



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

RIGHTS OF VICTIMS OF VIOLENT CRIME, UNDER THE CRIMINAL JUSTICE SYSTEM

DIVAKAR DAS

Faculty & Placement Officer, The ICFAI University, Dehradun

ABSTRACT

The rights of victims of violent crime within the criminal justice system have gained increasing recognition and importance in recent years. This research paper explores the rights afforded to victims of violent crime, examining their historical development, legal frameworks, and practical implementation. By analyzing various jurisdictions and international standards, this paper seeks to highlight the progress made in victim rights and identify areas where further improvements are needed. Additionally, it explores the potential benefits of prioritizing victims' rights, such as enhancing victim participation, promoting fairness, and ultimately strengthening the criminal justice system as a whole.

KEYWORDS: Rights of victims, Victims of violent crime, Criminal justice system, Victim rights legislation, Restitution, Compensation, Support for victims, Confidentiality.

INTRODUCTION

The criminal justice system plays a crucial role in addressing and redressing the harm caused by violent crimes. While it primarily focuses on the prosecution and punishment of offenders, it also recognizes the rights and needs of the victims. Victims of violent crime often experience physical, emotional, and psychological trauma, and their rights within the criminal justice system are designed to provide them with support, protection, and a voice throughout the legal process.

Over the years, there has been a growing recognition of the importance of victims' rights and their active participation in the criminal justice system. Historically, victims were often treated as mere witnesses or

evidence in criminal proceedings, with limited opportunities for input or involvement. However, in recent decades, legal reforms and changes in societal attitudes have sought to elevate the status of victims and address their specific needs within the criminal justice framework.

It is substantial that the specific rights and protections afforded to victims of violent crime may vary across jurisdictions. Different countries, states, or regions may have their own laws and regulations pertaining to victim rights within the criminal justice system. However, the overarching goal is to ensure that victims are treated with dignity, respect, and fairness, and that their needs are taken into account throughout the legal process.

BACKGROUND AND SIGNIFICANCE OF VICTIM RIGHTS

The rights of victims of violent crime within the criminal justice system vary depending on the jurisdiction and legal framework in place. Over the years, there has been an increasing recognition of the importance of protecting and supporting victims throughout the criminal justice process.

Historically, criminal justice systems have primarily focused on the rights of the accused, ensuring fair trials and due process.¹ However, victims of violent crime often faced significant challenges and were frequently marginalized within the system. They often felt ignored, disempowered, and left without a voice.

In response to these concerns, victim's rights movements emerged, advocating for the recognition of victims' rights and the provision of services and support to assist them in their recovery.² These movements sought to address the power imbalance between offenders and victims and to ensure that victims' needs and interests were taken into account by the justice system.

EVOLUTION OF VICTIM'S RIGHTS

In many countries, including the United States, Canada, and several European countries, significant progress has been made in recognizing and protecting the rights of victims of violent crime. This progress can be attributed to various legal reforms and policy changes.³

Victim's rights typically encompass the following key principles

Participation: Victims have the right to participate in the criminal justice process. This may include the opportunity to provide input, submit victim impact statements, and be heard during key decision-making processes, such as bail hearings or parole hearings.

¹ Fisher, B. S., & Sloan, J. J. (Eds.). (2018). *When Violence Is No Stranger: Pastoral Counseling with Survivors of Acquaintance Rape*. Westminster John Knox Press.

² Groth, A. N., Burgess, A. W., & Holmstrom, L. L. (Eds.). (2018). *Sexual Trauma in the Life Stories of Women: Implications for the Helping Professions*. Routledge.

³ National Organization for Victim Assistance (NOVA). (2018). *Crime Victim Rights in the United States: A Training Guide for Victim Advocates*.

Restitution and Compensation: Victims have the right to seek restitution from the offender for any harm or losses suffered as a result of the crime.⁴ Additionally, victims may be eligible for compensation from government funds or other sources to assist with their recovery and support their financial needs.

