

An Analysis of the Legal and Policy framework for Victims' Rights in Criminal Proceedings in India

Table of Contents

Abstract	1
Introduction	2
Legal and Policy Framework Analysis	4
1. The Constitution of India and Fundamental Rights	4
2. Criminal Procedure Code (CrPC)	5
2.1 Provisions for Victim Participation	5
2.2 Challenges and Limitations	6
3. Victim Compensation Scheme	9
3.1 Legal Provisions and Implementation	9
3.2 Adequacy and Accessibility of Compensation	11
4.1 Witness Protection Measures	14
4.1 Legislative Framework and Mechanisms	14
4.2 Efficacy and Challenges	15
Comparative Analysis	18
Policy Gaps and Recommendations	19
Conclusion	23
References	23

Abstract

From Miranda rights in the United States to the right to remain silent in various democracies, many laws and provisions are available to protect the accused during the proceedings. A very less discussed issue has always been the rights of victims during criminal proceedings.

There were a total of 60,96,310 cognizable crimes registered in 2021 under the Indian Penal Code(IPC) and Special and Local Laws(SLL) crimes. It also implies that the cases registered will also have many or even more numbers of people who became victims of various crimes in India. In 2021, according to the National Legal Service Authority, only 7851 applications for interim compensation and 8832 applications for final compensation were disposed of, among which most of the compensation was awarded to women under cases of acid attacks and sexual offences.

In India, though we have provisions for victims' rights protected under the constitution, Code of Criminal Procedure, and other statutes. Victims face various challenges at every step during criminal proceedings and the victim's rights and rehabilitation who had to live with the repercussions of crime are woefully disregarded.

This paper will critically analyze the legal and policy framework for victims' rights in India. Also, a comparative analysis of various countries worldwide will aid in assessing various unique mechanisms and the need for their utilization to enhance the rights of victims in India. It will also study the challenges faced by the victims in India's criminal justice system and provide policy recommendations.

Introduction

There are basically two types of justice systems: inquisitorial and adversarial. In the inquisitorial system, the investigation is supervised by the magistrate which is an efficient way and leads to a high conviction rate. In contrast, an adversarial system is a fair trial, wherein both parties get to prove and support their argument which implies that the conclusion is based on the evidence available, and in the absence of such evidence judgment will be in the favor of the accused. India follows an adversarial system to promptly address the issues of a large population. In such an adversarial system though the accused has the right against self-incrimination, there is also a provision of plea bargaining (plead guilty to get a lesser sentence or punishment) which exactly contrasts the former. The background of our justice system since independence shows that focus has majorly been given to the accused and their rights, safety, and basic needs are taken care of by the authority itself. Whereas, the person whose rights are violated, who has suffered harm has been neglected and taken for granted. The legal justice system has gradually evolved with consideration to victim-oriented reforms. Though the rights of the victims procured prominence and various pro-victim provisions were advocated and enforced. The presence of such provision barely solves the concerns of victims as at the ground level the victims nonetheless encounter hardships and are unaware about their

rights. In many cases, even the local authorities are not aware of victim-protection provisions and how to treat the victims with dignity.

*“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, it overlooks the by-product of crime i.e. the victims”*¹ -**V R Krishna Iyer**

It is the fundamental duty of the State machinery to protect, deliver justice, and compensate the victim as it failed to adequately protect them from victimization. The judiciary plays a crucial role in ensuring a fair and speedy trial to gain the trust and confidence of the victims. In **P. Ramachandra Rao v. State of Karnataka**,² it was realized that it is important to pay attention to the victims, and if left ignored they can resort to vengeance and pose a threat to the maintenance of the rule of law thereby disrupting the law and order of democracy. The **154th Report of Law Commission** dedicated an entire chapter to Victimology, where victim's rights in criminal cases were given prominence and compensation was proposed as a widely accredited method to offer immediate support to the victim which also extended to the family of the victim.³

Scope of Victims' Rights

Though it took too long for the world to recognize the rights of the victim, victims' rights do not exist independently of the criminal process. Each victim differs concerning the harm or injury done to them and has different restorative needs.

Much before the United Nations or other developed nations legislated for the protection and development of the rights of victims, the Supreme Court in **Rattan Singh vs. State of Punjab**,⁴ lamented against the utter ignorance of victims in our justice system that, *“The victimization of the family of the convict may well be a reality and is regrettable. It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependents of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law! This is a deficiency in the system which must be rectified by the Legislature. We can only draw attention to this matter. Hopefully, the Welfare State will bestow better thought and action to traffic justice in the light of the observations we have made.”*

The notion of rights of the victims is comprehensive covering a variety of rights such as the right to participate in judicial proceedings, the right to avail compensation, rehabilitation, protection, etc. The concept of the victim is defined under **Section 2 (wa) of the Criminal Procedure Code (CrPC)**, *‘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’*.⁵

¹ V. R. Krishna Iyer: Access to Justice- A case of Basic change (1991) p.14

² JT 2002 (4) SC 92

³ [154th Report of Law Commission](#)

⁴ 1980 AIR 84

⁵ [Section 2 \(wa\) of CrPC](#)

One prime matter that needs to be jotted down is the commonalities between human rights and victims' rights. The former development of human rights primarily took place to curb the abuse of power and protect the rights of individuals and groups that occurred in the past times (such as the nazi regime, colonization, slavery, and world war) which also implies that the evolution of human rights took place to protect victims of such abuses. If we glance through the provisions of human rights, it has provisions for the accused who has committed the crime but does not include any provisions for the victims of crime.⁶ Victims directly experience crime, which also constitutes a violation of their human rights. It illustrates the need to acknowledge victims firstly as humans before the law with rights and privileges.

The initial step of every victim is to approach the police authority available in their jurisdiction. The police authority plays a fundamental and primary role during criminal proceedings starting from filing an FIR to carrying out the investigation. The Indian judiciary plays an important role in delivering justice to the victims. In **Articles 32⁷ and Article 226⁸** of the Constitution, the Supreme Court and High Court respectively have the power to pass appropriate orders which also accommodate the rights of victims. They also have the power to order the accused to pay compensation to the victims. Various NGOs and agencies work all over the country for the betterment of the victims, especially women and children.

Legal and Policy Framework Analysis

1. The Constitution of India and Fundamental Rights

The principles of victimology have a foundation in Indian constitutional jurisprudence.

Fundamental Rights: The rights of victims come under the ambit of the articles of fundamental rights of the Indian constitution. Everyone has the right to equality which also includes the right to equal treatment and fair trial under **Article 14⁹** of the Constitution. **Article 21¹⁰** compels states to compensate victims against deprivation of life and liberty. The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 as realized in **Justice K.S.Puttaswamy(Retd) v Union Of India And Ors. judgement.**¹¹ Thus, the constitution protects some of the important fundamental rights which also include the victims. Anything else would be a violation of what is supposed to be promoted.

