

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 5 | Issue 4**

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**2022**

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# Crime Victims and Criminal Justice System: A Comparative Analysis

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## ABSTRACT

*The Present Paper is an attempt to make a comparative analysis of the position of crime victims in various Crimi-nal Justice Systems across the globe. It also examines their outstanding role in bringing the rights of the crime victim to some extent in tune with their Justice Delivery system. Laws protecting crime victims in India, in particu-lar, are argued to be insufficient. In India, the criminal justice system has been functioning well below average, and many would argue that it has failed to inspire public confidence. Until the criminal justice system takes vic-tims' interests into account, it is now widely acknowledged that no amount of criminal law or criminal procedure will ever result in justice being served. The victim is not merely a tool in the prosecutor's arsenal for securing con-victions. If the victim is merely employed in the reporting of the crime and subsequently as a witness, they should be treated as human beings with their own rights that should be taken into account at all phases of the criminal investigation and final prosecution. Further, the Research paper will look into the changing dimension of the sta-tus of victim's till date under various International instruments and their impact on developed, developing and under developed countries. The Indian Criminal Justice System's limited provisions for the protection of crime victims are also mentioned. Without being oppressive, criminal law must be powerful enough in its content as well as its implementation. Victims, on the other hand, have been reduced to mere witnesses in criminal trials down the ages. In this way, the role of victim has changed dramatically in human history. As legal conceptions have evolved over time, so too have the methods used to address victims of crime in the criminal justice system. The current research is only devoted to doctrinal issues.*

**Keywords:** *Victim's, Criminal Justice System, International Covenants, victimology, Magna Carta.*

## I. INTRODUCTION

Our understanding of victims can constantly be improved. Victims are often treated as merely a conduit for evidence and information regarding criminal activity in most court systems around the world. There is a perception that victims of crime are puppets in the government's

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game. Victims of crimes that the government views as a danger to society as a whole are dehumanised and treated as if they were only exhibits in a courtroom, to be thrown away after a conviction is handed down. Prior to World War II, criminal law and criminologists paid almost no attention to the victim's perspective on the criminal justice system or compensation for the victim of crime. The United Nations General Assembly in 1985 adopted the Declaration on Basic Principles for Justice for Victims of Crime and Abuse of Power after recognising that victims' rights had not been successfully addressed. A non-legally enforceable convention, the Magna Carta of worldwide victim's movement, sets out the basic norm for the treatment of crime victims. The first International Symposium on Victim (1973) held in Jerusalem concluded that modern laws were harsher on victims than on offenders in terms of compensation for victims, and that victims should be adequately armed with modern laws to obtain indemnity from the offender through procedural reforms. As well as punishing the culprit, the victim of a crime demands compensation for any physical or material damage they have suffered.<sup>2</sup>

## **II. POSITION OF VICTIMS UNDER INTERNATIONAL COVENANTS**

Criminals who commit international crimes like genocide, war crimes, crimes against humanity, enforced disappearances, and torture must be held accountable, regardless of where the crimes were committed. There is a universal consensus.<sup>3</sup>

Combating injustice against those responsible for international crimes begins and ends with the victims who bear the brunt of that injustice. When it comes to protecting the rights of victims, states and criminal justice actors must be conscious of their responsibilities.

Protecting human rights and maintaining world peace are the core goals of the United Nations. Because of this, the UN has played an essential role in the defence of crime victims' human rights. The UN General Assembly's formal acceptance of the "UN Declaration of basic principles of justice for victims of crime and abuse of power" during its 96th plenary meeting on November 29th, 1985, is one of the most significant advances in victimology in the recent two decades.<sup>4</sup> For victims of crime and power abuse, the UN General Assembly's 1985 Declaration on Basic Ideas of Justice gives the "Magna Carta" of principles that have been hotly disputed and recast as victim's rights in several industrialised countries during the last

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<sup>2</sup>Dalbir Bharti, *The constitution and criminal justice administration* (2002).

<sup>3</sup>International Covenant on Civil and Political Rights, OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited Jul 16, 2022).

