

HUMAN RIGHTS AND VICTIMS IN PRESENT SCENARIO

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1. Human Rights: Its Genesis

Political philosophers and legal scholars are agreed that the antecedents of contemporary rights and liberties are of ancient origin. The concept of rights may be traced since the age of Greek philosophers Socrates , Plato and Aristotle .It was ancient Greece where the concept of human rights began to take meaningful shape i.e. protection from arbitrary prosecution . Citizens of certain Greek states enjoyed rights such as equal respect for citizens (*isotomia*), equal freedom of speech (*isogoria*), and equality before the law (*isonomia*) which are prominent among the rights claimed in the modern world.¹ According to the Greek tradition natural law is the law that reflects the natural order of universe essentially the will of Gods who control nature. The idea of natural rights continued in ancient Rome where Roman jurist Ulpian echoed Cicero in declaring that according to the law of nature all men are equal and by the same law all are born free. Identification of our present concept of rights with early Christian philosophy or the advent of medieval constitutionalism also commands the attention of those who seek the pedigree of human rights. Human rights became synonymous with natural rights, right that spring from natural law.

To demonstrate how fundamental and unchallengeable such rights were, the claim was often added that these were natural rights, derived from some ‘natural law’ that ruled the universe. But it is remarkable that before the formulation of theory of natural law by the stoic philosophers, citizens of certain Greek states had enjoyed some of the rights which are today claimed as fundamental.²

The concept of natural law was systematically formulated for the first time by stoics after the breakdown of the Greek states. For them natural law was universal as it applied not only to citizens of certain states but rather to everybody everywhere in the cosmopolites. It was superior to any positive law and embodied those elementary principle of justice which were apparent to the “eye of reason”. The natural right conferred by it were not the particular privileges of citizens of certain states but something to which every human being, everywhere, was entitled by virtue of the simple fact of being human and rational.³

¹ Maurice Cranston. Human Right Today, 1962. p.4.

² Gaius Ezejiolor, Protection of Human Rights Under the Law, Butterworth, London 1964. p.2

³ Maurice Cranston , Human Right Today, 1962, p.9.

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In the later years of middle ages, when a revolt against royal autocracy took place such ideas were revived. French jurist, though concerned to assert and confirm the sovereign powers of the king, accepted like many of his contemporaries, that the acts of sovereign must be bound in relations to his subject by the law of God and nature. Locke was concerned primarily to set down the limits of kingly power and sought to lay down the natural rights such as life, liberty and property, which rulers were bound to observe under natural law, had a duty to recognize. These ideas began to be incorporated in constitutional documents which in turn formed the natural weapons of all those struggling to limit the kingly rulers.

The English revolutionaries determined to preserve themselves against another re-emergence of arbitrary royal-rule, which laid down in the Bill of Rights of 1689. It protected some basic rights to justice like excessive bails or fines, cruel and unusual punishments and unfair trials and guaranteed impartial courts, independent judges to which all citizens were entitled. The American revolutionaries triumphant over another English King and directly influenced by current political theorists declared in the Bill of Rights which adopted in Virginia during 1776. It States; ‘All men are by nature equally free and independent and have certain inherent rights namely, the enjoyment of life and liberty with the means of acquiring and possessing property and obtaining happiness’. Finally, the French revolutionaries, having equally deposed of their king, laid down in Declaration of the Rights of Men -1789, the rights which they held which had been denied by the previous regimes. Declaration declared that men are born and remain free and equal in right and that the purpose of all political association is the confirmation of the natural and inalienable rights of man. These rights are liberty, property, security and resistance of oppression. The philosophy underlying this doctrine of inalienable rights superior to the civil rights may best be explained in the words of a contemporary political thinker Thomas Paine “...all men are born equal and with equal natural rights”.⁴

Justice in India, during the Hindu period was short and swift. The main tenets of justice was compensation to the injured, tax to the estate and imposition of certain conditions, if the offender was not dealt with death, or banishment. In Mughal period the practice was nearly the same. The Mughal system of administration of criminal justice was in force till East India Company spread its dominion in India. The British judiciary was enjoined to preserve status quo in the matter of civil and criminal justice of administration. However, difficult and consequently they started to rely upon the English law for information and guidance, but each presidency followed a system of its own. This resulted in a chaotic mass of conflicting decision. The commission appointed for the examination of conflicting features, observed:

“The British Regulations having been made by three different legislatures, contain different provisions. There in Bengal serious forgeries are punishable with a term double the term fixed, for perjury in Bombay presidency on the contrary perjury is punishable with imprisonment for a term double the term fixed for the most aggrieved forgeries : in madras presidency the two offences are exactly on the same footing there were many more and glaring discrepancies. The result was utter chaos and confusion in administration law of crimes”.⁵

⁴ D.D. Basu, Human Rights in Constitutional Law, Wadhwa & Company, Nagpur, 2003, p.52.