⁶ [Victim's Rights : Research Gate](#)

⁷ [Article 32 of the constitution](#)

⁸ [Article 226 of the constitution](#)

⁹ [Article 14](#)

¹⁰ [Article 21](#)

¹¹ (2017) 10 SCC 1

Directive Principle of State Policy: In **Article 39A**,¹² the state offers free legal assistance and guarantees to promote justice on the grounds of equal opportunity. The **154th report of the law commission** as viewed earlier also interpreted various articles in the Indian Constitution:

Article 38¹³: the State to 'secure a social order for the promotion of the welfare of the people.

Article 41¹⁴ mandates, inter alia, that the state must make effective provisions for 'securing the right to public assistance in cases of disablement and other cases of underserved want.

Article 51A¹⁵ states that every citizen is responsible for the development of humanism, the spirit of inquiry and reform.

The cases listed below consist of references to the fundamental rights for the protection of victims in the legal justice system.

In **Ranjitsing Brahmajetsing Sharma v. State of Maharashtra (2005)**,¹⁶ the court stated that Article 21 because of its expansive meaning not only protects life and liberty but also envisages a fair procedure. In **Olga Tellis v Bombay Municipal Corporation**¹⁷, the court observed that the Right to life under Article 21 can be jeopardized by violation of the right to livelihood.¹⁸ In **Maneka Gandhi v Union of India**¹⁹, the court observed that the phrase "procedure established by law" in Article 21 does not mean 'any procedure' laid down in a statute but "just, fair and reasonable" procedure and that the term 'law' in Article 21 envisages not any law but a law which is "right, just and fair, and not arbitrary, fanciful or oppressive."

2. Criminal Procedure Code (CrPC)

2.1 Provisions for Victim Participation

The Indian justice system follows an adversarial model in which the rights of the offender are predominantly focused and secured whereas victims are placed in a passive position.

Though there is no provision to give legal aid to the victim in the code of criminal procedure, **Section 12 (1) of the Legal Service Authorities Act, 1987** entitles every person 'who has to file or defend a case' to legal services subject to fulfilment of means test and prima facie criteria.²⁰

1. **Filing of First Information Report (FIR):** The witness does not have any important role to play and is limited to being a witness/complainant/informant. Under **Sections 154²¹ and Section 155²² of CrPC**, the FIR can be filed to carry out the investigation. In a cognizable offence warrant

¹² [Article 39 A](#)

¹³ [Article 38](#)

¹⁴ [Article 41](#)

¹⁵ [Article 51 A](#)

¹⁶ 2004 CriLJ 3743

¹⁷ AIR 2005 SC 2277

¹⁸ AIR 1986 SC 180

¹⁹ 1978 AIR 597

²⁰ [Section 12\(1\) of Legal Service Authorities Act](#)

²¹ [Section 154 of CrPC](#)

²² [Section 155 of CrPC](#)

from the magistrate is not required to initiate an investigation whereas in the case of a non-cognizable offence warrant from the magistrate is required. In case of cognizable crimes such as rape, murder, etc to avoid wasting any time, the victims/complainant can also file a **ZeroFIR** in any police station regardless of the jurisdiction which further can be transferred. Additionally, there is also a provision to file an online complaint through **e-FIR**. Until the police report(charge sheet) is filed under **section 173 of CrPC**²³ the victim is neglected. After the submission of the chargesheet, the power of police to investigate an offence comes to an end and the Magistrate's cognizance of the offence begins.

2. **Direct approach to Magistrate:** **Section 190 of CrPC**²⁴ enables the victims to directly approach the Magistrate with the complaint in which the magistrate takes cognizance based on the complaint of facts and institutes the proceedings. **Section 200 of CrPC**²⁵ empowers the magistrate to examine and verify the complainant under oath. Such a provision is essential as the victims of crime who were not rescued by the State Machinery and even their complaint was not registered can directly approach judicial magistrate under it.
3. **Right to assist prosecution:** In **Section 24(8) of CrPC**²⁶ victims have the right to choose an advocate to assist in prosecution during proceedings. **Section 301 (2) of CrPC**²⁷ mandates the lawyer to act under the direction of the public prosecutor and can only submit written arguments with the permission of the court after the evidence is closed in the case.
4. **Right to appeal:** In **Section 372 of CrPC**,²⁸ victims are provided with the right to appeal against an acquittal order or conviction for a lesser sentence or inadequate compensation. **Section 377 of CrPC**²⁹ provides the state with the right to appeal to seek enhancement in the sentence. In **Section 378 of CrPC**³⁰, the state government is entitled to direct the Public Prosecutor to present an appeal in the High Court from an order of acquittal (original or appellate) passed by the Court of Session of any court other than the High Court.
5. **Transfer of cases:** **Section 406**³¹ (Power of Supreme Court to transfer cases and appeals) and **Section 407**³² (Power of High Court to transfer cases and appeals) of the CrPC ensures that the trial is conducted in a free and fair environment. For instance, in **G.X. Francis v. Banke Bihari Singh**³³ which involved bitterness among the communities of the complainant and the accused, the court utilized the provision of transferring cases.

²³ [Section 173 of CrPC](#)

²⁴ [Section 190 of CrPC](#)

²⁵ [Section 200 of CrPC](#)

²⁶ [Section 24\(8\) of CrPC](#)

²⁷ [Section 301 of CrPC](#)

²⁸ [Section 372 of CrPC](#)

²⁹ [Section 377 of CrPC](#)

³⁰ [Section 378 of CrPC](#)

³¹ [Section 406 of CrPC](#)

³² [Section 407 of CrPC](#)

³³ A.I.R. 1958 SC 209

2.2 Challenges and Limitations

It can be assessed through the following challenges that there are limited provisions available for victims during the proceedings and the available provisions are not used to their fullest to solve the problems of victims.

- 1) **Limited scope for victim's counsel:** There is no scope for the victim, complainant or the lawyer to participate in the court proceedings. Though victims have the right to choose an advocate, the rights of the advocate are very limited. In **Rekha Murarka v The State of West Bengal and Anr**,³⁴ the court dismissed the application made by the appeal concerning the request of the victim's counsel to cross examine the defense witnesses after the Public Prosecutor could not be allowed and even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This decision was criticized as it restricts the victim and its counsel from taking part in the proceedings, which it does not classify as a fair trial necessary to ensure justice and is a step back from victim justice.
- 2) **Burden of proof:** One of the major challenges faced in the adversarial model of India is the absence of proof, although the provision for reporting crime has become easier, the burden of proof or proving the guilt remains on the side of victims which results in the acquittal of the accused and leaves the victim vulnerable. We have the principle of *Innocent until proven guilty* and in addition, the accused also has the right to remain silent or the right against self-incrimination which often leads to a **low rate of conviction**. For instance, 24,873 cases of murder were registered in 2021 wherein only 4,304 were convicted. Similarly, 1,85,836 cases of rape among which only 3,368 were convicted. Of 1,72,302 cases of kidnapping and abduction only a mere 2,665 cases were convicted.³⁵ It clearly shows that the conviction rate is very low and victims have to endure everlasting court proceedings to seek justice.