<sup>4</sup> Declaration of basic principles of justice for victims of crime and abuse of power, OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse> (last visited Jul 16, 2022).

two decades. In the UN Handbook on Justice for Victims, the international standards demanded from governments in the treatment of victims are defined.<sup>5</sup> For the first time, significant efforts were undertaken at the international level to define the victim and their rights. The UN Declaration on the Rights of Victims of Crime includes provisions for victims' access to justice and equitable treatment, as well as restitution, compensation, and help. The biggest successes of victims' rights include the "Right to Reparation for Victims of Human Rights Violations" in 1997, the "Handbook on Justice for Victims" in 1999, and the "UN Convention on Justice and Support for Victims of Crime and Abuse of Power" - 14 November 2005<sup>6</sup>

Victims are defined in the Declaration in order to ensure that they are not overlooked by society. In the definition, a victim is defined as a person who has been harmed, either individually or collectively, including but not limited to physical or mental injury, emotional distress and being identified, apprehended or prosecuted or convicted. the close family members or dependents of the actual victim, as well as those who have been harmed by intervening to help or avoid victimisation.<sup>7</sup> As a victim of illegal acts or omissions that violate the criminal laws in force inside member states, including rules prescribing criminal abuse of power, they are often overlooked by the entire system of administration for pecuniary loss or considerable degradation of their fundamental rights. Victims under this declaration may include perpetrators who have not been charged with a crime. Declaration of Rights declares victims' rights, including their right to be informed of the progress of their cases.

Victims of crime have been addressed in the Declaration's recommendations.<sup>8</sup> Some of the suggestions which deserve a special note are:

- (i) There should be compassion and respect for the dignity of the victims. They have a right to seek restitution through the channels of justice established by law for the injury they have endured.<sup>9</sup>
- (ii) In order to ensure that Victims have access to swift, fair, cheap, and accessible remedies, judicial and administrative systems must be established and strengthened.

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<sup>5</sup> Measures for crime victims in the Indian Criminal Justice System, , [https://www.unafei.or.jp/publications/pdf/RS\\_No81/No81\\_11VE\\_Chockalingam.pdf](https://www.unafei.or.jp/publications/pdf/RS_No81/No81_11VE_Chockalingam.pdf) (last visited Jul 15, 2022).

<sup>6</sup>(PDF) victims of crime - researchgate, [https://www.researchgate.net/publication/309284059\\_Victims\\_of\\_Crime](https://www.researchgate.net/publication/309284059_Victims_of_Crime) (last visited Jul 15, 2022).

<sup>7</sup> Singh Chandra Sen Pratap, *Victims of crime: Their rights and human rights* (2010).

<sup>8</sup> United Nations General Assembly, A/RES/40/34 - declaration of basic principles of justice for victims of crime and abuse of power - un documents: Gathering a body of global agreements, <http://www.un-documents.net/a40r34.htm> (last visited Jul 16, 2022).

<sup>9</sup> Robert C. Davis, Arthur J. Lurigio & Wesley G. Skogan, *Victims of crime* (1997).

- (iii) Victims have the right to seek remedy through these channels, and this information should be made available to them.
- (iv) The police and the courts are beginning to understand the need of treating victims with respect and dignity. Secondary victimisation is often caused by indifference and callousness not only by criminal law agencies but also by the people in their vicinity, hospital and mass media. Statutory guidelines in the form of "victim's Bill of Rights" are being provided in the United States and certain European countries.
- (v) Criminal justice does not place much importance on victims, despite the growing recognition that they should be given a voice in their own defence.
- (vi) Probation and other innovative sentencing measures are being used to alleviate the suffering of the victim. If the criminal is willing to pay the victim, he or she may be released on probation in acceptable conditions.
- (vii) Acquaintance with the processes and outcomes of their cases for victims of serious crimes who have asked for this information is a critical part of the justice system.
- (viii) Reducing the burden on Victims by ensuring that they are protected from intimidation and revenge by the perpetrators, as well as the families of the Victims and witnesses on their behalf. Execution of orders or decrees providing awards to them should not be held up by undue delays..

Several international documents, such as the Resolutions of 1985 and 2005, included provisions for victims' rights before and after:-

1. **Article 8** of the *Universal Declaration of Human Rights, 1948*:- It addresses the need for an international tribunal to provide an effective remedy for those who lack such a remedy at home.
2. **Article 2** of the *International Covenant on Civil and Political Rights, 1966*:- There should be an appropriate remedy for anyone whose rights or freedoms are violated in accordance with this document.
3. **Article 6** of the *International Convention on the Elimination of All Forms of Racial Discrimination, 1963*. Protective mechanisms and tribunals for victims of racial discrimination should be established by the members, it says.

4. **Article 14** of the *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, 1984*- A judicial mechanism for redressing the concerns of torture victims is urged to be established and maintained by the state parties.
5. **Article 39** of the *Convention on the Rights of the Child, 1989* - Children who have been harmed should be given the opportunity to rehabilitate physically and psychologically, it says.