⁵ Dr. Mir Mehrajuddin, Crime and Criminal Justice System in India, Deep & Deep Publication, New Delhi, p. 55.

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However, during the British period a new social order and administration was set up on the Western pattern. There was a shift from individual administered justice to multi-institutional machinery, through a long drawn procedure of apprehension, detention and trial, leading to judgment.

The law relating to administration of criminal justice is contained in the Code of Criminal Procedure Code, 1898. The Code has been amended from time to time by various acts of the central and state legislatures. The more important of these were the amendments brought about by the central legislation in 1923 and 1955. These amendments were intended to simplify procedures and speed up trials as far as possible. Apart from these amendments, the provisions of the code of 1898 have practically remained unchanged through these decades and no attempt was made for comprehensive revision of this old code till the Central Law Commission was set up in 1955.

The Law Commission presented its report (14th Report) on the reform of the judicial administration. It was not concerned with the detailed scrutiny of the provisions of the Criminal Procedure Code, but it did make some recommendations in regard to the law of Cr.P.C. A comprehensive report for the revision of Cr.P.C. was presented by the Law Commission in 1969, consequently the Government came with the new Criminal Procedure Code, 1973 (Act II of 1974).

DEFINING HUMAN RIGHTS

Human Rights generally be defined as those rights which are inherent in nature without which we cannot live as human beings. The expression “Human Rights” has not been specifically defined in any Declaration or Covenant thereof. Human Rights are those minimal rights which every individual must have against the state or other public authority by virtue of his being a member of the human family, irrespective of any other consideration.⁶

Human Rights are generally defined as those rights, which are inherent in our nature and without which we cannot live as human beings. The recognition of these natural rights of human beings dates back the human civilization.

The following definition clearly indicate the meaning of human rights: “A human right is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without grave affront to justice, something which is owing to every human simply because he is human”.⁷

An alternative explanation was provided by the Philosopher Kant. He said that human beings have an intrinsic value which is absent in inanimate objects. To violate a human right would therefore be a failure to recognize the worth of human life.⁸

The representatives of the assembled Nations met at San Francisco on 26 June 1945, and adopted the United Nations Charter which inter-alia is as Declaration of Faith; “In fundamental Human Rights, in the dignity and worth of the human persons in the equal rights of men and women and of nations, large and small”.

The term ‘Human Rights’ are defined in the Human Rights Act 1993 as “Human Rights” means rights relating to life, liberty, equality and dignity of the individual guaranteed by

⁶ D.D. Basu, Supra note 4 at p.8.

⁷ S. Augender, Questioning the Universality of Human Rights, Indian Socio-legal Journal 28 (1&2), 2002 p. 80.

⁸ A.I. Melden, Rights and Persons, University of California Press, Berkeley, 1977 p.189.

the Constitution or embodied in the International Covenants and enforceable by the courts in India.

Different countries ensure these rights in different ways. In India, these rights are contained in the Constitution. In the U.K. these rights are available through precedence and case law laid down by the courts. In addition, international law and conventions are also provide certain safeguards.

Above discussion reflects that Human Rights are the means and instruments to establish human grace, which is full of primary human necessities. These necessities are innate since human birth, hence Human Rights is that inherent necessity in the society. Human Rights are such rights of human beings which is available because of humanity .

THE UNITED NATION CHARTER AND HUMAN RIGHTS

Human rights are those minimal rights which every individual must have by virtue of his being a member of human family. They have their origin from natural law which is superior to man made law. The first documentary use of the expression ‘Human Rights’ is to be found in the charter of the United Nations which was adopted after the Second World War at San Francisco on June 25,1945 and ratified by a majority of its signatories . The charter contains seven specific references to human rights . The first is the preamble written by Field Marshal Smuts . The relevant part of the preamble said ;

“We the people of U.N., determined..... to re-affirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large and small have resolved to combine our efforts to accomplish these aims”.

“to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion and to encourage recognition of the interdependence of the people of the world.”