The **lack or absence of proof** leads to acquittal of the many criminals. According to **Section 25 of the Indian Evidence Act**, confession cannot be used against the accused which again works in the favor of the accused.³⁶ In **Vijendra v State of Delhi**,³⁷ The Supreme Court emphasized that a statement made before a police officer during an investigation cannot be used for any purpose unless it falls under the provisions of section 27 of 32 (1) of the Indian Evidence Act. Thus, judgment cannot be made on evidence based on police investigation but it can assist in formulating judicial conclusions. According to the **National Crime Records Bureau's Report Crime in India**, a total of 58,09,380 persons were arrested under the IPC and SLL cases combined, among which several 12,14,059 accused (10,47,356 acquitted + 1,66,703 discharged) were set free.³⁸ It also indicates that in our country there is a high rate of acquittal and many of the accused are discharged

³⁴ WB 2020 AIR(SC) 100

³⁵ [National Crime Records Bureau](#)

³⁶ [Section 25 of Indian Evidence Act](#)

³⁷ (1997) 6 SCC 171

³⁸ [National Crime Records Bureau](#)

which further shows that it isn't easy for the victims to seek justice and their condition is vulnerable.

- 3) ***Inadequate Sentence/Light Punishments:*** The victims feel humiliated when the offender gets a disproportionately light sentence or goes unpunished. It erodes the faith of the victim of crime and society in general in the judiciary system. The same was realized in the following case: In **Jaswinder Singh v. Navjot Singh Sidhu**,³⁹ the court comprehended an important aspect that any undue sympathy to impose inadequate sentences would do more harm to the justice system and undermine the public confidence in the efficacy of law. Thus, it was rightly recognized in this judgment that the sentence awarded to the accused must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated.
- 4) ***Element of bias:*** The nature of the criminal justice system is such that the participation of executives in the investigation and prosecution process can lead to bias in the trial. The prosecutor in most of the proceedings is a government servant. In criminal trials that involve an individual from the ruling government or someone who has influence in the government, it brings a high possibility of bias in the proceedings. The probability of evidence being tampered with and witnessed being intimidated is also high in such cases. Sometimes, it is normal to quote religious texts and scriptures in certain cases relating to family disputes, or inheritance. But, in one of the latest Gujrat High Court judgment involving the pregnancy of a minor-rape survivor, the judge referred to the Manusmriti and said girls used to deliver before the age of 17.⁴⁰ What if the judge or the victim was Muslim/Christian, would they use the Quran/Sharia Law or Bible to hold judgements or justify? It is important for the judiciary to carry out the proceedings in an unbiased way and adhere to constitutional morality.
- 5) ***Backlog of cases:*** There is a huge backlog of cases in the judiciary system. At present, more than 5 crores of criminal cases in the district and Taluka courts, 29 lakhs of criminal cases in the high court⁴¹ and 69,000 cases in the Supreme Court⁴² are pending. Various factors are the cause for the backlog of cases and delay in hearings such as non-availability of an adequate number of judges and staff, absence of summons or witnesses, complexities of cases, adjournment of cases, etc.
- 6) ***Unreported Crimes:*** Many of the cases remain unreported and as said what is visible is only the tip of the iceberg. Various reasons such as stigma and cultural barriers prevent women and girls from reporting sexual offences and seeking justice. The courts' procedures are so complicated that people, even if aware of the existence of the compensation scheme, hesitate to take legal action against the offenders. Sometimes cases are not registered because the complainants fail to establish the ownership of the lost or stolen items by producing cash memos, bills, etc., and, hence police do not register cases. Under **Section 154 of the CrPC**⁴³, it is mandatory to register FIR and if the

³⁹ (2022) 7 SCC 628

⁴⁰ [Minor-rape case : Outlook India](#)

⁴¹ [National Judicial Data Grid](#)

⁴² [Pending Supreme Court cases](#)

⁴³ [Section 154 of CrPC](#)

information discloses the commission of a cognizable offence there is no need for a preliminary inquiry. Also, it has been noticed that in crimes related to kidnapping or sexual assault, police have to make preliminary inquiries before concluding. Such an appeal of the police to register FIR only after completing a preliminary inquiry is unappealing and objectionable.

7) **False Accusation:** With the presence of various provisions to protect fundamental rights in India, it is easy to file complaints, due to which false complaints are rising especially pertaining to rape and sexual assault cases. There are various instances of false accusation in which the innocent have been convicted due to which basic human rights of a person are violated and the person suffers an uncertain loss due to it. In India, we have provisions to deal with such cases such as, **Section 250 of CrPC**⁴⁴ gives magistrates the power to direct informants or complainants to pay **compensation** to people accused by them without reasonable cause based on the complaint filed by them which is false, frivolous, or vexatious. Also, **Section 358 of CrPC**⁴⁵ empowers the court to direct compensation to such a person for causing a Police Officer to arrest another person wrongfully. Such false cases can be closed under **Section 182 of IPC**⁴⁶ (false information to the public official) or **211 of IPC**⁴⁷ (making false allegations without any basis). Also, **Section 193 of IPC**⁴⁸ consists of punishment for false evidence. Though we have such provision to curb cases of false accusation, its scope, in reality, is limited and subjective. For instance, Section 193 of IPC is a bailable offence which again is a limitation on the cases of false evidence. As observed in the case of **NandKumar Krishnarao Navgire v Jananath Laxman Kushalkar**,⁴⁹ the same magistrate can initiate action and pass the final order and the predecessor cannot continue the proceedings. Also, in **Sarab Dial Singh v Bir Singh**,⁵⁰ it was held that if the complainant is directed by the Second class Magistrate to pay compensation that exceeds one hundred rupees, the right to appeal lies in Session court. Thus, it can be estimated that the penalties for filing false complaints are not only less but also appealable. Thus, falsely accused people are also victims of crime and for this, they must be given rights at par to deal with such circumstances.

It is unnecessary to point out that, a great deal remains to be done concerning the victim assistance provisions in India.

⁴⁴ [Section 250 of CrPC](#)

⁴⁵ [Section 358 of CrPC](#)

⁴⁶ [Section 182 of IPC](#)

⁴⁷ [Section 211 of IPC](#)

⁴⁸ [Section 193 of IPC](#)

⁴⁹ (1998) 2 SCC 355

⁵⁰ (1928) 9 Lah 462

3. Victim Compensation Scheme

3.1 Legal Provisions and Implementation

An effective remedy or program to provide compensation is a significant factor as it provides victims with a procedure by which they can avail their rights and receive reparation for the violation caused to them.

Legal Provisions

The following provision empowers the court to grant compensation to the victims.