### III. POSITION OF VICTIMS UNDER ROME STATUTE (ICC)

I.C.C in Hague, Netherlands, is a good illustration of a pro-victim approach to international law. The International Criminal Court (I.C.C.) is the first international court to acknowledge victims' rights. Rights of victims to participate in criminal justice procedures and to be able to receive reparation through the court are based on the 1985 United Nations Declaration of Basic Principles on Justice for Victims and Abuse of Power.<sup>10</sup>

This is the first major international treaty to make the rights of victims a central part of the quest for redress. The atrocities committed during the world wars of the twentieth century are highlighted in the Statute's Preamble as a source of injustice made worse by the impunity of the perpetrators. The International Court of Justice's Rome Statute recognises victim's rights.<sup>11</sup> It started with the adoption of “*The Rome Statute of the International Criminal Court*”.<sup>12</sup> Restitution for victims is a key focus, and the United Nations Commission on Human Rights drafted the majority of the fundamental principles and guidelines for reparation.

**Article 68**, of the *Rome Statute* of 1998 states that:

“Where the personal interest of victims are affected, the court shall permit their views and concerns to be presented and considered at stages of proceedings determined to be appropriated by the court and in a manner which is not prejudiced to or inconsistent with the rights of the accused and in a fair and impartial trial”.

Similarly, **Article 75** of the *Rome Statute* discusses the measures of compensation, rehabilitation and restitution of victims.

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<sup>10</sup> Rome Statute of the International Criminal Court, , <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf> (last visited Jul 15, 2022).

<sup>11</sup>Theo van Boven, The position of the victim in the statute of the International Criminal Court, Reflections on the International Criminal Court 77–89 (1999).

<sup>12</sup>Rome Statute of the International Criminal Court, OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court> (last visited Jul 16, 2022).

In addition to the aforementioned, a large number of countries have enacted legislation and implemented programmes specifically to assist victims of crime. To name a few of them, for example:-

#### **IV. POSITION IN UNITED STATES OF AMERICA**

Beginning in the 1970s and 1980s, the victimology movement in the United States grew into a significant force. The following are some of the U.S. government efforts aimed at providing support and safety to the victims:

- In 1982, the U.S. Reagan Commissioned the President's Task Force on Victims of Crime<sup>13</sup> supervised by Assistant Attorney General Lois Haight Harrington. In 1984, the Victims of Crime Act was approved, which established the Crime Victims Fund as a result of the Commission's suggestion .
- The Crime Victim's Rights Act was signed into law by the United States Congress in April of 2004. In accordance with this legislation, victims have the following rights.:<sup>14</sup>
  - i. To be able to keep the accused at a safe distance.
  - ii. Notification in a timely manner that is both accurate as well as complete.
  - iii. It is important that you are included in any public proceedings.
  - iv. To be able to be heard clearly.
  - v. To speak with a government lawyer about the matter.
  - vi. In accordance with the law, to offer complete and timely reparation.
  - vii. To not be held up by excessive delays.

For several states in the United States, this federal law served as the basis for enacting state legislation to protect victims of crime..

- National Organization for Victim Assistance (NOVA): An umbrella group dedicated to improving present victim services, developing new programmes, and advocating for the adoption of victim's rights laws was created in 1975. In addition, NOVA is a resource for local and regional victim support programmes in terms of information and technical help.

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<sup>13</sup> Victims in criminal justice: Rights, services and vulnerability, *Victims of Crime* 26–53 (2012).

<sup>14</sup> David E. Aaronson, *New rights and remedies: The federal crime victims' rights act of 2004* DigitalCommons@Pace, <https://digitalcommons.pace.edu/plr/vol28/iss4/2/> (last visited Jul 16, 2022).

- Victim Impact Assessment (VIA): VIA, During sentencing, it is one of the most powerful weapons that victims have in the fight against crime. Pre-sentence reports, presented to the judge before imposing sentence, are required in most jurisdictions and allow the victim to make an oral or written testimony at the sentencing hearing.

During sentencing hearings in the United States, the Supreme Court determined that Victim Impact Statements could be considered constitutionally.<sup>15</sup>

## V. POSITION IN CANADA

In response to the United Nations Declaration on the Rights of Victims, Manitoba became the first Canadian province to pass the Justice for Victims of Crime Act in 1986. There were provisions for crime prevention, mediation, and conciliation and reconciliation procedures in Manitoba's legislation, for example.