The U N Charter however is not a binding instrument and merely stated the ideal which was to be latter developed by different agencies and organs.⁹

The Universal Declaration of Human Rights

The first major and concrete step in formulation of these rights was taken by the U N General Assembly in December 1948 which adopted the Universal Declaration of Human Right .The Universal Declaration of Human rights was unanimously adopted and proclaimed by the United Nations General Assembly on December 10,1949 with a view to give legal form to the provision of the Universal Declaration. It contains a preamble and thirty Articles. The preamble of Universal Declaration of Human Rights is of utmost importance . It envisioned the foundation of freedom justice and peace in the world and in the wake of instances of barbarous acts which have out reached the conscience of mankind showing disregard and contempt for human rights the need for the advent of a world in which human beings shall have inherent dignity and equal and inalienable rights enjoying freedom of speech and belief and freedom from fear and want. It lays down the basic human rights and fundamental freedoms to which all men and women everywhere are entitled without any distinction as to race, sex, color, language, religion, political or other opinions. It states the common standard of achievement for all people as an expression

⁹ D.D. Basu, Supra note 4 at p.9.

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of legal conscience of mankind. It contained many characteristics and lofty ideals of democratic constitutions like the one found in American Constitution.¹⁰

The General Assembly proclaimed this declaration “as a common standard of achievement for all people and all nations, to the end that every individual and every organ of society, keeping this declaration in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international to secure their universal and effective recognition and observance, both among the peoples of member states themselves and among the people of territories under their jurisdiction”.

The Articles of the Declaration are phrased in present tense on laying down positive rights of the individual, Article 1 to 21 deals largely with civil and political rights. It is provided that everyone has the right to life, liberty and security of person; to recognition as a person before the law; to effective remedy by the competent national tribunals for acts violating his fundamental rights; to be presumed innocent till proved guilty; no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment, to arbitrary arrest, detention or exile or have his privacy. Everyone is entitled to all the rights and freedom set forth in the Declaration and to receive a fair and public hearing by an independent and impartial tribunal. Articles 22 to 27 are concerned with the new economic, social and cultural rights. Remaining three Articles are incidental to human rights.

THE DRAFT COVENANTS ON HUMAN RIGHTS

The Draft Covenants were approved by the Commission on Human Rights on 16th April, 1954 and transmitted to the General Assembly for consideration which ultimately adopted these two Covenants in December, 1966, for the observance of human rights.

These Covenants are:

- a. The Covenant on Civil and Political Rights, and
- b. The Covenant on Economic, Social and Cultural Rights

While the former formulated legally enforceable rights of the individual, the latter was addressed to the States to implement them by legislation.

Following civil and political rights of the persons inter-alia had been recognized in this Covenant:

I. Provisions having Direct bearing on victims are as follows;

- 1. Right to compensation of arrest or detention is unlawful [Article 9(5)]
- 2. Right to be treated with humanity [Article 10 (1)]

II. Indirect bearing provisions

- 1. Right to life [Article 6 (1)],
- 2. Right against torture or cruel, inhuman or degrading treatment or punishment [Article (7)]
- 3. Right against arbitrary arrest or detention [Article 9 (1)]
- 4. Right to be informed of the reasons of arrest [Article 9 (2)]
- 5. Right to trial within a reasonable time or to release [Article 9 (3)]

¹⁰ S.C. Khare, Human Rights & U.N., Metropolitan Book Co. Pvt. Ltd. , New Delhi ,1977 p..13.

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6. Right to fair public hearing in the determination of any criminal charge [Article 14 (1)]
7. Right to be presumed innocent till proved guilty [Article. 14 (2)]
8. Right to be informed promptly about the nature and cause of charge; adequate time for the preparation of defence to be tried without undue delay; to be tried in his presence; defend in person or through legal assistance of his choice; to examine the witnesses against him; free assistance of an interpreter; not to be compelled to confess guilt.[Article 3 (a) to (g)]
9. Right to review conviction or sentence by a higher tribunal [Article 14 (5)]
10. Right to have an effective remedy against violation of these rights [Article 3 (a)]
11. Right to recognition everywhere as a person before the law [Article 16]
12. Certain other rights are also recognized under Articles 17 to 27.

In the past, the criminal justice system was concerned mainly with the rights of the defendant failing to involve the victims actively in the process.

Therefore, the victims were treated as the objects of the process and not guaranteed minimum protection. They were not given a major role in the process, which resulted in re-victimization. Victim of the crime are no longer being neglected by the criminal justice system today but rather have become significant players in resolving criminal cases.

Where the citizen's rights and freedom are considered as paramount values in a modern society, protection of victims of crime should be understood in the light of human rights. Adequate protection of victims means protection of the rights and freedoms of citizens as potential victims of crime. It is also a realization of constitutional value which protects the dignity of human beings.

Victim's rights are intended to make victims integral players in criminal justice, rather than mere bystanders. Alas, victim rights are not readily seen as human rights. Generally, there has been discontent between debate on victim's right and on human rights, most probably because some believed that victim's rights "will interfere with the human rights of the accused person". Certainly, balancing some victim's rights with the rights of accused persons is a recurring and contentious matter, but not always.