Section 357 (1) of CrPC: The court while imposing a sentence of fine or a sentence of which fine forms a part, when passing judgment, it can direct to pay the whole or any part of the fine recovered to be applied. Thus, it empowers the court to impose fines on discretion. **Section 357(3)** empowers the court to award compensation even in cases where the fine is not part of the sentence.⁵¹

Section 357A of CrPC⁵² directs the state to form a Victim Compensation Scheme in coordination with the central government. In which the state/district legal authorities have the discretion to decide the quantum. The Ministry of Home Affairs introduced the Central Victim Compensation Fund scheme(CVCF), with an initial corpus of Rs. 200 crores to enable support to victims of various attacks. One of the main objectives of this scheme was to support and supplement the existing victim compensation scheme as directed to the State and Union Territories under the provision of Section 357A of the CrPC. The states have set up victim compensation schemes and the legal service authority in the respective states have the power to decide the amount of compensation. Factors such as degree of offence, injury suffered by the victim (Both in mental & physical terms), expenses incurred on medical treatment, loss of job, in case of death, and the number of dependents are taken into consideration.

Section 357C of the CrPC⁵³ addresses the provision of treatment for victims. All hospitals, public or private, whether run by the Central Government, the State Government, local bodies, or any other person, shall immediately, provide first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 2[376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident.

Implementation:

The procedure to avail compensation is said to be easy in which the victim or their dependents may apply to the State or District Legal Service Authority for the award of compensation. After the application is scrutinized and after making a due inquiry, the grant amount is decided by them and further the victims will receive their compensation.

⁵¹ [Section 357 of CrPC](#)

⁵² [Section 357 A of CrPC](#)

⁵³ [Section 357 C of CrPC](#)

To comprehend the implementation of the Victim compensation scheme, it is important to understand the equation of the data of crime disposed of by police⁵⁴ and court⁵⁵ in 2021 vis-a-vis compensation availed⁵⁶ in the same year. The data provided may vary, but here to put forth a comparative analysis, the data will assist in understanding the implementation process under this scheme.

There is no comprehensive approach or strategy to disburse the funds across the states. Due to this many victims stay uncompensated. In certain states, a large amount of funds was disbursed for compensation such as in Chhattisgarh(1008 applications) an amount of rupees 11,72,19,000; in Delhi (1283 applications) amount of 19,35,90,500 rupees; in Gujrat (1142 applications) 11,14,32,500 rupees was disbursed. Similarly, in other states such as Odisha and Rajasthan large sum of compensation was disbursed.

Whereas, in certain states such as in Maharashtra only 78,22,000 rupees compensation was awarded to 183 applications. But, in Maharashtra, a total of 166896 cases were charge-sheeted and a total of 17893 cases were disposed of by the police and 17994 cases were convicted by the court only under Special and Local Laws in 2021. If we consider only the number of victims under certain crimes against women⁵⁷ in Maharashtra: 2506 victims of rape, 23 murders with rape/gang rape, 10578 victims of assault on women with intent to outrage her modesty, 6219 victims(only girls) under Protection of Children from Sexual Offences Act (POCSO), 172 dowry deaths in 2021. It can be estimated that many of the victims must have not been compensated as only a mere 183 applications were decided to be compensated.

Similarly, in Manipur out of 23 only 4 applications were awarded compensation. In 2021, 216 cases were charge-sheeted and 533 cases were disposed of by the police and 55 cases were convicted by the court under SLL in Manipur. Here as well if we consider certain crimes against women in 2021: 26 victims of rape, 94 victims of assault on women with intent to outrage her modesty, and 100 victims under the POCSO act. Here, only 23 victims applied for compensation despite the crime occurrence. By this, it can be reckoned that the victims are not aware of the victim compensation scheme available to them.

Whereas, in certain states, nobody applied for the victim compensation scheme. For instance, in Goa, nobody applied for the victim compensation scheme in 2021. But if we again consider the crimes in Goa, 844 cases were charge-sheeted and 876 were disposed of by the police in 2021. Under crime against women in 2021: 224 total crimes against women (IPC+SLL) in which major crimes consisted of 74 victims of rape and 81 assaults on women with intent to outrage her modesty.

⁵⁴ [Disposal of cases by Police : NCRB, page 183](#)

⁵⁵ [Diposal of Cases by Court : NCRB, page 221](#)

⁵⁶ [Victim Compensation Scheme :NLSA 2021](#)

⁵⁷ [Crime Against Women : NCRB, page 257](#)

In certain cases, the victims applied for application but haven't received their compensation. For instance, in Nagaland, 16 applications were received in 2021 in which none of the applications were awarded compensation.

After analyzing the implementation of the victim compensation scheme, it has been realized that there is a haphazard distribution of the compensation in which certain victims must have not received their compensation. It implies that there is inconsistency in the implementation of the scheme concerning states and districts. There is no consistent mechanism to scrutinize how the scheme works and how the compensation is granted. Some of the victims do not receive even after applying, the scheme does not justify the rejected applications. The power of accepting the application, and deciding the amount of compensation is solely provided to the states and district authorities which also has created concerns as they can utilize it the way they deem fit. Also, the scheme aims to provide financial assistance but overlooks the provision of rehabilitation. The scheme does not define the term 'rehabilitation'

It can be regarded that the scheme initiated to protect the victims has varied challenges in the implementation process. There is a need for uniform guidelines to treat the victims equally.

3.2 Adequacy and Accessibility of Compensation

In India, we do not have a comprehensive law dedicated to the holistic development of victims through compensation but the provisions discussed above if used relevantly can help to resolve the concerns of the victims. The magistrate plays an important role in awarding compensation to the victims and has a huge responsibility as their mindfulness in every case is required to decide an important factor in victims' rights protection i.e. compensation.

In **Hari Singh v. Sukhbir Singh**,⁵⁸ Supreme Court advocated that Section 357 of CrPC empowers the court to award compensation to the victims while passing the judgment of conviction. It also urged all the courts to exercise this power liberally to meet the ends of justice in a better manner. This ability is given to ensure that the victims are not forgotten in the criminal justice system.

The judgement listed below displays the spectacle attempts of the judiciary pertaining to the concern of victim compensation.

1. ***Abuse of Power and Custodial Violence:*** There are many provisions made for the accused arrested to prevent them from custodial violence and unnecessary detainment. In the case of **D K Basu v State of West Bengal**,⁵⁹ it was laid down that custodial violence, including torture and death in the lockups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. The protection of an individual from torture and abuse by the police and other law enforcement officers is a matter of deep concern in a free society. The court addresses this issue by providing

⁵⁸ 1988 AIR 2127

⁵⁹ 1997 (1) SCC 416

comprehensive guidelines on custodial deaths and violence. In **Nilabati Bahera V. State of Orissa**,⁶⁰ the Supreme Court awarded damages against the State to the mother of a young man beaten to death in police custody. The Supreme Court recognized the need for **state compensation** in 1983 in case of abuse of power by state machinery. In **Rudul Sah v. State of Bihar**,⁶¹ the court ordered the state to pay compensation of Rs. 30,000, which according to the court was “palliative” and additionally also directed to pay Rs. 5000 in case of illegal imprisonment of the victim for long years exceeding the period of his sentence.

