



## A Comparative Analysis of Victims' Rights in USA, UK and India

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### ABSTRACT

*Victim rights are neglected in most of the countries. Their role is limited to giving witness and are ignored in the criminal justice system. It is very important to protect the victim rights in any criminal justice system. This paper analyses the protection of victim rights in USA, UK and India.*

**KEYWORDS :** victim, rights, criminal, law

### Introduction

Under most of the legal systems of world, a victim is simply a complainant who activated the machinery of the criminal justice system by bringing evidence and information about illegal acts to the attention of the authorities. If the police solved the case and made an arrest, the victim then played an additional role as a witness for the prosecution and helping the government to secure a conviction. Since crime is conceptualized as an event that threatened and offended the entire community, and was prosecuted by the state on behalf of the People, the actual victim was treated like just another piece of evidence, a mere exhibit to be discarded after the trial. The responsibility of victims is only confined to report the incidents, cooperate fully with the investigation, and ultimately testify as part of the state's case in court. But the rights that the injured parties deserved within the criminal justice process, as it handled and resolved their cases, were not given much consideration at all.

### Victims' Rights in USA

In America there was a serious imbalance between the rights of offenders and crime victims. Despite the reliance on victims, the American Jurisprudence has emphasised its interest in favour of offenders. As a consequence the needs of the victims had become subordinate to the offenders. During the years 1960s and 1970s a movement for the victims' rights started in view of extraordinary rise in the crime. The movement began as a coalition of various organizations seeking to redress the criminal justice system's inadequate treatment of victims. Early in 1980 President Ronald Reagan appointed a Task Force to investigate the crime trends and ascertain the position of victims in criminal proceedings. The Task Force in its report called for assistance for victims and recommended a Constitutional Amendment recognizing the victims' right to be present and heard at all the critical stages of criminal proceeding and restitution in all the cases where victim suffered financial loss.<sup>1</sup>

Prior to this Task Force Report, the notable legislation concerning victims was The Victim Witness Protection Act, 1982. This Act anticipated the recommendations of the Task Force Report and incorporated important provisions concerning victims' rights which included restitution by the victim and victim impact statements at sentencing of offenders. The Act also required the Attorney General to lay down the policies for the protection of victims and witnesses. Overall the Act assured a fair treatment for victims in Federal Criminal Justice System, by assuring his participation and protection from victimization along with restitution on priority basis.

There after the *Victims of Crimes Act, 1984* referred as (VOCA) was passed by which the Congress provided funding for victim assistance, victim compensation and training and technical assistance for victim service providers in the state. The Act redistributed the monies collected from federal offenders in the form of fines, penalties, bond forfeiture to the states and local funding the victims.<sup>2</sup> States responded by making suitable amendments in their respective laws.

Then in the subsequent *Victims Rights and Restitution Act, 1990*, the Congress gave the crime victims a host of rights which included the right to notification of court proceedings and right to attend them, right to know the changes in the status of offenders' detention, right to consult the prosecutors and right to protection from the offenders' aggression. Later, during President Bill Clinton's regime *The Violent*

*Crime Control Act* and the *Law Enforcement Act* gave federal victims right to speak at sentencing hearings, made restitution mandatory in sexual harassment cases and expanded the funding for the local victim assistance programmes.<sup>3</sup>

The next important legislation, *The Mandatory Restitution Act, 1996* authorised the federal judges to order full restitution from the offenders in the specific cases of fraud, property crimes, consumer product tampering and drug crimes etc. By 1998, 29 states have amended their Constitutions under the influence of the recommendations by Regan Task Force, granting new rights to victims which included right to speedy trial and right to participate in parole proceedings.<sup>4</sup>

Finally there came the most important legislation advancing the victims' rights in 2004, the *Crime Victims Rights Act, 2004* (CVRA). The Act strengthened the existing federal crime victims' rights provisions and its most important contribution is the creation of a judicial enforcement regime, including standing for crime victims to transform often illusory crime victims' rights into meaningful, enforceable ones.<sup>5</sup> The CVRA can be distinguished from earlier legislations and most state constitutional amendments and statutes in three areas: (1) It extended rights and remedies to victims of all infringements and violent crimes, (2) It gave a significant right to participate at all critical stages of criminal proceedings and (3) It provided judicial enforcement regime, which gave a right to victim to appeal against a violation of his rights immediately after the violation occurs to federal appellate courts and the same to be heard within seventy-two hours. The Act provides the following rights to victims:

The right to be reasonably protected from the accused.

The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.

The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.

The reasonable right to confer with the attorney for the Government in the case.

The right to full and timely restitution as provided in law.

The right to proceedings free from unreasonable delay.

The right to be treated with fairness and with respect for the victim's dignity and privacy.<sup>6</sup>

The *Crime Victims' Rights Act* (CVRA) of 2004 is a seminal contribution towards advancing crime victims' rights through the creation of a new judicial enforcement regime. The Act besides providing number of trial participation rights also provides the victims, the right to be treated fairly and respect the victim's dignity and privacy. This re-

sults in increase of cooperation of victim with police, prosecution and judges. Further, the creation of new judicial enforcement regime has resulted in the new body of case law. In interpreting and applying victims' rights, it has set standards to guide the conduct of trial judges, prosecutors, defense attorneys, and other criminal justice officials.

