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# Rights of Victims in Indian criminal Justice System

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## ABSTRACT

*The purpose of this research paper is to enlighten the reader with the rights of victims in Indian criminal Justice System. Often times the rights of the victims in our legal system is disdained or not given enough priority by the legal authorities. One of the primary reasons of this issue is that most of the average citizens in a state/country do not know what rights will or should be administered to them in case they are subjected to a crime. In this research paper, the author has first tried to acknowledge the definition of a victim in our legal system as well as definition provided by the international body, United Nations. Then the author has state victims' rights of victims in four parameters. The purpose of this method is to clearly categorize the various rights and remedies for the better understanding of the research paper. The author has also given some suggestions that, if properly implemented, can really enhance the current role and status of the victims in Indian criminal Justice System. Through this paper the author has come to conclusion that even though codified laws and remedies are accessible in our Legal system but still they are not fully implemented or administered to the victim or the person suffering the harm when he/she needs it the most. There is a wide sphere of improvement which is still remaining to be filled.*

## I. INTRODUCTION

In our society we often express a feeling of satisfaction and hope when our legal judiciary delivers a landmark judgement on cases where the accused is convicted for a heinous crime. We eagerly wait for the date of such trial where the accused is pronounced guilty by the qualified panel of judges in our justice system. The media also depicts this event as a form of victory of good over evil. The people likewise inculcate a firm belief towards the administration of justice. But in all this, the concern of the citizens and the legal authorities are somewhat misplaced as their interest is more on whether the accused is convicted or acquitted rather than if some relief is provided to victim in the form of compensation, assistance or restitution. we

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as law abiding citizens should firmly believe that justice should serve both as sword and as a shield. Indian criminal Justice System should perform a dual function of convicting a criminal as well as providing relief to the victim. Both these duties are parallel to each other rather than the former taking precedent over the latter.

The objective of this research is to enlighten the reader with the rights provided to the victims by the Indian legal Framework and whether they are implemented by the legal authorities involved in Indian criminal Justice System. For a better understanding of the research topic, four broad parameters are utilized and various rights and remedies given in Indian criminal Justice System are categorized into these parameters so as to make this research paper more organized and easier to read and follow. These parameters are the ones iterated by General Assembly of UN<sup>2</sup> of which India is a signatory.

Providing relief to a victim in the form of right to access of justice, compensation, restitution or assistance, not only bestows a feeling of justice and equality to the aggrieved person (who is the victim) but also preserves the sanctity of the firm belief of the citizens in our Justice System as without this belief the laws codified in the form of Acts and codes in our Indian Legislation will diminish to nothing but a bunch of hollow words reciting empty rules and regulations.

#### **DEFINITION OF A VICTIM**

In Indian criminal Justice System, the definition of the term “Victim” is defined in Code of Criminal Procedure which is the substantive law that enunciates the rules and procedure for the administration of justice.

Section 2(w)(a)<sup>3</sup> defines Victim as:

“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. The expression “Victim” also includes his or her guardian or legal heir.

But the Centre for Criminology and Victimology stated that,

“This definition however suffers from glaring deficiencies. Firstly, that the loss or injury is not defined clearly and is subject to judicial interpretation. Secondly, the use of the phrase ‘act or omission of the accused person’ betrays a compartmentalized mind-set that fails to take into account the secondary victimization that occurs when the victims find it difficult or are unable

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<sup>2</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985.

<sup>3</sup> Code of Criminal Procedure, 1973.

to access justice in the compensatory, distributive, social and restorative sense of the term. Lastly, the definition also fails to provide rights to all persons who suffer harm in the process of assistance or while stopping the crime.’<sup>4</sup>

The definition of victim stated by the code to a certain degree follows a constrained approach as compared to the definition provided by the Declaration of Basic principles of Justice for Victims of crime and abuse of power, a General Assembly resolution passed in 1985, of which India is a signatory.

In its second provision of definition of Victim it provides that ‘‘A person may be considered victim regardless whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of familial relationships between perpetrator and victim’ ’But in the Criminal Procedure Code , an aggrieved person will be recognized as a victim by the legal authorities only if the person inflicting the harm has been identified, apprehended and is being prosecuted in the Criminal Court.

