm of this national transition. It epitomizes both the substantive progress codified in law and the glaring implementation chasm that renders these rights theoretical for a vast majority of its citizens. The post-2008 legal framework, encompassing the amended CrPC, the Victim Compensation Scheme, and special statutes like the PWDVA and PoA Act, provides a formidable and progressive toolkit (Chokalingam, 2009; Gangoli, 2016).

This research has elucidated that the impediments are not merely administrative but are deeply embedded in the district's socio-structural fabric. Poverty and illiteracy, particularly in the rural hinterlands and Sundarbans, prevent victims from navigating complex legal processes. Gender inequality and social stigma silence survivors of sexual violence, while caste-based hierarchies continue to intimidate victims from seeking redress under the PoA Act (Kannabiran, 2012; Ghosh & Choudhuri, 2011). Concurrently, institutional overload—manifest in under-resourced police stations, a backlogged judiciary, and an underperforming DLSA—creates a system where procedural delays themselves become a form of secondary victimization, stripping statutory rights of their practical utility (Kumar & Das, 2021; Sarkar, 2020).

Therefore, the path forward cannot rely solely on top-down legislative diktats. It necessitates localizing solutions and building a victim-centric ecosystem from the ground up. This demands a fundamental re-engineering of district-level institutions. The District Legal Services Authority (DLSA) must be transformed from a passive aid provider into a proactive

Victim Justice Centre, spearheading awareness, guidance, and support. The Judiciary and the Police require not just sensitization but also a reorientation of their core mandate to include victim welfare as a key performance indicator, measured not only by conviction rates but by victim satisfaction and restitution outcomes.

Ultimately, achieving meaningful justice in India hinges on a paradigm shift in perspective: viewing the victim not as a passive beneficiary or a piece of evidence, but as a central, rights-bearing stakeholder in the justice process. This means institutionalizing their voice at every stage—from bail hearings to sentencing—through mechanisms like victim impact statements and ensuring their safety through a functional witness protection cell. For the relentless energy, cultural richness, and stark contrasts, translating this vision into reality is an urgent imperative. Doing so would do more than streamline legal processes; it would affirm the constitutional promise of justice—social, economic, and political—for its most vulnerable citizens, thereby strengthening the very foundations of the rule of law and democratic governance in one of India's most dynamic and challenging regions.

## **5. Recommendations:**

The journey toward meaningful victim justice in India necessitates a decisive shift from a retributive, state-centric model to a restorative, rights-based paradigm, where a progressive legal framework is systematically undermined by deep-seated socio-structural barriers, including poverty, illiteracy, gender and caste hierarchies, and crippling institutional overload. To bridge this chasm, a localized, multi-pronged strategy is imperative: transforming the District Legal Services Authority into an active Victim Justice Centre with dedicated support units; establishing a functional Witness Protection Cell to combat intimidation; implementing mandatory, trauma-informed training for police and judiciary; leveraging technology through a district-wide victim tracking portal; fostering institutional convergence via a high-level committee; and fundamentally revising the Victim Compensation Scheme to ensure adequate, timely, and directly transferred funds. Ultimately, this blueprint demands a fundamental reorientation—viewing the victim not as a passive object of the state's punitive action but as a central stakeholder whose dignity, participation, and restoration are the core objectives of justice, thereby affirming the constitutional promise for the district's most vulnerable citizens and strengthening the rule of law itself.

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