In Canada *the Victims Bill of Rights Act*<sup>16</sup> was passed on 23<sup>rd</sup> July 2015 As a result of this new law, victims of crime now have a more powerful voice in the criminal court system When this legislation is signed into law it will be the first time in Canadian history that victims of crime would have explicit statutory rights at federal level in Canada. Rights to information, protection, and participation, and the ability to seek compensation are established in the Canadian Victims Bill of Rights. A complaint process is in place for breaches of these rights by federal agencies.

Complaints are initially filed with the relevant federal government agency by victims who believe their rights have been violated under the Canadian Victims Bill of Rights (CVBR). Internal complaint systems for victims to assess complaints, make recommendations for correcting any infringements, and notify victims about review outcomes are mandated by the Canadian Victims Bill of Rights law for all federal departments and agencies.

When it comes to police, prosecutors, or victim services, you can expect your complaint to be handled in accordance with the relevant provincial or territorial legislation. As a means of enhancing or creating complaint organisations for crime victims, the federal government is allocating cash through the Victims Fund to the provinces and territories. This financing ensures that victims of crime across the country have access to the same complaints channels,

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<sup>15</sup> *Payne v. Tennessee* 111 S. ct. 2597 (1991), <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1093&context=wlucdj> (last visited Jul 15, 2022).

<sup>16</sup> *Service Canada, Government of Canada* Canada.ca (2015), <https://www.canada.ca/en/news/archive/2015/07/overview-canadian-victims-bill-rights.html> (last visited Jul 16, 2022).



but does not divert funds from programmes that have been proven to be effective for victims of crime.

During the investigation, prosecution, and corrections or conditional release of an offender, a victim has the opportunity to exercise the rights under the Canadian Victims Bill of Rights. An accused who has been ruled unfit to stand trial or not criminally responsible due to mental disorder can exercise his or her rights while a court or Review Board is considering the case<sup>17</sup>

## **VI. POSITION IN FRANCE**

As soon as an investigation has been launched, victims of crime are entitled to participate as parties. In the trial stage, the role of the victim is dynamic as well. When prosecutors fail to do their jobs properly, victims can be named as special prosecutors. Also remarkable in the French system is the role of the victims in deciding whether bail should be granted or cancelled and how much compensation should be set. Efforts were made in France in 1993 to enhance existing legislation in order to increase the potential for victim compensation..<sup>18</sup>

Interestingly, in European criminal proceedings, the victim or his representative has a highly active role allotted to them. In France, for example, everyone who suffers harm as a result of an offence is entitled to participate in the procedures from the beginning of the investigation. Even though he isn't a lawyer, he is well-versed in the legal process and can help with investigations that have been delayed or misconstrued. The prosecution will not be inconvenienced by his active participation during the trial, which will aid in the search for the truth. If he feels qualified, he can provide the court ideas for probing questions to ask the witnesses. If the public prosecutor fails to do his job properly, he can take over the case. He has the ability to supplement the prosecution's evidence and make his own arguments. There is no doubt that the court would benefit from his expertise in this area. In order to determine whether or not he is entitled to temporary reliefs and compensation by way of restitution, he will present evidence regarding his losses, anguish, and suffering. If the court can keep the victim on its side, it can thwart any attempts made by the prosecution to withdraw or close the case for reasons unrelated to the case itself. Victim participation in investigations, prosecutions, and trials, as well as the power of courts to discover the truth, should be recognised in criminal procedures for a variety of good reasons. Next of kin should have this power if the victim is deceased or otherwise unavailable. For victims of sexual assault, children who have been

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<sup>17</sup> Anne F. Logan, *The international work of Margery Fry in the 1930s and '40s* Kent Academic Repository (2016), <https://kar.kent.ac.uk/64560/> (last visited Jul 16, 2022).

<sup>18</sup> Rights of victims in the Indian Criminal Justice System, , <https://www.ielrc.org/content/a0402.pdf> (last visited Jul 15, 2022).

victimised, and those in charge of caring for the elderly or disabled, the courts should allow these groups and government agencies to intervene as parties whenever it is deemed necessary for a fair resolution of the case by the court.