## **II. RIGHTS OF A VICTIM**

### **(A) Access to Justice and Fair Treatment**

- Right of Victim to Register A FIR

The first step to initiate criminal proceedings in Criminal Justice System in India is to register a FIR. A FIR is First Information Report which is recorded by a Police Officer on duty provided by an Aggrieved person or any other person to the commission of an offense. On the basis of such information the Police Officer commences the investigation. This information is defined in the Code of Criminal Procedure under Section 154:

‘‘154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

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<sup>4</sup> (Duties of Frontline Professionals Towards Securing Justice for Victims: A manual, 2018).

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

In ‘*Lalita Kumari v Government of UP*’<sup>5</sup>, the Supreme Court of India enunciated the following guidelines on the registration of a FIR:

(1) Registration of FIR is important under Section 154 of the Code of Criminal Procedure only if the information discloses the commission of a cognizable offence then no preliminary inquiry is permissible in this situation.

(2) If the information received doesn’t disclose a cognizable offense but indicates a need for an inquiry, a preliminary inquiry may be initiated only to ascertain whether the information disclosed is of cognizable offense or not.

(3) The FIR must be registered only when the preliminary inquiry discloses the commission of an offense. If the preliminary inquiry ends in closing the complaint, the first informant will be supplied a copy of the entry of such closure forthwith and not later than one week. Reasons in brief for closing the complaint and not proceeding further must be disclosed.

(4) If a cognizable offense is disclosed, it is the duty of the police officer to register such an offense. Action must be taken against those police officers who do not register the FIR even when the information received is of a cognizable offense.

(5) The use of preliminary inquiry is not to verify the information received to see whether such information discloses a cognizable offense.

(6) what type and in which cases preliminary inquiry is conducted will be dependent on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes /family disputes
- (b) Commercial offences
- (c) Medical negligence cases

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<sup>5</sup> (2014) 2 SCC 1, 12/11/2013, Supreme Court of India.

(d) Corruption cases

(e) Cases where there is an unreasonable delay in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The above are only illustrations and not exhaustive of all conditions which may make it mandatory for the preliminary inquiry.

(7) The preliminary inquiry should be made time bound and, in any case, more than 7 days should not be exceeded. The fact of such delay and the reasons of it must be reflected in the General Diary Entry.

(8) Since the General Diary/Station Diary/Daily Diary is the record of all information received in the police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to inquiry, must be mandatorily and extensively reflected in the said Diary.

Under Section 154 the following procedure of registering of FIR is given as

1. FIR may be given orally or in writing.
2. If a FIR is given orally it has to be reduced in writing by the Police Officer in charge of the station.
3. The victim or the person giving the information should sign the FIR only after ensuring that the information written on it is true and correct to the knowledge of the victim or the person giving the information.
4. The copy of FIR must be provided to the Victim or the person providing the information free of cost.
5. If the police Officer refuses to record any information in regard to provisions pertaining to Sexual Offences under the IPC, such a police Officer will be liable to punishment under Section 166A of the Indian Penal Code.

A private citizen intending to initiate criminal proceedings in respect of an offence has two courses available to him. He may lodge a FIR before the police if the offence is a cognizable one, or he may lodge a complaint before a competent judicial magistrate irrespective of whether the offence is a cognizable or non-cognizable. A victim or any other person can opt for the latter under Section 190 which states that under the condition specified in the section certain magistrate 'may' take cognizance of offenses. There are varying opinions of the Courts on this point. Considering the observation of the Supreme Court in this connection it may be fairly

concluded that ‘a magistrate has certain discretion but it must be judicial in nature, it is limited in scope’. It may be noted that a magistrate can take cognizance of any offense only within the time-limits prescribed by law. Even after the period of limitation such offenses can be taken cognizance of by the court if the delay is condoned prior to taking cognizance. The power to take cognizance of an offense may not be confused with the power to inquire into or try a case. In cases where the victim does not lodge a FIR in the police station due to any reason whatsoever or in case where the police refuses to admit FIR reported by any victim, in such case the magistrate is empowered to take cognizance under Section 190 of the Code of Criminal Procedure, 1973.

This provision acts as a safeguard against the interest of the victims while keeping in check the powers of the police. The clause is divided into three parts which empowers the magistrate to take cognizance upon receiving a complaint or a police report of facts, from information received from any person other than a police officer, or upon his own knowledge that such offense has been committed.