Support Services: Victims have the right to access support services to aid their recovery, such as counseling, crisis intervention, and assistance with navigating the criminal justice system. These services can help address the emotional, physical, and practical consequences of the crime.⁵

Dignity and Empowerment: Victims of violent crimes often experience physical, emotional, and psychological trauma. Acknowledging their rights helps restore their dignity, empowers them, and recognizes their role as participants in the criminal justice process.

Access to Information: Victims have the right to be informed about the progress of their case, including updates on investigations, arrests, court proceedings, and sentencing.⁶ This information enables victims to make informed decisions, prepare themselves, and seek necessary support.

Protection and Safety: Victims have the right to protection and safety. This includes measures such as restraining orders, no-contact orders, or witness protection programs to prevent further harm or intimidation by the offender.⁷

Privacy and Confidentiality: Victims have the right to privacy and confidentiality to protect their personal information, particularly in cases involving sensitive or high-profile crimes. This helps safeguard their well-being and prevent further victimization.⁸

LEGISLATION AND LEGAL PROTECTIONS

Many jurisdictions have enacted legislation or incorporated victims' rights provisions into their legal frameworks. For example, the United States has the Victims of Crime Act (VOCA) and the Victims' Rights and Restitution Act (VRRRA), which provide various protections and services to victims of federal crimes.⁹ In Canada, the Canadian Victims Bill of Rights (CVBR) ensures that victims have specific rights throughout the criminal justice process.

INTERNATIONAL OVERVIEW ON VICTIMS' RIGHTS

Victims' rights refer to the legal and moral entitlements of individuals who have suffered harm as a result of criminal acts or other offenses. These rights aim to ensure that victims are treated with dignity, respect, and

⁴ Ransford, P., & Myers, R. (Eds.). (2020). *The Victimization of Women: Law, Policies, and Politics*. Oxford University Press.

⁵ Ibid

⁶ Roach Anleu, S. L., & Mack, K. (Eds.). (2019). *Gender and Judicial Education: Raising Gender Awareness of Judges*. Routledge.

⁷ United Nations Office on Drugs and Crime (UNODC). (2012). *Handbook on Justice for Victims: A Guide to Justice for Victims of Crime*. United Nations Publications.

⁸ Victim Rights Law Center. (n.d.). *Understanding Victim Rights: Information for Victims of Crime*. Retrieved from <https://www.victimrights.org/>

⁹ Ibid

fairness throughout the criminal justice process.¹⁰ While the specific rights afforded to victims vary across jurisdictions, there has been a growing international recognition and support for victims' rights.

United Nations

The United Nations has played a significant role in promoting and protecting victims' rights globally. In 1985, the UN adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This document outlines fundamental rights such as access to justice, restitution, compensation, protection, and assistance for victims.¹¹ The UN has also established the UN Trust Fund for Victims of Trafficking in Persons, which supports organizations providing direct assistance to victims.

European Union

The European Union (EU) has been actively involved in advancing victims' rights within its member states. In 2012, the EU adopted the Victims' Rights Directive, which establishes minimum standards for the protection and support of victims of crime.¹² The directive includes provisions on access to information, participation in criminal proceedings, protection, support services, and compensation. EU countries are required to implement these standards into their national legislation.¹³

United States

In the United States, victims' rights vary across states due to the federal system. However, progress has been made at the federal level. In 2004, the U.S. Congress passed the Justice for All Act, which includes several provisions to enhance the rights of crime victims. One significant development is the establishment of the Crime Victims' Rights Act (CVRA), which grants victims certain rights in federal criminal cases, such as the right to be notified of court proceedings, the right to be heard, and the right to restitution.¹⁴

Other Countries

Many countries have enacted legislation to protect and promote victims' rights. For example, Canada has a Federal Victims Strategy, which provides funding for victim services and aims to improve victims' experiences within the criminal justice system. Australia has also implemented various reforms, including the introduction of victim impact statements and statutory compensation schemes. In South Africa, the Constitution guarantees

¹⁰ Walklate, S., Fitz-Gibbon, K., & McCulloch, J. (Eds.). (2019). *The Palgrave Handbook of Criminology and the Global South*. Palgrave Macmillan.