2. **Interim Compensation:** Section 143 A of the Negotiable Instruments Act⁶² lays down the provision for interim compensation. It is not mandatory for the court to direct the accused to pay interim compensation which is again a limitation. In a landmark case of **Bodhisattwa Gautam v. Subhra Chakraborty**,⁶³ the accused falsely married a woman before the family deity and established sexual relations with her. She underwent abortions due to it, further, she also requested the accused to make their relationship known to the family but the accused denied it and abandoned her. In this judgement, the Supreme Court **equated the plight of the woman to that of a victim of rape** and gave an eloquent exposition of the heinousness of the crime and also put forth the need to assist the victim to overcome the loss suffered by her. Accordingly, the Supreme Court ruled that if a court is trying an **offence of rape** has jurisdiction to award compensation at the final stage as well as has the **right to award interim compensation** and the accused was ordered to pay an interim compensation of Rs.1000 per month during the pendency of the case.
3. **Amount of Compensation:** In **Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.**,⁶⁴ the court took into account that the amount of compensation decided should be on reasonable grounds and is not arbitrary as well as the capacity of the accused to pay compensation must also be judged. Sometimes courts also make use of the golden triangle of fundamental rights (Articles 14,19 and 21) in combination with the proviso to section 372 of CrPC to provide victim compensation.
4. **Compensation to Foreigners:** Our legal system provides equal protection to the rights of foreigners as well and it has taken sporadic actions to provide justice to the victims who are not the citizen of India. For instance, in the landmark decision of **Chairman Railway Board v. Chandrima Das (2000)**⁶⁵, a woman from Bangladesh was raped in railway yatri niwas by some railway officials. In this, the court asked the railways to pay a sum of ₹ 10,00,000 as compensation for the infringement of her right to life under Article 21 of the Constitution. In **Suo Moto vs State Of Rajasthan**,⁶⁶ a German lady was raped by autorickshaw drivers in the city of Jodhpur. In this judgement, under the instructions of the High Court of Rajasthan, the fast track court decided

⁶⁰ (1993) Cri. LJ 2899

⁶¹ AIR 1983 SC 1086

⁶² [Section 143A of Negotiable Instruments Act](#)

⁶³ AIR 1996 SC 922

⁶⁴ 1999 Cr LJ 4606

⁶⁵ 2 SCC 465

⁶⁶ RLW 2007 (2) Raj 1407

the cases within two weeks of its occurrence and the accused were sentenced to imprisonment of life and an amount of rupees three lakhs were awarded as compensation.

By analysing certain important judgments it has appeared that the judiciary has taken constructive measures for providing justice. Thus, it can be demonstrated that Section 357 of CrPC confers a power on the court which is coupled with the duty to contemplate the matter of awarding compensation in every criminal case. In certain judgments, Section 357 of the CrPC was also reviewed providing the challenges faced by the victims while availing compensation.

In the judgement of the **State of Gujarat v High Court of Gujarat**,⁶⁷ was stated that Section 357 of CrPC in practice has not proved to be effective. Many of the people who are accused of long-term imprisonment do not pay compensation and instead, they prefer to continue in jail in default thereof. It is only in case where the fine is the only sentence, the accused choose to remit the fine. But such cases are ones in which the harm inflicted on the victim is more often less serious. Thus, it was expressed that the restorative and reparative theories are not translated into real benefits to the victims. An argument of moving from punishment of offender towards restitution and reparation aimed at restoring the harm done was also made.

In **Hari Kishan & Anr vs. Sukhbir Singh & Ors**⁶⁸, it was observed that courts rarely make use of section 357 of CrPC to grant compensation. It also signified that this power was bestowed to do something to reassure that the victim is not forgotten in the criminal justice system. It is an action of responding appropriately to crime as well as reconciling the victim with the offender.

Not only the victim but also his/her spouse, parent, and child are entitled to compensation. But in practice, the provisions (for compensation) have remained merely on paper because it is difficult to recover the amount from the offender.⁶⁹

The 154th report of the Law Commission also maintained that compensation must not be limited to recouping actual fines, penalties, and forfeitures. As mentioned above in the basic principles of the United Nations, victims need more than compensation. The compensation scheme is no doubt a constructive legal provision available for the victims, but its usage is an important factor. Having mere provision will not help, its access to the victims will prove its relevance. Also, as time passed the pertinent question is no more about what should be the apt punishment but rather what ought to be the just mode of redressal of the injury perpetrated on the victim.

4.1 Witness Protection Measures

4.1 Legislative Framework and Mechanisms

As rightly stated by Bentham more than 150 years ago “Witnesses are eyes and ears of justice.” The victims often feel vulnerable as they do not have an important role to play during the court

⁶⁷ (1998) 7 SCC 392

⁶⁸ 1988 AIR 2127

⁶⁹ [Compensation to Victims](#)

proceedings but remain as a witness. According to **Section 439 of CrPC**⁷⁰, while granting **bail**, notice must be given to the prosecution. Further, the victim/complainant can cancel the bail granted by moving it to the higher court. To prevent intimidation of the witnesses, **Section 195A**⁷¹ was introduced in the IPC which makes criminal **intimidation of witnesses** a criminal offence punishable by seven years of imprisonment. **Section 327 (2) of the CrPC**⁷² lays the provision for **in-camera proceedings** which means a private proceeding in the absence of the general public and media. It is an important provision meant to be conducted in certain cases as listed in the section, to protect privacy and dignity. Further, **Section 327(3) of CrPC**⁷³ denotes that it shall not be lawful for any person to print or publish any matter concerning any such proceedings except with the prior permission of the court. **Section 228A of the IPC**⁷⁴ consists of the punishment of such a crime (which may extend to two years imprisonment) as well as a fine. In the judgement of **R. Rajagopal vs. State Of Tamil Nadu**,⁷⁵ it was held that once a matter becomes a matter of public record, the right to privacy no longer remains and the victim becomes a subject for comment by the press, media, and the public. Thus, it is a matter of decency that in Article 19(2) of the Constitution an exception must be carved out to preserve the right to privacy. The victims of sexual abuse, kidnap, abduction, and the offence of like in nature should not further be subjected to the indignity of their name and their personal information must not be publicized. The police authority can call upon the witnesses under **Section 160 of the CrPC**⁷⁶ wherein “no male person under the age of 15 years or women shall be required to attend any place other than the place in which such male person or woman resides” and the witness must be provided payments by the police officer of the reasonable expenses, as per the rules. In addition, under **Section 311 of the CrPC**,⁷⁷ a court is empowered to summon and **Section 174 of the IPC**⁷⁸ as well as **Section 350 of CrPC**⁷⁹ deals with punishment for non-attendance by witnesses in obedience to the summons issued by the courts.