## **VII. POSITION IN EUROPE**

Both the Council of Europe and the European Union have set international standards for victim protection. First, in 1983, a European Convention on Compensation for Victims of Violent Crime was enacted by the Council of Europe, which sets forth basic principles for state compensation of crime victims.<sup>19</sup> Adoption of Recommendation 85(11) on Victim Status in Criminal Law and Procedure followed the convention.<sup>20</sup>

In 1999, the European Commission sent a letter to the European Parliament titled "Crime victims in the European Union: reflections on standards and action," which contained seventeen recommendations grouped under five main headings: prevention of victimisation, assistance to victims, standings of victims in criminal procedure, compensation issues, and general issues, and urged member states to implement fair and effective legislation in this area. The Framework Decision on Victims in Criminal Proceedings was adopted by the Justice and Home Affairs Council in 2001 after it was adopted by the Parliament. There are no waiting periods for the rights established by the framework judgement, unlike other international standards. As a result, victims' rights have also acquired popularity throughout Europe. This has resulted in an increased focus on victims' rights in international talks about human rights and criminal justice reform..

## **VIII. POSITION IN ISLAMIC COUNTRIES**

Criminal laws and social security systems have been implemented in modern society in an effort to give protection to victims of crime. Since there are so many various types of justice, they haven't all developed in the same way. Victims play an important part in several modern criminal justice systems, such as those in Islamic countries and some European ones.

It is important to remember that allowing victims to participate in the punishment process is more than just a way for them to receive payback or retribution. Victims may feel 'let down' by the system no matter what punishment the court decides. Involving them can assist the justice

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<sup>19</sup> Council of Europe – European Convention on the compensation of victims of violent crimes (ETS No. 116) – translations, Treaty Office, <https://www.coe.int/en/web/conventions/-/council-of-europe-european-convention-on-the-compensation-of-victims-of-violent-crimes-ets-no-116-translations> (last visited Jul 16, 2022).

<sup>20</sup>Victims and the International Criminal Court (ICC): Evaluating the ..., , <https://journals.sagepub.com/doi/10.1177/026975800901600205> (last visited Jul 15, 2022).

system regain its public trust while also serving as an additional deterrent to criminals in some societies.

Victim involvement is a well-established idea in Islamic thought, although it is new to the West and has not yet been thoroughly explored in any systematic way. Until the 1990s, the rights of suspects and criminals were the primary focus of Western judicial systems. Since then, the direct involvement of victims has become increasingly important.

Islam is the only religion in the world that has a system of retribution that includes the victim in the process. It contributes to the criminal justice system in two ways. Having the victim's voice heard is an important first step in ensuring that the justice system does not see the victim as an outcast. Because the victim bears the brunt of the offender's actions, they should have a say in how he or she is punished or pardoned.

As a result, the engagement of the victim in the punishment process may serve as a deterrent to future perpetrators. ' There are certain criminals who are willing and eager to commit specific crimes in order to receive the legal punishment, which may be a relatively short sentence for them. This could prevent them, though, if they perceive that their victim(s) might have some influence in the penalty they get. Here we can also mention that forgiveness, if that option is selected by the victim or victim's party, has the spiritual and moral force of reforming the offender by actual evidence of unselfishness, if that is what the victim wants.

Modern Western legal systems have been developed to reflect a worldview that emphasises the importance of an individual's time here on Earth. In many cases, offenders are given lenient treatment because they are claimed to be victims of circumstances, psychological complexes, and nerve diseases that are out of their control. Because it denies the victims of crime their right to forgive if they choose and are capable, or to accept compensation or demand the required punishment, this attitude is in direct conflict with natural justice. According to the Islamic pattern outlined above, allowing the victims to participate in the sentencing process returns to them their rights and duties in a topic that directly affects them and concerns them most. Islamically speaking, it's a well-rounded approach to victimology that makes an important contribution. Until now, Western legal thought and processes have mostly ignored or ignored this fact.

## **IX. THE WAY FORWARD**

The right of a victim to protection encompasses both the right to be shielded from being a victim and the right to be shielded from becoming a second victim. Victims have the right to redress, knowledge, and the truth as part of their right to justice and fair treatment. They all

exhibit a consensus on compensation for victims of crime, which is a positive sign for victims and their families.

The International Criminal Court (ICC), which has made a significant impact on the rights of victims, is in the crosshairs. The creation of the ICC provides victims with a mechanism to bring those responsible for their harm to justice and obtain redress.

According to this brief review of the global legal framework for victim's rights, the necessity to enforce and safeguard suspects' and accused's rights does not have to be exclusive when reorienting different Criminal Justice systems to serve the requirements of victims of crime. As a general rule, the goal of these multinational initiatives is to raise awareness for victims around the world. It's also a way to ensure that victims are treated with respect in each country's criminal justice system.

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