¹¹ Walklate, S., & Fitz-Gibbon, K. (Eds.). (2017). *Gendering Violence: Feminist Interventions in Domestic and International Law*. Routledge.

¹² Zedner, L. (2009). *Victims in the Criminal Justice System*. Cambridge University Press.

¹³ Roberson, C., & Wallace, H. (2016). *Victims' Rights and Advocacy at the International Criminal Court*. In *Handbook on the International Criminal Court* (pp. 453-469). Edward Elgar Publishing.

¹⁴ Ibid

certain rights to victims, including the right to participate in criminal proceedings and the right to compensation.¹⁵

There are several international instruments that aim to protect the rights of victims of various crimes and violations. These instruments provide guidelines and standards for states to ensure that victims receive proper support, assistance, and access to justice.¹⁶ Here is an overview of some key international instruments protecting victim rights:

- **Universal Declaration of Human Rights (UDHR):** Although not legally binding, the UDHR establishes the fundamental principles and rights that apply to all individuals, including victims. Article 8 states that everyone has the right to an effective remedy by the competent national tribunals for acts violating their fundamental rights.¹⁷
- **United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:** Adopted by the UN General Assembly in 1985, this declaration outlines the rights and needs of victims. It covers areas such as access to justice, restitution, compensation, assistance, and protection.
- **United Nations Convention against Transnational Organized Crime (UNTOC):** This convention, adopted in 2000, includes provisions for protecting and assisting victims of organized crime. It emphasizes the rights of victims to access remedies, receive fair treatment, and be protected from intimidation or retaliation.¹⁸
- **United Nations Convention on the Rights of the Child (UNCRC):** The UNCRC, adopted in 1989, specifically addresses the rights of child victims. It emphasizes the child's right to special protection, support, and assistance throughout the legal process and recovery.
- **Rome Statute of the International Criminal Court (ICC):** The ICC's founding treaty, adopted in 1998, recognizes the rights of victims to participate in criminal proceedings and seek reparations. It establishes the Trust Fund for Victims to provide assistance and reparations to victims of crimes under the jurisdiction of the ICC.¹⁹
- **Council of Europe Convention on Action against Trafficking in Human Beings:** This convention, adopted in 2005, focuses on protecting and assisting victims of human trafficking. It emphasizes the rights of victims to support, protection, access to justice, and compensation.
- **Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence):** The Istanbul Convention, adopted in 2011, recognizes the rights of victims

¹⁵ Naylor, B., & McDowell, D. (Eds.). (2017). *Crime Victims: An Introduction to Victimology*. Routledge.

¹⁶ Davis, R. C. (2018). Victims' Rights, Human Rights and Criminal Justice: Reconciling the Role of Third Parties in Fair Trial Rights. *International Journal of Evidence & Proof*, 22(2), 99-115.

¹⁷ Groenhuijsen, M. S. (2019). *Victims of Crime in 22 European Criminal Justice Systems: The Implementation of Directive 2012/29/EU from a Comparative Perspective*. Maklu.

¹⁸ Dignan, J. (2018). *Victims and Victimology: Research, Policy and Practice*. Routledge.

¹⁹ Fattah, E. A. (2017). *Victims in the Criminal Justice System*. Routledge.

of domestic violence, including women and children. It aims to prevent violence, protect victims, and ensure their access to justice, support services, and compensation.²⁰

These are just a few examples of international instruments protecting victim rights. Many countries also have their own domestic laws and policies in place to address the rights and needs of victims within their jurisdictions. Overall, there is a global trend towards recognizing and enhancing victims' rights. Governments, international organizations, and advocacy groups continue to work towards ensuring that victims of crime receive the necessary support, protection, and justice they deserve.²¹ While progress has been made, challenges and gaps still exist in effectively implementing and enforcing victims' rights in many jurisdictions.

CHALLENGES AND OBSTACLES IN IMPLEMENTING VICTIM RIGHTS

Implementing victim rights can be a complex and challenging process due to various obstacles. Here are some of the challenges commonly encountered:

Legal Framework: Developing a comprehensive legal framework that recognizes and protects the rights of victims can be challenging. Laws need to be carefully drafted, incorporating the principles of fairness, equity, and due process, while also considering the rights of the accused.