### Victims' rights under United Kingdom

In England and Wales, victims' rights are mainly service rights.<sup>7</sup> The *Code of Practice for Victims of Crime* has played a major role in providing victims with a minimal level of service they can expect from eleven criminal justice agencies,<sup>8</sup> including a comprehensive and detailed list of information rights.<sup>9</sup> In addition, the Code includes a clear division of service obligations between the different criminal agencies to facilitate implementation and avoid confusion among the different agencies. For instance, the Code (as well as prosecutorial pledges and the *Code for Crown Prosecutors*) recognises the prosecutor's key role, not only in informing victims about decisions,<sup>10</sup> but also in meeting certain victims and providing them with *explanations* when certain prosecutorial decisions are made in the most serious crime cases.<sup>11</sup> The Code provides vulnerable and intimidated victims with enhanced services through Witness Care Units. These units have a unique duty to inform victims about case progress and to identify victims and witnesses with particular needs that would require enhanced services under the Code:

Then came in 2001 Victim Personal Statement (VPS) scheme which provided victims with a right to submit a victim personal statement (VPS) to the police which is also meant to be part of the victim's file to inform criminal justice agencies about victims' specific service needs:

Prior to this Legislation, the main thrust of English law was on payment of compensation to the crime victims. The most prominent legislation in England that showed concern for crime victims was Criminal Justice Act, 1972. According to this Act payment of compensation was the most appropriate action after the conviction of the offender. This Act was subsequently replaced by Criminal Court Act, 1973. This Act empowered the courts to make the compensation order under Section 35(1) "by or before which a person is convicted of an offence." and additionally the courts can make any other order it thought appropriate. This order was not dependent upon an application by the victim and it can be granted in respect of any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentences.<sup>12</sup> It is important to note that this provision extended to not only personal injury loss or damage suffered by the immediate victim of the offence but also to persons indirectly affected by it, provided, of course, that a clear and casual connection can be established.<sup>13</sup> The Criminal Court Act, 1973 also went through several amendments and lastly replaced by Criminal Justice Act, 1988.

Under the 1973 Act, the compensation order was entirely a matter of discretion of the court. But under the Criminal Justice Act, 1988, the courts had no such discretion to grant or not to grant the compensation to the victims. Further, the Act made it obligatory for the courts to record reasons for not awarding the compensation, even if it had a power to order compensation, but declining to do so.<sup>14</sup> The power of court to order compensation was considered to be a useful sentencing tool. The court by directing the convict to pay compensation to the victim for the injury suffered by him as a result of criminal behavior of the convict saved the victim from filing a civil suit for the same. In *R v. Inwood*<sup>15</sup>, Scarman LJ. observed that compensation order were introduced on to our laws as a convenient and rapid means of avoiding the expense of civil litigation when criminal has means which would enable compensation to be paid.

The court could award compensation in respect of any personal injury, loss or damage. But there must be a causal link between the offence and the loss suffered by the victim. When the court makes a compensation order, it was not required to consider the complete concept of causation applicable to civil law, it was sufficient if the loss or damage "can fairly be said to have resulted", from the offence.<sup>16</sup> The court showed its concern by laying down simple procedure for compensation largely administered by law magistrates. The order for payment of compensation was not punitive but purely compensation. In *R v. Maynard*<sup>17</sup> it was observed that compensation should explicitly refer to the loss suffered. Sec 35(4) of the Act of 1973 states that the

offenders' means to pay the compensation should be taken into consideration by the courts.

Apart from the compensation to the victim of crime by the offender, there is also a scheme which provides compensation to the victim of crime by the State. The Criminal Injuries Compensation Scheme was first introduced as an experiment on a non-statutory basis in the year 1964<sup>18</sup> to provide ex-gratia compensation to the victims of crimes of violence and to those hurt in their attempts to arrest the offenders and to prevent crimes. This scheme was revised in the year 1979, in which major changes were introduced to make it effective, so also the scope of the scheme was extended so as to cover the victims of family violence. The government of U. K. has introduced a revised Criminal Injury Compensation Scheme giving effect from 1979 on a non-statutory basis to provide ex-gratia compensation to compensate the victims of crime. Criminal Justice Act of 1988 replaced the earlier scheme with another placed on a statutory footing, with the consequence that eligible applicants now have an express legal right to compensation.<sup>19</sup> The new scheme is based closely on the earlier scheme, although certain adjustments are made.

The earlier scheme simply stipulated that victims of a crime of violence including arson and poisoning were eligible but the phrase was not further defined and its interpretation caused difficulty. Consequently, Section 109 of the Criminal Justice Act, 1988 sets out a new and more detailed definition of eligibility, intended to cover same broad group of victims. Under the present scheme so also in the earlier scheme, persons who are injured in the law enforcement activity are entitled to compensation. The Act embodies provisions for victim's compensation against various crimes, such as Rape, corporate offences, traffic violation, dangerous driving etc.