Historically, several of the fundamental rights of accused persons are traced from Magna Carta which provided that to none will we deny or delay right or justice. Thus, it is a long standing right that the state is bound neither to deny justice to anybody nor to delay anybody in obtaining justice. Magna Carta also set the foundation for the principle that if a presumed right is ignored or dispensed appropriate action should be taken to restore it.

Crime is an infringement of human right. By virtue of becoming a victim, individual human rights have been violated. Accordingly, steps should be taken to ensure justice to victim. For that purpose victims want amongst other things, the state to provide and maintain equal justice and reasonable redress.

Victim's rights as human rights are already recognized internationally. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power follows the typical form of other human rights instruments. It has been adopted by the United Nations High Commissioner for Human Rights, and it is also found in many Human Rights compilations. The Declaration provides standards and norms that countries should follow. These relates to the recognition of, and respect for, the rights of victims of crime and abuse of power, in terms of access to justice and fair treatment, restitutions, compensation and assistance.

2. HUMAN RIGHTS AND VICTIMS OF CRIME

The protection of human rights promotes the dignity of the individual. It is only through the pursuit of practical and effective efforts to promote human rights that we show our real commitment to the welfare of individual and society. To maintain order and peace in society and to prevent, detect and control crime the state provides its law enforcement machinery, particularly the police, with wide ranging powers. If used arbitrarily, these powers could impinge on the dignity and liberty of the individual. To preserve the Human Rights of the citizens, it becomes necessary to build in safe guards in the criminal justice administration.¹¹ Concern for Human Rights of victim/individual in the criminal justice administration is of recent origin.

United Nations took upon itself the role of a crusader for Human Rights. In the preamble of United Nations Charter it was determined “to reaffirm faith in fundamental Human Rights, in the dignity and worth of human person in equal rights of man and women and of the Nations large and small---.” Victims are at the center of human right thinking. No other group of individuals has a sacred place in human rights law.

In the present system of criminal justice , it is the responsibility of the state to prosecute offenders and provide retribution for offence to the victims of crime. When the state has undertaken the responsibility to protect “right to life and property” of all its citizens, and for that purpose has assumed all police powers, it is the obligation of the state not only to prosecute the offenders as violators of human rights but at the same time to extend help and support to the victims of crime.¹²

The Criminal Justice System in India favours accused. The main principle on which the system of legal jurisprudence is based is to let ninety nine persons get away free than to have even one innocent man punished. This tenet while preventing injustice to one possible innocent denies justice to ninety nine victims of crime. Thus it is desirable to think of an alternative i.e. “Let not even one innocent man be punished, but let not ninety nine criminals also be not allowed to escape the clutches of law”. Then only some justice could be meted out to the victim of crime.

The possible reason for the favourable disposition towards the rights of the accused is that in our anxiety to punish the accused we might do justice to an innocent person. This would mean that there is an additional burden on the police and the judiciary to be very cautious during investigation and during trial respectively.

Generally none is sympathetic to the victim of a crime nor extends help to his family. The victim could have suffered from:

- a. Physical injury
- b. Impact on Family
- c. Financial Loss
- d. Social distress
- e. Psychological or mental stress or harassment

Further, the victim has to deal with

- 1) The Police

¹¹ Dr. S. Subramanian, Human Rights International Challenges, Vol.1, Manas Publication, New Delhi 1997 p. 222.

¹² Justice D. M. Dharmadhikari, Human Rights of Victims (2007) 6 SCC (J), at p.11.

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- 2) The Trial
- 3) The Society

During these complicated process, the victims' rights have scarcely been taken into consideration and while giving evidence he is rarely protected.

Generally, the victim's count on the police to accept their version and events, and further expect that a thorough investigation is launched. They expect that proper evidence is collected by the police and proper action is taken to recover their stolen property.

A state also has a responsibility towards the victim. In fact the state's responsibility does not end with merely putting the criminal behind the bars. The added responsibility of the state is that the victim is allowed to come back to normalcy and lead a peaceful life in the society despite the losses already suffered by him.

Victims who suffer by the crime or abuse of power are deprived of the normal quality of enjoyment of life and sometimes face threat to their well being and safety. All victims have a right to seek help and protection from the state as their fundamental right included in Article 21 of the Indian Constitution which guarantees to every person protection of his "life and personal liberty."

Article 39-A of the Indian Constitution of seeking "free legal aid for seeking justice".

Article 51 (c) of the Indian Constitution directs the state to endeavour to "foster respect for international law and treaty obligations in its dealings.