4.2 Efficacy and Challenges

Various provisions though available to the witnesses, the ground reality to a larger extent is that witnesses face many challenges during the investigation as well as in the court proceedings. Though a thought has been given to the **Witness Protection Scheme**⁸⁰ its implementation is still awaiting.

⁷⁰ [Section 439 of CrPC](#)

⁷¹ [Section 195A of IPC](#)

⁷² [Section 327\(2\) of CrPC](#)

⁷³ [Section 327\(3\) of CrPC](#)

⁷⁴ [Section 228A of IPC](#)

⁷⁵ 1995 AIR 264

⁷⁶ [Section 160 of CrPC](#)

⁷⁷ [Section 311 of CrPC](#)

⁷⁸ [Section 174 of IPC](#)

⁷⁹ [Section 350 of CrPC](#)

⁸⁰ [Witness Protection Scheme, 2018](#)

There are many judgments in which the court has given due consideration to the factor of witness protection. One such important witness-oriented step was taken in the following judgement as followed:

Video-Conferencing: In the **State of Maharashtra v Praful B. Desai**⁸¹, emphasis was made on **Section 273 of CrPC**⁸² which states that all evidence must be taken in the presence of the accused except as otherwise expressly provided. It was one of the important cases about witnesses producing testimony via video conferencing. Section 273 became a very debatable topic as to whether electronic evidence or video conferencing is legal or not. The court made a contemporary analysis of the section and submitted that video conferencing did not exist when the code of criminal procedure was enacted/amended. It was also submitted that Section 273 is analogous to the Confrontation Clause set out in the Sixth Amendment to the US Constitution and it was also held by US courts that video conferencing does not satisfy the requirements of the Confrontation Clause. The word presence in various dictionaries meant actual physical presence. However, the court referred to the judgement made by the Supreme Court of the USA in **Maryland vs. Santra Aun Craig**⁸³ where it held that evidence by video conferencing did not violate the Sixth Amendment (Confrontation Clause). The court also referred to the **Indian Evidence Act in which Section 3**⁸⁴ includes documentary evidence (all documents including electronic records produced for the inspection of the Court). It confers that evidence can also be by way of electronic records which will also include video-conferencing.

The court, thus, held that there would be a failure of justice not only by an unjust conviction but also by acquittal of the guilty for unjustified failure to produce evidence. Though the accused have to be kept in mind and safeguarded they shouldn't be over-emphasized to the extent of forgetting that victims also have rights.

In **Ram Phal v State and Ors**,⁸⁵ it was observed that victims struggle and do not have much role in the court proceedings. Some challenges faced by the witnesses can be explained under the following heads. The witness is often **reluctant to volunteer** to provide their testimony or during the investigation as they feel that attendance in court or police station entails a lot of inconvenience and harassment which is, to a greater extent, the harsh reality of our justice system. In many instances, criminals or influential people hold out **threats** to the victim and witnesses not to lead the evidence. In **Zahira Shiekh and another v. State of Gujarat**⁸⁶ while defining Fair Trial the court has said that if the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. Sometimes, when witnesses depose in court, especially involving high-profile cases of hardened criminals, their **safety** is often at risk as they are threatened or

⁸¹ (2003) 4 SCC 601

⁸² [Section 273 OF CrPC](#)

⁸³ 497 U.S. 836 (1990)

⁸⁴ [Sec \(3\) Indian Evidence Act](#)

⁸⁵ AIR 1993 SC 1979

⁸⁶ 2004 (4) SCC 158 SC

injured prior to testifying in court. If this doesn't work, a witness may also get murdered. Thus it is essential to protect the witness from any threat and coercion. Another major challenge faced by witnesses is protracted trials. **Protracted trials** can be simply explained as prolongation of the trials and delay in the disposal of cases which usually happens due to the adjournment of the proceedings. Witnesses come from distant places and wait for long hours to provide their testimony. After waiting for the long when the case is adjourned and the next date is fixed and if the witness fails to attend it, harsh steps are taken against them. Also, there is no assurance that if the witness appears at the next date, the court might not be adjourned. They have to attend court many times due to this. Even after the inconvenience of the protracted trials, the witnesses are not compensated for the loss of earnings of the day. Even the **expenses incurred** due to the court proceedings or investigation are not reimbursed. It not only creates inconvenience to the witness but also creates a sense of refrainment in society for not engaging in court proceedings and cooperating with law enforcement agencies at investigations or trials.

Further, the witnesses face inconvenience during **stressful court proceedings** and investigations and the victims feel doubly victimized, firstly by the accused and then by the officials during the criminal proceedings. Sometimes, even basic amenities that are required are not available to the witness on the court premises. It has been noticed that sometimes law enforcement personnel display **racial and ethnic biases** in investigating crimes and dealing with victims of crime.⁸⁷ The plight of rape victims is compounded by their being held in 'protective custody' in jails or the nari (women's shelters), on the pretext that they are required for giving evidence although such detention has no legal basis.⁸⁸ The shelter homes are sometimes, not a safe place for victims, for instance, a social audit by a Mumbai-based Tata Institute of Social Sciences (TISS) brought to light the sexual abuse of 34 girls at a government-run shelter home for girls in Muzaffarpur, Bihar.⁸⁹ Also, in some cases, the victim feels uncomfortable while giving testimony due to close proximity to the perpetrator. Further, many victims relating to sexual violence become vicious targets of psychological assault by way of **unhealthy cross-examination by the defense lawyer**. It has also been observed that victims of sexual violence feel uncomfortable to depose in open trial proceedings. Mainly due to this, witnesses are unable to depose correctly which results in a low conviction rate, and many times even hardened criminals escape the conviction. Though we have special provisions for video conferencing, the judges rarely resort to such protective measures.

Many such challenges lead to witnesses turning hostile which is a major disturbing factor in the criminal courts of India. **Hostile witnesses** can be regarded as someone who can destroy a carefully planned case and cause unjust acquittals of the accused by refusing to fully testify in support of the party who called them or by presenting a testimony that is different from what was decided in the pre-trial. The major reason for it can be regarded as the **inducement of the witness** by various means. In many high-profile cases, we often observe the regularities of witnesses turning

⁸⁷ [Victims' Rights : Academia](#)

⁸⁸ [Victims' Rights : Academia](#)

⁸⁹ [Shelter Home, Bihar, page 62](#)

hostile, majorly due to monetary considerations or due to other tempting offers. Criminals with political influence often use **muscle or money power** to induce the which also turns the witnesses hostile. Such an inducement, in a broader sense, undermines the entire criminal justice system and creates an impression that influential and powerful people can always get away from the clutches of law.

Section 154 of the Indian Evidence Act⁹⁰, the Court 'may' permit the party to cross-examine their own witnesses which again gives the court its own choice or discretion to do so. One of the most important challenges in the justice system is that we do not have clear-cut legislation to check the hostility of the witnesses.