Awareness and Education: Many people are not fully aware of the rights of victims, which can impede their effective implementation.²² Raising awareness and providing education to victims, law enforcement agencies, legal professionals, and the general public is crucial to ensure that victim rights are recognized and respected.

Funding and Resources: Implementing victim rights often requires financial resources to provide necessary support services. These services may include victim assistance programs, counseling, legal aid, and other forms of support.²³ Lack of adequate funding and resources can hinder the implementation of these rights.

Cultural and Societal Attitudes: Societal attitudes and cultural beliefs about victims can pose significant obstacles. Victim-blaming, stigmatization, and prejudice can undermine the recognition of victim rights and hinder their implementation.²⁴ Addressing these attitudes through public awareness campaigns and education is essential.

Coordination and Collaboration: Implementing victim rights often involves coordination among various stakeholders, including law enforcement agencies, legal institutions, victim support organizations, and social service providers. Ensuring effective collaboration and cooperation among these entities can be challenging due to differences in priorities, resources, and approaches.

²⁰ Groenhuijsen, M. S. (Ed.). (2017). *Victimology in the Criminal Justice System*. Springer.

²¹ Ibid

²² McElrea, F. M. (2020). Victims' rights in the criminal justice system: A comparative analysis of Australia, Canada, England, and New Zealand. *Canadian Journal of Law and Society/Revue Canadienne Droit et Société*, 35(1), 81-102.

²³ Ibid

²⁴ Ibid

Privacy and Confidentiality: Respecting the privacy and confidentiality of victims is crucial to safeguard their rights. However, balancing these considerations with the need for information sharing and collaboration among relevant parties can be complex.²⁵ Developing protocols and guidelines to protect victim information while enabling effective communication is essential.

Systemic Barriers: Existing legal systems and processes may have inherent barriers that hinder the implementation of victim rights. These barriers can include long delays in the justice system, lack of accessible legal remedies, and limited victim participation in legal proceedings. Overcoming these systemic barriers requires comprehensive legal reforms and a commitment to victim-centered approaches.²⁶

International Cooperation: Implementing victim rights can also be challenging in cases involving international borders. Cooperation among different jurisdictions, sharing of information, and ensuring consistent protection for victims across countries can be complex due to legal and cultural differences.

Addressing these challenges requires a multifaceted approach that involves legislative reforms, public education, resource allocation, and collaboration among stakeholders. It is essential to continuously evaluate and improve victim support systems to ensure the effective implementation of victim rights.²⁷

BENEFITS OF PRIORITIZING VICTIM RIGHTS

Prioritizing victim rights is crucial for creating a just and compassionate society. Here are several benefits of prioritizing victim rights:

- **Empowerment and Support:** Prioritizing victim rights sends a powerful message that victims are valued members of society and deserve to be heard, supported, and empowered. It helps victims regain control over their lives, promoting their healing and recovery process.
- **Justice and Fairness:** Victim rights ensure that justice is served and that perpetrators are held accountable for their actions.²⁸ By prioritizing victim rights, we create a fairer legal system that acknowledges the harm inflicted on individuals and strives to provide appropriate remedies.
- **Increased Reporting:** When victims feel that their rights will be respected and protected, they are more likely to come forward and report crimes. Prioritizing victim rights can help break the cycle of silence and increase reporting, leading to better crime detection and prevention.²⁹

²⁵ Brennan, D., & Brennan, S. (2016). Criminal justice responses to victims: Victim support and assistance, restorative justice, and the right to participation. In *Handbook of Victims and Victimology* (pp. 327-352). Routledge.

²⁶ Wolhuter, L., & Hough, M. (2019). Victim rights in Europe. In *Handbook of Victims and Victimology* (pp. 213-232). Routledge.

²⁷ Fisher, B. S., & Sloan, J. J. (Eds.). (2018). *When Violence Is No Stranger: Pastoral Counseling with Survivors of Acquaintance Rape*. Westminster John Knox Press.