The Universal Declaration of Human Rights, as the basic document adopted by the United Nations Organization in 1948, recognizes right of every individual to all human freedom and a life with dignity. It is therefore the moral and legal obligation of the state not only to refrain from interference with these freedoms but it is also its duty to facilitate the individual to realize such freedoms by lawful means.¹³

The existing criminal justice delivery system has failed to satisfy the society in maintaining law and order. The main reason for its partial failure is overemphasis in court proceedings on the right of the defence of the accused, being his constitutional right under Article 20,21 and 22 of the constitution. Under the Penal Laws of India, In the process of trial for an offence, the focus always remains on the accused with insistence on all concerned to give him opportunity to defend himself against the charge. In the existing procedure of the court, hardly any attention is paid towards the plight and right of the victim and witnesses on whose evidence the efficacy of trial and the verdict of court depends.

The apathy towards the rights of victim is apparent as no participation is allowed in the course of trial, coupled with frequent occurrence of witnesses turning hostile under compulsions, e.g. intimidation, coercion or allurements deflects the course of justice, invariably resulting in acquittals.

The victims are thus left to suffer physically, mentally and financially .The legislature also became alive to this lopsided criminal justice delivery system, which throughout its process focused mainly on the accused. The legislature has therefore introduced several amendments to the Code of Criminal Procedure for providing effective participation to the victims during the trial.

¹³ Ibid at P.12.

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Henceforth at the time of consideration of grant of bail, in the course of examination of witnesses, on quantum of punishment and in the event of acquittal, not only effective participation but independent opportunity of hearing and right of appeal have been provided to the Victim. The present practice in court is when a particular witness approaches the court and expresses apprehension of his safety the court may direct for security to the witnesses depending upon gravity of the offence and the nature of the apprehension of insecurity expressed by the witness.

Existing law has no provision to help and support the victim or allow him any participation in the enquiry or investigation of crime. After the commission of the crime against him and till the actual trial begins in court, he is at the mercy of the state and the society. The victim requires greater help and support soon after commission of crime.

At the initial stage the victim needs medical treatment, psychological supports and legal aid. It is the victims rights to insist that he be provided proper medical care, safety of his life and property ad protection against harassment by police and media. He has also a right to insist that eye witnesses of the incident are given adequate protection so that they are able to appear in court and adduce evidence fearlessly without intimidation, allurements or harassment.

The victims rights are required to be zealously guarded equally with the rights of defence of the accused. The needed protection to victim is required more in the period intervening the occurrence of crime and actual commencements of trial in court. In the present criminal justice delivery system there exists no forum or arrangement whereby a victim may seek financial and legal aid to secure punishment of the guilty and support for early restoration of his normal life.¹⁴ International standards of compensation for those who are the victims of gross violations of human rights are clearly set out in several instruments, such as Article 8 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights.

Provision of compensation to the crime victims is a crying need of the hour. The International Covenant of the Civil and Political Rights, 1966, indicates that an enforceable right to compensation is conceptually integral to human rights. Article 9 (5) of the Covenant lays down: "Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation."

Unfortunately in India only provision regarding payment of compensation to the crime victim's is contained in Cr. P.C. under Section 357 which provides for compensation for the loss or injury caused by the criminal offence to victim after a fine is imposed by the court.

Section 357 (1) of Criminal Procedure Code provides that when court impose sentence which includes fine, the court may direct that the fine amount should be utilized:

- (a) In defraying the expenses of prosecution
- (b) In making payment in the loss caused to the victim.

Section 357 (3) of Criminal Procedure Code provides that the court can award compensation even in cases where fine does not form part of the sentence. The provision does not make it mandatory for the state to pay compensation to the victims. However, the amount of compensation has not been uniform and no cardinal principles have been laid down. It is

¹⁴ Justice D.M. Dharmadhikari, Supra note 12 at p. 13.

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desirable to frame a suitable legislation under which the state should pay compensation to the victims of crime or to their kith and kin.

Supreme Court of India, explaining the rationale of compensating the victims of crime in **State of Gujarat Vs. Hon'ble High Court of Gujarat**¹⁵ and observed: "In our effort to look after and protect the human rights of the convict, we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to his livelihood because of criminal act of the convict. The victim is certainly entitled to reparation, restitution, and safeguard of his rights. Criminal justice will look hollow if justice is not done to the victims of crime. A victim of crime cannot be a forgotten man in the criminal justice system. It is he who suffered most. His family is ruined particularly in case of death and other bodily injury. This apart from factors like loss of reputation, humiliation, etc. An honor which is lost or life which is suffered out cannot be recompensate but then monetary compensation will at least provide some solace."

Society has woken up to the realization of victims plight and related unfairness of the whole system. The U.N. General Assembly adopted the Basic Principles of Justice for Victims of Crime and Abuse of Power, this declaration is specifically concerned with societal response to the needs of the victim.

