

Basic Principles of Victims of Crime with including the challenges and current scenario in India

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The Declaration of Basic Principles for Justice of Victims of Crime and Abuse of Power including the current situation of victims of crime at each stage of the criminal process in India along with the challenges and proposal for measures for victims in India

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the General Assembly on 29 November 1985.

The General Assembly accordingly adopted the Declaration as an annex to resolution 40/34 on 29 November 1985.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power consists of two parts: A

Adopted by General Assembly resolution 40/34 of 29 November 1985

A

A) Victims of crime

1. **Victims** means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. [The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.]

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural

beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

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Access to Justice and Fair Treatment

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:-

1. Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
2. Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
3. Providing proper assistance to victims throughout the legal process;
4. Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
5. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
6. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

Offenders or third parties responsible 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 provision of services and the restoration of rights.

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

In cases of substantial harm to the environment,

restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted.

In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

(c) The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged.

Assistance

Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted.

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B) Victims of Abuse of Power

"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

States should consider incorporating into the

national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

States should consider negotiating multilateral international treaties relating to victims.

States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

Current Situation of Victims of Crime At Each Stage of The Criminal Justice Process In India In Comparison To International Standards

Unfortunately, in India the police are still not oriented to meet the expectations of the victims as per the UN Handbook on Justice for Victims.

The police at the field level who are in actual contact with the victims in day-to-day crime situations are blissfully ignorant of the international developments in the field of Victimology and the better treatment victims deserve from the police.

The treatment of victims by the police also forms the basis for a negative perception of it.

The Handbook says that "victims have a valid interest in the prosecution of the case and should be involved at all stages of the proceedings".

In practice, the entire court proceedings protect the rights and interest of the accused, neglecting the victims' interest.

Except that the victims are summoned to tender evidence in courts, the various services and assistance to be rendered by the prosecution to victims are not practiced in the criminal courts in India.

In a nutshell, victims are alien to the criminal proceedings as they have no rights excepting to be a witness when summoned by the court.

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Recommendations of Commissions and Committees on Justice to Victims in India The Law Commission of India, 1996

The Law Commission, in its report in 1996, stated that, "The State should accept the principle of providing assistance to victims out of its own funds:-

1. in cases of acquittals; or
2. where the offender is not traceable, but the victim is identified;
3. also in cases when the offence is proved

(Law Commission of India Report, 1996)

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The Justice Malimath Committee on Reforms of Criminal Justice System (Government of India, 2003)

The Justice V. S. Malimath Committee has made many recommendations of far-reaching significance to improve the position of victims of crime in the CJS, including the victim's right to participate in cases and to adequate compensation. Some of the significant recommendations include:

1. The victim, and if he is dead, his or her legal representative, shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years' imprisonment or more;
2. The victim has a right to be represented by an advocate and the same shall be provided at the cost of the State if the victim cannot afford a lawyer;
3. The victim's right to participate in criminal trial shall include the right: to produce evidence; to ask questions of the witnesses; to be informed of the status of investigation and to move the court to issue directions for further investigation; to be heard on issues relating to bail and withdrawal of prosecution; and to advance arguments after the submission of the prosecutor's arguments;
4. The right to prefer an appeal against any adverse order of acquittal of the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation;
5. Victim compensation is a State obligation in all serious crimes.
6. The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. (Government of India, 2003).

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Challenges And Proposal For Measures For Victims In India

Some of the challenges and the counter-measures include:

No Separate Law for Crime Victims Yet

But continuous efforts are going on to enact a national law for victims. The ISV's Victim Bill is a model draft Bill.

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Corruption in the Indian Criminal Justice System

Corruption by public officials erodes the entire health of the society and victimizes people in all sections of the population.

Many steps to reduce the level of corruption and

accumulation of illegal wealth have been taken by the Government.

Declaration of assets and wealth by judges of the higher judiciary and ministers of the government is a recently introduced example.

Empowerment of Women to Prevent Victimization of Women

Serious efforts to change the traditional submissive and victimized role of women have been taken up by NGOs and the Government.

One attempt is the consistent struggle and active efforts by women's organizations to get more political power for women in the form of representation in the Parliament, state legislatures and local bodies through a 33% reservation of seats for women in these bodies.