The concern for victims continued with launching of new schemes like 'Victim Support' and victim's welfare. These schemes provided the victim various rights like right to be heard, right to necessary information for protecting his interest, right to be protected by the enforcement agencies, right to receive compensation and restitution, right to receive support and assistance etc. The Victim's Charter, 1990 and Victim's Charter, 1996 issued by Home Office provides for standards of service to be given to the victim and his family. It included right to be treated human dignity and respect, right to support and protection and right to compensation and reparation.

The compensation awarded through the State Funded Criminal Injuries Schemes which began in 1964 was modified in 1969, 1979, and 1990. Finally the Criminal Injury Compensation Act, 1995 established a new tariff approach based on types of injuries rather than individualized consideration of harm or damage. The Act set a standard fixed payment ranging from 1000 to 2,50,000 pounds depending upon the severity of injuries which were grouped into twenty five bands<sup>20</sup>.

The subsequent enactments in UK considered reparation as other mode of doing justice crime victims. The Crime and Disorder Act, 1998, the Youth Justice and Criminal Evidence Act, 1999 and the Power of Criminal Court Act, 2000 are the legislations where the reparation to the victims is dealt with. The scheme of reparation is applied at three different levels in the criminal justice. At pre-prosecution, in between conviction and sentence and as a part of punishment to make the offender liable personally for his behavior. The gradual increase in the importance accorded to victims of crime over recent years has gone hand-in hand with a shift in how they are perceived. In the past, the relationship between victims and criminal justice professionals has overwhelmingly been defined in terms of the needs of one agency in particular - the police. The focus has been almost wholly on the victim reporting crimes, identifying offenders and providing evidence. However, the emphasis has progressively moved away from this focus solely on what the police need from victims, and more towards recognition that the latter not only have needs of their own but also have positive rights. Commentators have suggested that now, for the first time, "... victims and witnesses are genuinely central to people's thinking on criminal justice... not merely regarded as a source of evidence."<sup>21</sup>

In general, England and Wales have been able to take positive action toward rebalancing justice with no task force, no declarations and no framework decisions. By the time the *Magna Carta* for victims of

crime was adopted in 1985, the government of England and Wales had already developed a network of victim assistant agencies (referred to as "victim support schemes") as well as relatively generous criminal injuries program. The National Association of Victim Support Schemes (NAVSS) was set up by the British government to establish victims' service standards across England and Wales in 1979. The British government also modified the restitution law so that restitution was to be paid before fines.

In 1996 and 2004 this charter went to two further iterations. The British government didn't stop there. In 2006, it adopted the code of practice for victims of crime, a protocol that governs the services provided to victims. It defines which victims of crime will benefit from which services and the service providers.

The minister of justice for England and Wales appointed a victim champion to advocate for victim's issues and advise top levels of government on victim concerns. In 2008, Sara Payne was appointed the same who called for more integration between victims and criminal justice systems. In 2010, two new initiatives were rolled out to better serve victims of crime. One was to launch a National Victim Service to build on a national network of victim assistance agencies and court based services. The second was to replace the rotating victim champion with a permanent victim commissioner to oversee the National Victim Service.

### Victims' rights in India

Victims have few legal rights to be informed, present and heard within the criminal justice system. Victims do not have to be notified of court proceedings or of the arrest or release of the defendant, they have no right to attend the trial or other proceedings, and they have no right to make a statement to the court at sentencing or at other hearings. Moreover, victim abatement programs are around non-existent<sup>22</sup>

The core rights for victims of crime include:

The right to attend criminal justice proceedings;

The right to apply for compensation;

The right to be heard and participate in criminal justice proceedings;

The right to be informed of proceedings and events in the criminal justice process, of legal rights and remedies, and of available services;

The right to protection from intimidation and harassment;

The right to restitution from the offender;

The right to prompt return of personal property seized as evidence;

The right to a speedy trial; and

The right to enforcement of these rights.

### Constitutional Protection

Incorporating victims' rights into constitutions also gives those rights a degree of permanence. Ordinary statutes can be changed at any time by the legislature. In contrast, it is relatively difficult to change the constitution of a state. In most states, a constitutional amendment must be passed by each house of the legislature by a two-thirds majority. This must usually be done at least twice, often with a legislative election between votes. Identical language must be passed each time. In addition, giving victims' rights constitutional protections generally makes those rights enforceable. If an official or a state agency violates a constitutional right, a court usually has the power to order that official or agency to comply with the constitution.<sup>23</sup>

In general, the victims' rights in the Constitution are:

be treated with fairness, dignity and respect;

be informed of proceedings and events, such as the release of the defendant;

attend the trial and other proceedings;

be heard at critical points in the criminal justice system, such as sentencing or parole hearings; and

be awarded restitution from a convicted offender.

### Conclusion

In spite of so many legislations and international conventions it is sad to note that the victim rights are unnoticed by the legislature as well judiciary. Although judiciary has taken up most of the task for protection of victim rights in the form of compensation for victims, it is pertinent to note that there is no effective or restorative justice to the victims. The views and wants of victims are often ignored. India needs a new legislation which fixes compensation and recognize the rights of victims specially and protect them.

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