- **Right of Victim to Participate through Private Counsel**

The right to private counsel signifies that the victim engaged in the court of law can plead his own arguments in the court through the way of an advocate of his/her choice. In Indian criminal Justice System, the victim is given a right to a private counsel given that the advocate of choice assists the prosecution. Such right is conferred to the victim under section 24(8) of the Code of Criminal Procedure. The scope of this right is further explained in Section 301 (2) and section 302.

Section 301 (2) states that if the victim instructs any advocate to prosecute any person in any court, the advocate so instructed shall act under the directions of the Public Prosecutor or Assistant Public Prosecutor and may submit written arguments, after the evidence is closed, with the permission of the court.

From this section we can infer that:

- (1) The victim has a right to a private counsel.
- (2) The private counsel representing the victim shall act under the Public Prosecutor or the Assistant Public Prosecutor.
- (3) The private counsel can submit written arguments only with the permission of the court after the evidence of the case is closed.

‘The role of a private counsel in the trial court as pointed out by the Supreme Court in the case

of “*Shivakumar v Hukum Chand*”<sup>6</sup> is more or less that of a junior counsel who assists a senior as he cannot act independent of the Public Prosecutor”<sup>7</sup>.

Similarly, section 302(2) of the Code of Criminal Procedure states that:

‘Any person conducting the prosecution may do so personally or by a pleader’.

‘The private person who is permitted to conduct prosecution in the Magistrate’s court can engage a counsel to do the needful in the court on his behalf. In case, the private person is aggrieved by the offence committed against him or against anyone in whom he is interested, he can seek permission from the Magistrate to conduct the prosecution himself. The court will consider this request and if the court thinks that the cause of justice is better served by granting such permission, may grant the permission. But this right of a private individual to participate in the conduct of prosecution in the sessions court is very much constrained and is subject to the control of the public prosecutor.’<sup>8</sup>

The above statement made by the Supreme Court articulates the scope of a private person’s participation in conduct of prosecution in Indian criminal Justice System.

The Supreme Court while referring to *Shiv Kumar v Hukum Chand*<sup>9</sup> and *JK International v State (Govt of NCT of Delhi)*<sup>10</sup> explaining the differences between section 301 and section 302 of the Code of Criminal Procedure held that the role of an informant or the private party is of a constrained nature during the prosecution of a case in a Court of Sessions. The counsel engaged by the victim is required to act under the public prosecutor. And as far as section 302 is concerned, power is given to the magistrate to grant permission to the complainant to conduct the prosecution independently.

But regardless of permitting the victim to engage a private counsel of his/her choice, the legislation and the judiciary has curbed the role of the private counsel which in turn hinders the participation of the victim in court proceedings. The role of the victim is downplayed into a mere witness in the prosecution.

The major discrepancy between the right to private counsel and participation available in Indian criminal Justice System and those provided by the UN General Assembly is deliberated in an Article in *The Hindu* stating that:

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<sup>6</sup> (1999) 7 SCC 467.

<sup>7</sup> Reddi, P. V. “Role of the Victim in the Criminal Justice Process.” *Student Bar Review*, vol. 18, no. 1, 2006, pp. 1–24. *JSTOR*, [www.jstor.org/stable/44306643](http://www.jstor.org/stable/44306643). Accessed 26 June 2020.

<sup>8</sup> *JK International v State (Govt of NCT of Delhi)*, AIR 2001 SC 1142 at pp 1144-1145.

<sup>9</sup> *Supra*.

<sup>10</sup> *Supra*.

*‘Even though these sections were codified with the purpose of victim participation in Indian criminal Justice System, they deviate far from the ideals embedded in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, of which India is a signatory. The declaration allows for views and concerns of the victims should be allowed and considered in all the stages without prejudice to the accused in contrast to section 301(2) which states that the advocate can only give his/her views and concerns, not to the court, only to the prosecutor and must act under his directions therein. The only substantive stage is provided to the advocate only after the closing of the statements when written arguments are submitted in the court, this stage is the only stage which is deemed as legislatively ‘appropriate’.*<sup>11</sup>

In the recent judgement of *Rekha Murarka v State of Bengal*, the Supreme Court stated that the Victim’s counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself. They further went on to state that the private counsel of the victim can neither present oral arguments nor can cross examine the witnesses.

This judgment has greatly downgraded the role of private counsel to that of providing mere assistance to the Public Prosecutor. It also impedes the right of a victim to participate in trial proceedings and present his/her concerns and views through the private counsel.