The main needs of victims of crime and society that must be taken into account are the right to access to mechanisms of justice, including the right to be informed at every stage about those rights, participation of the victim throughout the proceedings, respect for their dignity and privacy, and the right to obtain redress. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that the views and concerns of victims of crime should be presented and considered at appropriate stages in the proceedings, that victims should be provided proper assistance throughout the process, that they should suffer only minimal inconvenience, in particular with regard to their privacy, and that unnecessary delays should be avoided in proceedings.¹⁶

Article 5(5) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that "Everyone who has been the victim of arrest or detention in contravention of the provisions of his article shall have an enforceable right to compensation."

This right must be provided within the national legal system i.e. remedy must be made available under the domestic law to be enforceable in a domestic court. The basic duty of the state is to ensure that a breach of Article 5 may be remedied by way of compensation in the domestic legal system. Where the convention forms part of the law of the land, there is hardly any difficulty in complying with this provision but where this has not been either transformed or specifically adopted.¹⁷

Article 9(5) of the International Covenant on Civil and Political Rights of 1966 indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed rights. It runs; "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

India adopted the Covenant with a reservation on the enforceability of right to compensation. The Declaration by the Government of India dated 10-04-1979 in respect of Article (9) is as under:

¹⁵ AIR 1998 SC 3162

¹⁶ Principle 6 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.

¹⁷ Justice G. Yethirajulu, Article-32 and the Remedy of Compensation, (2004) 7 SCC (J) 49.

Declaration II – With reference to Article 9 of the International Covenant on Civil and Political Rights, the Government of the Republic of India takes the position that the provisions of the Article shall be applied as to be in consonance with the provisions of clauses (3) to (7) of Article 22 of the Constitution of India. Further under the Indian legal system, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest of detention against the state.¹⁸

The supreme court of India in *D.K. Basu Vs. Sate of W.B.*¹⁹ made the following observation : “The Government of India while ratifying International Covenant on Civil and Political Rights, in 1979 made a specific reservation to the effect that the Indian legal system does not recognize right to compensation for victims of unlawful arrest or detention.. This has now lost its relevance in view of the law laid down by Supreme Court in a number of cases awarding compensation for the infringement of the fundamental rights to life of a citizen.”²⁰

The term “victim” means anyone who has suffered loss or injury as the result of an act which constitutes a crime in a law. This includes individual , corporation, relatives and dependents of persons who are injured or killed during the course of a crime and even good samaritans who may be harmed during the act of preventing a crime or while preventing the perpetrator from leaving the scene.

Universal Declaration of Human Rights 1948 laid emphasis in protecting the human right of the accused and the prisoners due to the reason that law already punishes the offender by the curtailment of freedom, Victims of crime was neglected subject in the criminal justice system . Due to persistent efforts of the World Society of Victimology the U.N. Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the General Assembly in 1985 through its resolution no.40/34 . It became a *magna carta* for the victims which emphases on four important rights, namely, access to justice ,restitution compensation and assistance to victims of crime and abuse of power.²¹

However, the term “victim” has been given a widest definition in Declaration of Basic Principles of Justice for Victims of Crime and Abuse of power. According to paragraph 1 of the Declaration, “victim’ means persons who individually or collectively have suffered any harm including physical , mental emotional injury suffering economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal law operative within member states, including those laws prescribing criminal abuse of power.” This definition covers many categories of harm sustained by people as a consequence of criminal conduct, ranging from physical and psychological injury to financial or other forms of damages to their rights irrespective of the injury or damage concerned was the result of positive conduct or a failure to act.

In the Declaration a person may be considered as a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.”

¹⁸ Ibid.

¹⁹ (1997) 1 SCC 416.

²⁰ Ibid at p. 438 para 42

²¹ K. Chockalingam, Victimology and Victim Justice In C.Rajkumar, K. Chockalingam (ed.) Human Rights Justice & Constitutional Empowerment, Oxford University Press 2007 p.444.

Further the term ‘victim’ also includes immediate family or direct dependants of the victims and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”²²

The international law does not regulate in detail the question of protection and redress for victims of ordinary crime, although attempts have been made to increase the focus on the plight of victims so as to encourage Governments to provide them with adequate help and support. There are international rules governing the legal duties of states to provide effective protection and redress to victims of human violations. In this regard, rules exist in international human rights law, which have been further clarified in the substantial case law of the international monitoring bodies.

While there is no universal Convention dealing with the rights of victims of Conventional crimes, the United Nations General Assembly adopted in 1985, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the text of which had been approved by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September, 1985.