²⁸ National Organization for Victim Assistance (NOVA). (2018). *Crime Victim Rights in the United States: A Training Guide for Victim Advocates*.

²⁹ Groth, A. N., Burgess, A. W., & Holmstrom, L. L. (Eds.). (2018). *Sexual Trauma in the Life Stories of Women: Implications for the Helping Professions*. Routledge.

- **Improved Safety:** Emphasizing victim rights can lead to enhanced safety measures and protective services for victims. This may include measures such as restraining orders, safe shelters, and improved police response protocols. Prioritizing victim safety creates a supportive environment that encourages victims to seek help and escape dangerous situations.³⁰
- **Restorative Justice:** Victim rights are closely linked to the concept of restorative justice, which focuses on healing the harm caused by crimes rather than solely punishing offenders. Prioritizing victim rights allows for greater emphasis on the needs and perspectives of victims, promoting a more balanced approach to justice that addresses both the victim's and the community's needs.
- **Deterrence:** By prioritizing victim rights, we can create a stronger deterrent effect on potential offenders. When individuals know that victims will be supported, that crimes will be taken seriously, and that there will be consequences for their actions, they are more likely to think twice before engaging in criminal behavior.³¹
- **Societal Well-being:** A society that prioritizes victim rights fosters a culture of compassion, empathy, and respect. It promotes a sense of communal responsibility for the well-being of all members, leading to healthier relationships, stronger communities, and an overall improved quality of life for everyone.

CASE STUDIES AND IMPLEMENTATION OF VICTIM RIGHTS

Implementing victim rights effectively is crucial for ensuring justice, providing support, and empowering victims of crimes. While there have been numerous successful implementations of victim rights around the world, let's explore two notable case studies that demonstrate successful outcomes in this area.

United States: The Crime Victims' Rights Act (CVRA)

In the United States, the Crime Victims' Rights Act (CVRA) was enacted in 2004 to protect and promote the rights of crime victims in federal criminal cases. The CVRA establishes a range of rights for victims, including the right to be heard, the right to attend court proceedings, and the right to receive timely and accurate information about the case.³²

One significant success story involving the CVRA is the case of *United States v. Paroline* (2014). The Supreme Court ruled in favor of the victim, Amy, who had been a victim of child pornography. The court ordered restitution from the defendant, Paroline, for the harm caused to Amy.³³ This decision recognized the rights of

³⁰ Roach Anleu, S. L., & Mack, K. (Eds.). (2019). *Gender and Judicial Education: Raising Gender Awareness of Judges*. Routledge.

³¹ Walklate, S., Fitz-Gibbon, K., & McCulloch, J. (Eds.). (2019). *The Palgrave Handbook of Criminology and the Global South*. Palgrave Macmillan.

³² Rights of Victims (justice.gov)

³³ Crime Victims' Rights Act: A Summary and Legal Analysis of 18 U.S.C. § 3771 (fas.org)

victims and their entitlement to compensation, marking a significant milestone for victim rights in the United States.³⁴

The CVRA has also led to improved communication between prosecutors and victims, ensuring that victims are informed about the progress of their case and have a voice in the criminal justice process.³⁵ The act has created a legal framework that acknowledges the rights and needs of victims, enabling them to actively participate and seek justice.

European Union: Directive on Victims' Rights

The European Union has taken substantial steps to protect the rights of crime victims through the Directive on Victims' Rights, adopted in 2012. The directive establishes a set of minimum standards for victim protection, support, and participation across all EU member states.