Clearly, the decision held by the judiciary is erroneous as the Supreme Court has failed to recognize the real scenario of the Criminal courts in India where an abundance of cases overburdens the Prosecutor which can affect the ability of the prosecution to prosecute in a criminal trial and also make an effort towards providing justice to the victims in the court of law. The apex court should have also given attention to the fact that most of the Public Prosecutors are not equipped or lack the ability to prosecute on a criminal trial and provide justice to the victim better than the private counsel.

- Right of a Victim to Appeal

The right of a victim to appeal was codified by the way of amendment to the provision of section 372 of the Code of Criminal Procedure, prompted by the 154<sup>th</sup> Law Commission Report giving a right to appeal to the victim. It confers a statutory right upon the victim to prefer an appeal in the High Court against acquittal order, or an order convicting the accused for lesser offense or against order imposing inadequate compensation.

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<sup>11</sup> Bajpai GS and Kaushik A, “Victim Justice Is Two Steps Forward, One Step Back” *The Hindu* (February 8, 2020) <<https://www.thehindu.com/opinion/op-ed/victim-justice-is-two-steps-forward-one-step-back/article30777438.ece>> accessed June 28, 2020

A full bench of Delhi High Court stated that the right to prefer an appeal conferred upon the victim or relatives of the victim by the proviso of Section 372 is an independent statutory right and that there is no need for victims to seek the leave of the High Court required under section 378 to prefer an appeal under the proviso to section 372 of the Code of Criminal Procedure.

Therefore, the victim has a right to appeal in the High Court in the two instances;

- (1) Against any order passed by the court acquitting the accused.
- (2) Against any order imposing inadequate compensation

In a Delhi High Court case<sup>12</sup>, it was held that the victim's right under section 372 of the Code of Criminal Procedure is limited and that there is no inherent right of the victim to appeal on grounds of inadequate punishment.

Recently in a landmark judgement<sup>13</sup>, the Supreme Court of India stated that the Victim Can File Appeal Against Acquittal of the convicted without Seeking Leave to Appeal. In this case the Supreme Court considered two questions namely;

- (1) Whether a 'victim' as defined in the Cr.P.C. has a right of appeal in view of the proviso to Section 372 of the Cr.P.C. against an order of acquittal in a case where the alleged offence took place prior to 31st December, 2009 but the order of acquittal was passed by the Trial Court after 31st December, 2009?
- (2) Whether the 'victim' must apply for leave to appeal against the order of acquittal?

On the first question the majority answered in affirmative. And on the second question the majority answered in negative.

The majority judgment authored by Justice Madan B. Lokur (Justice S. Abdul Nazeer concurring) held that:

- (1) *"On the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in Section 2(wa) of the Cr.P.C. would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction"*.
- (2) *"The language of the proviso to Section 372 of the Cr.P.C. is quite clear, particularly when it is contrasted with the language of Section 378(4) of*

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<sup>12</sup> Ashok Malhotra v. State (NCT of Delhi), 2019 SCC Online Del 10864.

<sup>13</sup> Mallikarjun Kodagali (Dead) represented through Legal Representatives v State of Karnataka & Ors [(2019) 2 SCC 752].

*the Cr.P.C. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word 'complaint' has been defined in Section 2(d) of the Cr.P.C. and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of a FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to Section 372 of the Cr.P.C. is concerned.'*

This is a welcome step towards augmenting the participation of the victim at a post-trial stage as they now have the right to appeal against the acquittal of the convicted.

### **III. RESTITUTION**

According to the '*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*'<sup>14</sup>, Restitution is stated as:

Offenders or third parties liable for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the supply of services and therefore the restoration of rights.

Governments should review their practices, regulations and laws to think about restitution as an available sentencing option in criminal cases, additionally to other criminal sanctions.

In Indian criminal Justice System, even though the word restitution is not mentioned in Indian criminal Procedure Code, still the right of Victim to restitution is present. Under Section 357 of the Code of Criminal Procedure, it states that the court while passing the judgement and imposing a fine or sentence or both may order the full or any part of the fine imposed on the accused to be used for:

1. To pay the expenses incurred to the prosecution,
2. Payment to any person who suffered any loss or injury caused by the offense when, according to the court, the compensation is recoverable in civil court.
3. When a person is convicted of any offence for having caused the death of another person or of abetting the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death.