The basic principles contained in the Declaration “apply without discrimination, to all the countries, to all the victims”. It furthermore place corresponding responsibilities on central and local government, on those charged with the administration of the criminal justice system and other agencies that come into contact with the victim, and on individual practitioners.²³

The impact on victims of crime is not necessarily limited to physical injury and loss of property but may also include loss of time in obtaining financial redress and replacing damaged goods. Moreover, at the psychological level, victims may be afflicted by a sense of disbelief, a reaction that may be followed by a state of shock, disorientation or even fear and anger.

The U N Declaration on Victims emphasizes the following aspects of rights to victims of crime and abuse of power

- (i) Access to justice and fair treatment
- (ii) Restitution
- (iii) Compensation
- (iv) Assistance

(i) Access to justice and fair treatment

It includes the mechanism of justice and prompt redress, sufficient information of the victims right the right to proper assistance through legal proceeding and the right to protection of privacy and safety.

Offence has been committed, the victim’s first contacts with the police and this contact may continue for a considerable part of the judicial process. The response of the police during this encounter may have a decisive impact on the victim’s attitude to the criminal justice system. Their role is therefore crucial at this stage of the criminal process.

The Declaration on Basic Principles provides little guidance on police conduct as such, although paragraph four makes the general statement that victims “should be treated with compassion and respect for their dignity”, a rule that is equally valid for the police. The only explicit reference to the police is contained in the Declaration according to which police personal

²² U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, paragraph-2.

²³ For Details <http://www.mshrc.maharashtra.gov.in>.

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constitute one of the groups that should receive training to sensitize them to the needs of victims and guidelines to ensure proper and prompt aid.

However, according to paragraph six, which should be interpreted as applying also to police investigations of crime, “the responsiveness of judicial and administrative processes to the needs of victims should be facilitated” inter-alia, “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.”

“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, “Providing proper assistance to victims throughout the legal process.”

It follows from these provisions that; firstly, an important aspect of the role of the police is to show due courtesy and respect. They must also ensure that the victim feels “that the offence is being considered individually and properly”. Consequently, to prevent a sense of frustration among victims or increased anger, fear and insecurity, police officers should avoid conveying the impression that the crime is trivial or otherwise not being taken seriously. Respect, compassion and understanding for victims should thus be the hallmark of police conduct at this stage, including a willingness to speak to the victims in language that they understand, avoiding professional jargon to the extent possible.

Secondly, the police are particularly well placed to inform victims of crime in which they can obtain assistance, compensation and other kinds of help. For instance, they can refer victims to specialized assistance agencies and should preferably provide the information in both oral and written form, since the victims may at this stage be too upset to take on board all oral information given. In this connection, the police may also wish to reassure victims by emphasizing that crime is not tolerated and that they will do their best to investigate the victim’s case.

Thirdly, a more important role for the police is as transmitter to victims of various kinds of essential information regarding the judicial process. The continuous sharing of information that is of relevance to victims and their needs and interests is of fundamental importance in ensuring that they feel involved in the criminal proceedings, an aspect that has long been neglected in the criminal justice system. In particular, victims need to be adequately informed about the role they might play in the proceedings. Again, all such information should preferably be conveyed to the victim in both oral and written form. To this end, well-written guides could prove helpful.²⁴

In the context of the questioning of victims, treat victims of crime “with compassion and respect for their dignity” is particularly relevant whether the questioning is carried out by the police, a prosecutor or a judge in court. To give evidence in court may be a particularly intimidating experience, especially if the victim has had no earlier contact with the criminal justice system. Specific assistance for victims may be helpful “to ensure that the victim feels that he or she has been able to participate properly and that the court has the best evidence before it”. Special assistance to victims who have to testify in court may be of particular value to victims of rape and child abuse. The use of trained Counsellors, video-taped evidence or direct video links

²⁴ Ibid.

may be helpful in this respect, as may legal aid to victims so that they can have their own legal advisors. This is particularly important, inter alia, when the victim's claim in civil or criminal action is heard.

In court proceedings, victims should be informed about the time and scope of the proceedings and the role they are expected to play. As noted in the previous subsection, it may be helpful to provide special assistance to victims at this stage too. Such assistance is envisaged in paragraph 6(c) of the Declaration. It is also important for victims that unnecessary delays in the disposition of the case be avoided.²⁵

Declaration of Basic Principles, the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by : "Taking measure to minimize inconvenience to victim, 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".²⁶

(ii) Restitution

This right includes return of property that the victim has suffered from harm or loss as a result of the offence. In this extent public officials or other agents are those who have committed the crime the state should be responsible for the restitution to the victims. Then the state will claim for what it has paid to the victims from the offenders subsequently.

The term "restitution" means in this context that the offender restores to the victim the rights that were breached by the criminal act. Restitution to victims is of course only possible when the property or money stolen is still available. Restitution is not, therefore, a viable solution in the case of violent crimes such as murder, where there can be no reinstatement of rights.