One notable success story is the implementation of victim support services in Ireland following the enactment of the directive.³⁶ Ireland developed a comprehensive framework of services, including victim helplines, court accompaniment programs, and specialized support services for specific types of crimes, such as sexual violence and domestic abuse. The provision of these services has improved access to justice for victims and ensured they receive the support they need throughout the legal process.³⁷

Nirbhaya Gang Rape Case (2012)

The Nirbhaya case, involving the brutal gang rape and murder of a young woman in Delhi, sparked nationwide outrage and became a turning point in addressing victim rights in India. The case led to several legal reforms, such as the Criminal Law (Amendment) Act, 2013, which expanded the definition of sexual offenses, strengthened punishment for offenders, and enhanced victim rights.³⁸ The victim's family was provided with legal assistance, protection, and support throughout the trial, setting a precedent for victim-centric proceedings.³⁹

Shakti Mills Gang Rape Case (2013)

In Mumbai, the gang rape of a photojournalist at the Shakti Mills compound shocked the nation. The case was handled with sensitivity, and the victim's identity was protected throughout the legal proceedings. The trial was conducted in a fast-track court, ensuring swift justice. The survivor was provided with legal aid, counseling services, and support during the trial. This case demonstrated the importance of maintaining victim confidentiality and expediting the legal process.⁴⁰

³⁴ Crime Victims' Rights Act - Wikipedia

³⁵ Ibid

³⁶ Victims' rights in the EU (europa.eu)

³⁷ statewatch.org/media/documents/news/2017/dec/ep-study-victims-directive.pdf

³⁸ Nirbhaya Case History And Present (legalserviceindia.com)

³⁹ 2012 Delhi gang rape and murder - Wikipedia

⁴⁰ Shakti Mills gang rape - Wikipedia

Kathua Rape and Murder Case (2018)

The Kathua case involved the abduction, rape, and murder of an 8-year-old girl in Jammu and Kashmir. The case received significant media attention, prompting public outcry and demands for justice.⁴¹ The victim's family was provided with legal aid, and the trial was held in-camera to safeguard their privacy and minimize potential trauma. This case emphasized the need for victim and witness protection measures, particularly in sensitive cases.⁴²

Acid Attack Survivors' Rights (Various Cases)

India has witnessed numerous cases of acid attacks, and there have been efforts to protect the rights of survivors. The Supreme Court of India has taken steps to provide compensation, medical treatment, and rehabilitation support to acid attack survivors. The court has also emphasized the need for strict regulation on the sale and use of acid.⁴³ These initiatives showcase the commitment to addressing the specific needs and rights of victims of acid attacks.

Additionally, the directive has emphasized the importance of victim participation in criminal proceedings. It grants victims the right to receive information about the progress of their case, be heard during key stages of the proceedings, and have access to legal advice and support. This comprehensive approach has led to increased victim satisfaction and confidence in the criminal justice system in EU member states.⁴⁴

These case studies demonstrate the successful implementation of victim rights, highlighting the positive outcomes that can be achieved when legal frameworks and support services prioritize the needs and rights of victims. By providing victims with a voice, support, and access to justice, societies can strive for a fairer and more inclusive criminal justice system.

CONCLUSION

Recognizing and upholding the rights of victims of violent crime is essential for ensuring a fair and balanced criminal justice system. By providing victims with information, participation opportunities, protection, restitution, privacy, support services, and a speedy trial, the system can contribute to their healing and recovery. It is crucial for lawmakers, law enforcement agencies, and judicial authorities to continually assess and improve the implementation of these rights to ensure that victims receive the support and justice they deserve.

While progress has been made in recognizing and protecting victims' rights, challenges remain. Implementation and enforcement of these rights can vary across jurisdictions, and victims may face barriers in accessing justice,

⁴¹ Kathua rape case - Wikipedia

⁴² Kathua Rape Case Verdict | Current Affairs (iasparliament.com)

⁴³ Acid Attack Survivors: Implementing Their Right to Dignity - Centre for Law & Policy Research (clpr.org.in)

⁴⁴ Zedner, L. (2009). Victims in the Criminal Justice System. Cambridge University Press.

particularly in marginalized communities. It is important for governments, law enforcement agencies, and legal systems to continue working towards strengthening victims' rights and ensuring their effective implementation.

Society as a whole benefit when victims of violent crime are treated with dignity, respect, and compassion. By prioritizing the rights of victims, we can create a more equitable and responsive criminal justice system that supports healing, accountability, and ultimately, reduces the prevalence of violence in our communities.