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<sup>14</sup> Adopted by General Assembly resolution 40/34 of 29 November 1985.

4. To a purchaser of property who has become a victim to theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property and which is ordered to be restored to its rightful owner.

Indian criminal Justice System contains the right of victim to restitution by the offender or the state in the form of compensation but this right is often times overlooked by the legal authorities involved in the system.

Often times the application of the Section 357 of the Code of Criminal Procedure, be determined on whether the court considers fine as a substantive punishment for the accused. In the majority of criminal cases, the court may contemplate that a fine in addition to a punishment is not justifiable, especially when the public prosecutor ignores the needs and concerns of the victim and does not press for compensation on behalf of the victim.

Therefore, even though the right to restitution is available but often times is not utilised in our Justice System.

#### **IV. COMPENSATION**

In India, compensation as a victim's right is bequeathed in Indian criminal Justice System through the way of Victim Compensation Scheme which is under Section 357A of the Code of Criminal Procedure, 1973. This section iterates that the victim is provided with compensation in the form of monetary compensation, immediate first aid and medical facility.

It directs every state government in coordination with the central government to make a scheme for providing monetary funds as compensation to the victims or their dependents who have suffered any loss or injury as a result of the criminal act and require rehabilitation.

Whenever the court recommends for compensation, the District Legal Service Authority or the State Legal Service Authority decides the amount of compensation to be awarded to the victim. This section also contains a provision that if the victim is identified but the accused has not been traced or identified regardless of the latter the victim will be awarded with compensation.

The District Legal Service Authority or the State Legal Services Authority may also order for immediate first aid or medical benefits to be made available free of cost.

The Delhi High Court in *Tirath Singh Yadav v State* has directed payment of compensation for the Victim Compensation Scheme even for the offence which was committed prior to 2000. In this case, the court directed the Delhi State Legal Services Authority to undertake an inquiry under Section 357A (5) of the Code of Criminal Procedure (1973) within two months and disburse appropriate compensation to the family of the victim.

From this case it is clear that it is immaterial as to when the offence was committed or as to when the conviction or acquittal is pronounced. Victim will have to be paid compensation from the Scheme prepared under Section 357A of the Code of Criminal Procedure.

## V. ASSISTANCE

The Criminal Justice System in India provides assistance to victims of sexual offences. As the crime of sexual assault is considered one of the most heinous crimes in our country, it is an understandable notion that the victims of such crime should be provided with the utmost care and assistance from the professionals involved in the Criminal Justice System. This assistance to victims of sexual offences is codified in our procedural law in Section 164A in Code of Criminal Procedure which is stated as under:

### *Section 164A: Medical examination of rape victim*

1. *Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.*
2. *The registered medical practitioner, to whom such woman is sent shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely—*
  - the name and address of the woman and of the person by whom she was brought;*
  - a. the age of the woman;*
  - b. the description of material taken from the person of the woman for DNA profiling;*
  - c. marks of injury, if any, on the person of the woman;*
  - d. general mental condition of the woman; and*

*e. other material particulars in reasonable detail,*

*The report shall state precisely the reasons for each conclusion arrived at.*

*a. The report shall specifically record that the consent of the woman or of the person competent, to give such consent on her behalf to such examination had been obtained.*

*b. The exact time of commencement and completion of the examination shall also be noted in the report.*

*c. The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of Sub-Section (5) of that section.*

*d. Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.*

But this Section is not the sole assistance which is provided to a victim of Sexual Offences as there are landmark judgements given by the apex court of our country, the Supreme Court of India, in which they enunciated various guidelines to be followed by the officers of justice in Indian criminal Justice System. In *Delhi Domestic Working Women's v Union of India*<sup>15</sup>, the Supreme Court observed that:

1. The complainants of sexual assault cases should be provided with legal representation.
2. Legal assistance will have to be provided at the police station
3. The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.
4. The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the police station before leave of the court was sought or obtained.

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<sup>15</sup> 1995 SCC (1) 14, JT 1994 (7) 183.

5. In all rape trials anonymity of the victim must be maintained, as far as necessary.
6. It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board.