Many concessions, special privileges and tax rebates are provided for female students to encourage them in higher education and employment, and to encourage senior women citizens in economic self-reliance.

Empowerment of Children

Making primary education a fundamental right under the Constitution is a leaping step to empower children as education is the tool for development.

The implementation of this right will have a bearing on other kinds of victimization such as child labour.

Major Challenge is Implementation

Transparency and honesty among the politicians who make policies and the commitment of government officials who are charged with the responsibility for implementation are the big challenge.

Whereas the situation of victims has not been satisfactory in India, developed countries, including the United Kingdom, have gone far ahead to render victim justice, but the expectations and aspirations of victims remain high even in those countries which do not match the accomplishments made elsewhere.

During the long proceedings of investigation and trial, victims are not kept informed or provided with a sense of security. Very often, victims are expected to appear in courts for cases, which are adjourned even without their notice, or they are subjected to unnecessarily stressful courtroom experiences.

The agencies meant to help victims do not always understand and respond effectively to their needs.

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Justice for Rape Victims - Guidelines for Victim Assistance

In **Bodhisattwa Gautam vs. Subhra**

Chakraborty (AIR 1996 SC 922), the Supreme Court held that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. The court, having satisfied the prima facie culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985:

1. The complainants of sexual assault cases should be provided with a victim's Advocate who is well acquainted with the CJS to explain to the victim the proceedings, and to assist her in the police station and in Court and to guide her as to how to avail of psychological counselling or medical assistance from other agencies;
2. Legal assistance at the police station while she is being questioned;
3. The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed;
4. A list of Advocates willing to act in these cases should be kept at the police station for victims who need a lawyer;
5. The Advocate shall be appointed by the Court, in order to ensure that victims are questioned without undue delay;
6. In all rape trials, anonymity of the victims must be maintained;
7. It is necessary, having regard to the Directive Principles contained under Art. 38 (1) of the Constitution of India, to set up a Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment;

State Compensation for Victims of Abuse of Power

As early as 1983, the Supreme Court recognized the need for state compensation in cases of abuse of power by the State machinery. In the landmark case of **Rudul Sah vs. State of Bihar** (AIR 1983 SC 1086), the Supreme Court ordered the Government of Bihar to pay to Rudul Sah a further sum of Rs.30,000 as compensation, which according to the court was of a **palliative nature**, in addition to a sum of Rs.5,000, in a case of illegal incarceration of the victim for long years.

Similarly in *Saheli, a Women's Resources Centre through Mrs. Nalini Bhanot vs. Commissioner of Police, Delhi Police* (AIR 1990 SC 513), the Court awarded a sum of Rs.75, 000

as state compensation to the victim's mother, holding that the victim died due to beating by the police.

In another landmark case of **D. K. Basu vs. State of West Bengal** (AIR 1997 SC 610), the Supreme Court held that state compensation is mandatory in cases of abuse of power and said that **To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.**

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Articles on Victim Compensation in India:

Compensation to the Victim of Crime: Assessing Legislative Frame Work and Role of Indian Courts
Victim Compensation Scheme: An Aspect of Modern Criminology
Compensatory Jurisprudence
Uncivilized And Heartless Crime: SC Enhances Compensation To Acid Attack Victim
Victims Rights in India
An analysis of law relating to Accident Claims in India
Compensation: A Ray of Hope
Role of Indian Judiciary in Protecting Victims Rights
Legal Pronouncements for Compensation under Section 166 of the Motor Vehicles Act, 1988
Remedy of Compensation under Article 32
Gender Sensitization and Rehabilitation of Rape Victims
Category-wise Analysis of Awarded Cases related to compensation to the Bhopal Gas Victims
Can Victims Claim Compensation?
Speed Break To Section 304-A of IPC
Rights of Accused Far Outweigh That of Victims, Need Some Balancing So That Criminal Proceedings Are Fair To Both
Victims, victimization and victimology
Quantum of damages in Tort Law
Rehabilitation of Trafficked Children in India: Socio and Legal framework
Legal Aspects of the Bhopal Gas Tragedy
Compensatory Jurisprudence In India
Role of Decisions Law In Developing Concept of Compensatory Jurisprudence
Vitriolage - The Brutalization of Human Body
Trafficking in Women and Children - An ounce of prevention is worth a pound of cure