In recent times, extremism, terrorism, communal riots, and organized crimes have grown and are becoming more stronger and diverse. It becomes an important factor to protect the witnesses and instil trust among them so that they come forward to dispose of the truth and assist in providing justice. Thus, they must be ensured that they will be protected from the intimidation, threats, and harm that criminal groups might seek to inflict upon them which would discourage them from disposing of the truth and prevent them from cooperating in the justice-seeking process. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before the courts mere mock trials as are usually seen in movies.

Comparative Analysis

The comparative analysis will cover discourse on various peculiar and unique measures available across the globe concerning the enhancement of conditions of victims as well as how such measures can be initiated in India.

Victim Impact Panel: Victim Impact Panel is a program that is a widely accepted measure in the United States that follows a restorative justice model. The Malimath Committee (2003) also recommended setting up such a panel. It is a panel that allows the crime victims a healing opportunity by letting them speak to their offenders about the impact of crime upon themselves, their families, and the community as a whole. For instance, Drunk driving is not treated as other crimes in California. The punishment is not just to penalize but to reduce the chance of the driver driving under the influence again. For that, the punishment also involves participating in the victim impact panel.⁹¹In certain instances such as accidents, the accused does not have a criminal intent to cause injury but it happens by mistake or unintentionally such as due to negligent driving or drunk driving. Here, if such a model is initiated, it may help in making the person liable for it

⁹⁰ [Sec \(154\) Indian Evidence Act](#)

⁹¹ [Victim Impact Panel : California](#)

realize the intensity of their mistake on the lives of the victim and how their negligence can cause grave harm to others.

Victim Impact Statements: While conducting a trial, isn't it essential to understand and take into consideration the vulnerability faced by the victims when the crime occurred. The neglected aspect of the criminal justice system has been the impact of crime on victims as often the role of the victim is limited to being a witness. In many countries such as Ireland and the UK, there is a provision of a Victim Impact Statement available to the victims. A victim Impact Statement can be explained as a report or a statement that describes the physical, emotional, financial, or other impacts that the victim suffered as a direct result of the crime. Such a report is submitted to the judge prior to the proceedings which will help the judge to assess the intensity of the impact of the crime on the victim while giving the judgement. A victim Impact statement is a provision that will give victims the right to be heard at the proceedings and can reduce victim alienation.

Duty to Rescue: In recent times, it has become a common practice to shoot a video instead of rescuing someone who has been injured in an accident or when something unexpected happens in public. The video of a young girl brutally beaten to death in a public place where the bystanders do nothing but act as silent spectators. In India, no provision obligates the bystander or witness to help or rescue such a person. However, a moral or ethical duty remains even if there is no such legal duty. In many countries across the globe, there are provisions that oblige the witnesses to assist the victims, and omission of it is considered an offence. Such as in Argentina Section 106-108 of the penal code discusses the abandonment of people and Omission of Assistance.⁹²In France, under Article 223-6 of the French Penal Code, it is a general duty to rescue and omission of such a duty is criminalized.⁹³In Dutch, Article 450 of the Dutch Penal Code punishes failure to take steps that one could take without danger to himself to save another from death. In Germany, Section 323C of the German Criminal Code imposes liability for the failure to render assistance during an accident, common danger or emergency.⁹⁴In all such countries omission of assistance is considered an offence which imposes a sentence or fine on them. A total number of 4,12,432 road accidents have been reported in the country, claiming 1,53,972 lives⁹⁵ and one of the reasons for the death of victims of accidents is that they do not get immediate assistance from the public or the witnesses present at the site of the accident. There should be a provision in which if the bystander without risking their life can assist or rescue someone who is injured or in mortal danger must be obliged to do so.

Victims of Crime with Disability: In India, the Rights of Persons with Disabilities Act, of 2016 discusses the right to access any court, tribunal, authority, commission, or any other body having

⁹² [Omission of Assistance : Argentina](#)

⁹³ [Duty to Rescue : France](#)

⁹⁴ [Dutch and Germany](#)

⁹⁵ [Road Accident : morth](#)

judicial or quasi-judicial or investigative powers without discrimination based on disability. In one of the research paper, the rights of victims of crime with disabilities in Ireland has been studied. Various incriminatory steps such as the installation of ramps and the introduction of a loop system have been taken for the victims of crime with disabilities and they gained broader inclusive momentum in the legal system.⁹⁶ As victims with disabilities do not have equal access to the benefit they are doubly disadvantaged, first as the victim and secondly as a person with disability. There aren't any such provisions available for victims with disability in India. The thought of providing such provisions to the victims of crime with a disability must be deliberated as it will evoke a feeling that their problems are taken into consideration. Such provisions will aid in the betterment of the victims of crime with disabilities.

Policy Gaps and Recommendations

- 1) There is a necessity to **define victims of crime** as there is no holistic provision to recognize them and creating such a boundary to identify them, will ease the process to provide restorative measures such as compensation and rehabilitation to the victims.
- 2) As observed, the provision of compensation is not actively used, to cater to such a challenge, it is recommended that a **mandatory note** must be included in the process of trial explaining the reason for not granting compensation which will mandate the court to consider the factor of providing compensation and such data must be scrutinized.
- 3) Such as Miranda rights are read during arrest and similar provisions are present in India for the accused, in the same way, there must be certain **guidelines of legal rights of the victims** that must be recited compassionately and reassuringly to them while filing the FIR.
- 4) Participation of victims and their counsel is limited, for that, advocates must be allowed to make arguments for victims in their favour during court hearings. Victim impact statements must be enabled in serious crimes, and victims must be heard during charges framing, bail, probation, sentencing, and compensation.
- 5) The conditions of the victim in the shelter room must be inspected every six months. Regular surveys of the victims in the shelter room must be recorded to scrutinize the services and provisions available to the victim. Annual audits of shelter rooms consisting of victims (government as well as non-governmental) will not only identify the areas of concern but also uncover any malpractices or crimes occurring there.
- 6) In *Sakshi v Union of India*⁹⁷, the Supreme Court advanced the factor of recording evidence by way of video conferencing for children victims of sexual abuse and also put forth the measure of **videotape testimony** in which it elucidated that it enables the Court to hear a more accurate account of what about the incident at the time it first came to light and the videotape of an early interview if used in evidence can supplement the evidence of a child who is inarticulate or forgetful

⁹⁶ [Victims of crime with Disabilities : Ireland](#)

⁹⁷ Writ Petition (crl.) 33 of 1997

at the trial. Also, in press release from the UK, claimed that in pre-recording evidence the victim will not only have better court experience but can also seek vital support such as therapy.⁹⁸ In **Slovenia**, they use technical devices (protective screens, voice disguising devices, transmission of sound from separate premises, and other similar technical devices) to record the testimony of witnesses.⁹⁹The use of **video conferencing** during court proceedings will help to speed up the process of justice, ensure the safety of the victim, and make the victim/ witness more comfortable to put forward their testimony and it is time and cost efficient.