In *SAKSHI v Union of India*<sup>16</sup>, the Supreme Court gave the following directions on conducting trial of sexual offences stated below:

1. The provision of in-camera trial would also apply in inquiry or trial of offences under Sections 354 (assault or criminal force to woman with intent to outrage her modesty) and 377 (unnatural offences) IPC.
2. In holding trial of child sex abuse or rape:
  - (a) A screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
  - (b) The questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
  - (c) The victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

In *Rajesh v State of Haryana*<sup>17</sup> the Supreme Court observed that rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy. The Court also observed that the 'two-finger test' and its interpretation violate the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent.

Section 357C of the Code of Criminal Procedure, 1973 makes it mandatory for all the hospitals

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<sup>16</sup> AIR 2004 SC 3566, 2004 (2) ALD Cri 504.

<sup>17</sup> Lillu @ Rajesh & Anr V State of Haryana, (2013) 14 SCC 643.

both private and government to provide immediate medical treatment to the victims of acid attack or rape be made available free of cost.

Section 357B was inserted in the code through the Criminal Law Amendment Act 2013 which applies the principle stated by the Supreme Court that compensation should be in addition to fine, while the Supreme Court addressed the same in the context of all crimes and victims, the provision specifies compensation only for the purposes of Section 326A and Section 376D of the IPC while ignoring the victims of other offences.

Thus, from the following laws embedded in our legal system and the landmark judgements we can discern that providing assistance to victims should be given the utmost priority and that the manner of providing assistance is also of paramount significance. Providing mere assistance to a victim lacking in sympathy and care by the legal professionals involved in the administration of justice is violative of the victim's integrity and dignity. Several judicial bodies and medical professionals declared that the "two-finger test" was not only a flawed procedure of medical examination of a Rape Victim but that it was also violative of the privacy of the victim as well as their dignity. Merely providing assistance to the victim for the sake of it with utter disregard to their feelings and not acknowledging the ordeal which the victim has been put through by the accused is not the desired way of dispensing legal duties by the legal officers involved in the Criminal Justice System.

## **VI. CONCLUSION**

By examining this research paper, we can conclude that there are various codified laws and Landmark judgements which provide certain rights to the victim which is a positive step towards providing justice to the people who have suffered some harm due to the acts or omissions of the accused. These rights are not only made for betterment of the aggrieved person but also for the betterment of the administration of justice in our country.

People sometimes mistake justice as retributive in nature but justice can also be administered by providing the relief too. The legal authorities while dispensing their legal duties towards the administration of justice should be made aware of the dual responsibility that are endowed to them which is of convicting the accused as well as working towards the betterment of the aggrieved person (victim).

But sometimes mere codification of laws is not enough to provide relief to the victims, it should also be properly implemented and provided to victim by several legal authorities in Indian criminal Justice System. There are suggestions which, if implemented, properly can address the needs and wants of the Victims in the Justice System effectively. Some of these suggestions

are:

- a. There is no separate law for victims of crime codified in our Indian legislative framework. A bill codifying the various rights of victims can empower the victims and due crimes surging everyday it's the need of the hour.
- b. The private counsel of the victim should have a substantive role to play in the trial proceedings rather than just providing assistance to the Public Prosecutor.
- c. India should adopt and ratify U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 as soon as possible which will show her commitment to make its criminal justice administration more victims oriented.
- d. Victim Impact Statement should be made an important part of the Criminal Justice System. Victim Impact Statement is a statement which is either oral or written and which describes how the crime has affected the victim. It has the potential to alter the course of things for victims of crime. Many countries like USA, Canada, Australia has implemented the same. It is time for India to implement it too.
- e. The victim should have an important part from the investigation to trial stage.
- f. The legal authorities involved in Indian criminal Justice System, especially the police, should undergo sensitivity training towards handling the various victims of crime. This training will not only make the police force more efficient in properly addressing the views and concerns of the victims but will also result in making the victim more willing to participate in the whole trial proceedings.
- g. Rather than just being made a stage prop by the prosecution, the victim should be given a centre stage role in the legal proceedings. The views and concerns of the victim should be given utmost priority by the various legal authorities involved. It would be really beneficial in administering the justice efficiently as well.
- h. The definition of victim given in the Code of Criminal Procedure should be made more comprehensive and should have wider scope like its counterpart in the Declaration of the UN General Assembly of which India is a signatory. This can widen the scope of the definition of victim and would help in identifying the victims in a criminal case so that the state can provide the necessary relief and remedies to such an aggrieved person.

These suggestions if implemented in its entirety can really improve the Justice procedure of our country and can also improve the position and rights of the victims which, today is the need of the hour.

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