In addition to the restitution of property or payment for the harm and loss suffered, the victim may also claim reimbursement of certain expenses. Such claims may require a clear listing of expense that the victim has incurred as a result of victimization.²⁷

(iii) Compensation

Victims is usually entitled to claim for compensation in civil cases in parallel with criminal cases for any damages resulted from the offenders action. Irrespective of the fact whether compensation is available from the state, financial compensation from the offender for physical or psychological injuries or other harm sustained in connection with crime may be an important element for the victim. Compensation is seen to be a recognition of the hurt done to the victim by the offender. When court orders for compensation it is symbol of the State's concerned for the victim. This kind of recognition may have an important healing effect on the victim concerned and may also increase his or her confidence in the criminal justice system.

On this question, Declaration on Basic Principles states that, "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;

²⁵ UN. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 Paragraph-6(e).

²⁶ Ibid paragraph 6 (d).

²⁷ Ibid. paragraph-8

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b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.”²⁸

Lastly, Declaration states that: “the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the state of which the victim is a national is not on a position to compensate the victim for the harm.”²⁹

Unfortunately, there are no such provisions of law in our country. There is, however, some provision in Criminal Procedure Code. Sec. 250 allows compensation to the person accused for accusation without reasonable cause. Similarly, there is provision in Sec. 357, which empowers the Court to pay compensation out of the amount of fine awarded against the accused. But such compensation is totally inadequate.

Indeed, the Apex Court and High Court in exercise of their writ jurisdiction grant compensation to victim of crime. On similar lines, the National Human Rights Commission as well as State Human Rights Commission recommends the concerned Government to pay to the victim immediate interim relief in the form of compensation irrespective of outcome of the proceeding in exercise of their powers under Section 18 (3) of the Protection of Human Rights Act, 1993.

(iv) Assistance

Victims should be provided with necessary material medical psychological and social assistance through government and voluntary community. All the above rights are applicable to all kinds of victims of crime.

We know that human rights means all those rights relating to lives, liberty, freedom, dignity, equality and security of man, women, youth and children. Therefore, enjoyments of basic human rights are the entitlement of every citizen and their protection, the obligations of every civilized states. Human Rights violations take place in many forms. They may arise from infringement of civil, political, social, economic and cultural right.

The human rights of the victims are

1. Freedom from intimidation,
2. To be informed about the availability of financial assistance and legal assistance.
3. To get back stolen or other personal property which is no longer needed as evidence, and
4. A speedy investigation and disposition of his case.

Recognition of the rights of the victims without prejudice to the rights of offender is a necessary condition to promote greater justice for victims. The following rights of the victims as approved by the U.N. General Assembly, 1985 need to be recognized at the apex levels of courts, police and corrections:

1. Right to protection from criminal activities through police and the law.
2. Right to information from the agencies of criminal justice system at every stage.
3. Right to assistance at every stage; such assistance will include medical, financial and legal aid;
4. Right to courteous and humane treatment;

²⁸ Ibid. paragraph-12.

²⁹ Ibid. Paragraph-13.

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5. Right to restitution from the offender.
6. Right to compensation from state.
7. Right to in terrene at any stage of the proceedings through counsel, including the right to seek review of appeal.

The realization of these rights is possible when appropriate legal, administrative and policy decisions are made to ensure justice to the victims of crime in their interface with criminal justice agencies. This is a tall task given the neglect of victims and the violation of human rights situation in the country. But beginning has to be made in any case.³⁰

Victims are not traditionally recognized as part of the conventional criminal justice system and that their role in criminal justice is limited to that of witness. Recognition of the victims as person with rights is a major break with past. Victims rights are not considered human rights and to do so is new. Many common law countries such as India, Canada and the US have civil or constitutional rights that apply to citizens. Civil rights include a special rights of the accused, nothing about the victims. Indian Law focused only about payment of compensation to victims. After the recommendation of Malimath Committee Criminal Law(Amendment Act) 2008 is introduced. After this the victims status is improved. So many rights such as victims compensation scheme, victims right to appeal, rights of rape victims, appointment of Advocate of his choice is incorporated by this amendment.

In a human rights perspective both accused and the victims would be treated as subject of the law. Now a day victim of crime has getting place in the criminal justice process and their rights in the world. Thus it is concluded that in criminal justice system must ensure that fair trial and respect of the human right of the victim in conformity with the International Human Rights norms.

³⁰ S.P. Srivastava. Theoretical and Policy Perspectives in Victimology- An Agenda for the Development of Victimology in India, Police Research and Development Journal, July-September 1997, p.8.