- 7) **Linkage** of various authorities and agencies concerned such as police officials, medical authorities, helpline assistance, etc. to create an active emergency response system wherein the provisions of rescue, relief, and redressal are accessible to the victims can improve the process of the victim support mechanism. In **Sweden**, for instance, normally the police work closely with the victim support services and are located at the same premises to strengthen collaboration.¹⁰⁰
- 8) Public awareness programs must be conducted in which the masses must be educated regarding rules and procedures as to what constitutes a crime, how to report it, and how to seek help from the police whenever a crime occurs. Frequent civil drives in which civilians can participate and assist the police authority in various tasks can build confidence among the civilians to help each other.
- 9) In cases of false accusation, the predecessor cannot direct order, which is one of the limitations of our justice system. In cases of false complaints, it leads to the conviction of an innocent in the hands of the government which indicates the need to develop a strong mechanism against false complaints and accusation.
- 10) **Regular training sessions** must be provided to the authorities concerned regarding the rights of the victims and how to deal with them, especially to the authorities in the rural areas, and must set out the **minimum standard of treatment of victims** to prevent their secondary victimization which must include certain crucial factors:

While Filing FIR:

- ❖ The attitude of police of not registering FIR or designating it as no-crime due to which the perpetrator is left uninvestigated not only represents a miscarriage of justice but also a danger to society as a whole. First and foremost, the police authority must not abandon the victim in the very first step of justice i.e. while filing an FIR. The police **need to institutionalize a culture of believing the victim.**¹⁰¹
- ❖ Female officers to deal with women victims of crime and special officers to deal with children and victims with disabilities.
- ❖ The initial interaction between victims and police officers and the response of police impacts the victim and how the cases progress through the criminal justice system. Thus, whether words spoken or actions taken, behaviours are what victims tangibly experience, regardless of whether

⁹⁸ [Govt.UK : Press Release](#)

⁹⁹ [Slovenia : Testimony measures, pg 35](#)

¹⁰⁰ [Sweden Victim Support, page 39, pt. 15](#)

¹⁰¹ [BBC](#)

those words or actions align with unseen police attitudes. Any conversation or gestures leading to the factor of **victim blaming or shaming** must be avoided.

- ❖ Patriarchal mindset or sexism, prejudices based on class, caste, ethnicity, etc. leading to the humiliation of victims must be prohibited and a neutral and unbiased perspective must be used to deal with the victims.
- ❖ Police officers playing a primary role in providing justice must be trained to recognize the incidents and ask open questions to people to encourage them to share what happened. **Building trust and support must be prioritized.**
- ❖ The officers must provide information to the victim regarding the **victim support and compensation schemes** available.
- ❖ The rehabilitation process: improvement of physical injuries as well as the psychological trauma of the victims must be recorded.
- ❖ In certain grave crimes against women, not only counselling but assisting the victim by providing them with a support group (group of survivors of such crimes) will prevent victim alienation as victims can understand the trauma of fellow survivors and seek help from each other to overcome it.

In **Prakash Singh & Ors. v Union of India and Ors.**¹⁰², the Supreme Court put forth that there should be a **Police Complaint Authority (PCA)** at the district and state level wherein common people aggrieved by police action can approach. It has been set up across India, but its performance is not satisfactory and has varied challenges that need to be examined and fixed. Thus, to ensure that victims are not ill-treated while filing FIR, PCA will prove to be an important authority and strict implementation of it will work as an incredible pro-victim move.

Hospital/Medical Services:

- ❖ The Ministry of Health and Family Welfare issued extensive guidelines and protocols regarding the **Medico-Legal care of victims/survivors of sexual violence.**¹⁰³ It consists of a wide spectrum of victims of sexual violence based on the crime, gender, disability, etc. and the procedures that need to be followed by the medical authorities while giving medical services to such victims.
- ❖ The CAG Report (Government of Rajasthan, Report No. 4 of 2022) audited crime against women in Rajasthan which revealed many challenges such as slackness in collecting samples, delay in forwarding of samples for examination, delay in collection of examination reports from the forensic laboratories, monthly medical checkups not done and in many cases, even the DNA test was not conducted.¹⁰⁴ It indicates negligence on the part of police in handling sensitive crimes and it also has an adverse effect on the investigation process.
- ❖ The report recommended that the State Government should collect details of the cases where there has been negligence and delays in the collection and forwarding of samples for forensic examination and fix responsibility against the erring officials. To increase the efficiency and effectiveness of the

¹⁰² Writ Petition (civil) 310 of 1996

¹⁰³ [Guidelines and Protocols](#)

¹⁰⁴ [CAG Report](#)

investigation of cases, the State Government should encourage the investigating officers to adequately utilize the investigation apparatus including MFUs, DNA testing and audio-visual recording.

- 11) The areas of frequent criminal activities, isolated areas, or areas prone to riots must be on **alert patrolling, and focused surveillance** to prevent crimes. For instance, having a high probability of riots taking place in the Nuh(district in Haryana) and despite the provocative videos shared on social media with clear warning signs, the administration was unable to take **precautionary measures** to prevent the clashes between the two communities.¹⁰⁵The areas prone to communal and ethnic clashes must be given special attention so that the police authority must not be outnumbered or unequipped to handle such riots.
- 12) The compensation is sometimes not only delayed but there are other varied challenges. For instance, in Bengal, the compensation was not only delayed but the two women(victims) when reached the bank to receive compensation, were told that they could receive the money only if they agreed to put 75% in the fixed deposit.¹⁰⁶Further, West Bengal's State Legal Services Authority (SLSA) was unable to compensate because it had only Rs 5,000 left in its account.¹⁰⁷ All such diverse problems indicate a need for **strict uniform compensation guidelines** and **sufficient funds** across India. In Madhya Pradesh, the utilization of prisoner's wages to compensate victims is a convenient way for compensation.¹⁰⁸ The compensation scheme must be audited annually to prevent corruption or misuse of funds. The victim compensation scheme and its rules and procedures must be brought to the public forefront by the concerned authorities.

Conclusion

The victim plays a crucial role in the criminal justice system both as a complainant as well as a witness during criminal proceedings. The criminal justice system has an important responsibility to protect the rights of the victims, prevent the conviction of an innocent, prevent undue harassment of the victims in the proceedings, and secure the ends of justice. Various legal and policy provisions as interpreted by the Courts have contributed to the development of victims of crimes in India. Several reports of different Committees and Commissions have made their contribution in favour of victim protection.

In conclusion, it can be said that the rights of the victims have been recognized albeit there is still a considerable distance to travel in giving practical meaning to rhetoric inclusion.

¹⁰⁵ [Police Inaction](#)

¹⁰⁶ [Bengal Victim Compensation](#)

¹⁰⁷ [Bengal Compensation Fund](#)

¹⁰⁸ [Madhya Pradesh prison wage](#)

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