

BALANCING RIGHTS AND REFORMS: ANALYZING THE INDIAN CRIMINAL JUSTICE SYSTEM'S IMPACT ON OFFENDERS AND VICTIMS

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Abstract

The paper examines the criminal justice system of India with a focus on the notions of rehabilitation, reform, and restoration. It highlights the 4 main shareholders included in any crime: the victim, the state, offender, and the society. Altering notions of criminal justice system over time. Although the system in India is mainly on the basis of the notion of countering and treating crimes as crimes against the state, it recognizes the necessity to advance to prioritizing rights and entitlements. Victim's concerns. This research paper discusses the challenges victims face in seeking justice in an adversarial legal system, where the state is the opponent. India's inadequate infrastructure and law enforcement system are also discussed. Although it refrains from diving into the historical development of the system, it points to recent stagnation. Years and failure to correct its deficiencies. The paper's conclusion emphasizes the significance of identifying the rights of perpetrators and victims and prioritizing the complaints and actual victims' interests in justice. In addition to the challenges faced by victims in the Indian criminal justice system, the article also highlights the difficulties faced by the offender and society. The offender is often treated as an enemy, rather than a person in need of rehabilitation or reform. This can lead to a cycle of recidivism, where the offender is unable to find their way back into society. Society, on the other hand, often views crime as a moral failing, rather than a complex issue that can arise from a variety of factors. Overall, the article highlights the need for reform in the Indian criminal justice system, to prioritize the rights and interests of all stakeholders, including the offender, victim, society, and the state.

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I. Introduction

The criminal justice system is a network of multiple responsible govt. agencies crime prevention and punishment. Main participating institutions. Its components are i) courts, ii) police as well iii) penal institutions¹. At its foot, the system aims to keep public peace as well as tranquility using punishing offenders and defenders of the principle of law, defending the human rights of every citizen. The system of criminal in every country there are four main stakeholders involved in crime viz. the society, the criminal victim, as well as state. However, the weight given to them is a different matter for stakeholders. However, the system's principles have altered significantly over the centuries. In the past, the death penalty has been imposed on those guilty of even minor crimes such as theft Courts have now decided to allow the same only for the rarest crimes. The courts have consistently argued that punishment must not be retributive

¹ “Exploring the Components of India’s Criminal Justice System: ‘A Comprehensive Look at the Punishment System’ *Times of India* (04 Jan 2023). <<https://timesofindia.indiatimes.com/readersblog/law/pedia/exploring-the-components-of-indias-criminal-justice-system-a-comprehensive-look-at-the-punishment-system-48833/>>. Accessed 20 June 2023”.

because it is beneficial to nothing; rather, it should be guided by the principles of renewal, restoration, and restoration

The criminal justice system in India is predicated heavily on the concept of retribution, and all crimes are viewed as being against the state’s interest. In India's adversarial judicial system, the state is viewed as an enemy in criminal cases. The sufferer gains from it. The state's attorney for prosecution is typically more eager to produce stronger arguments. However, the way the criminal justice system is set up discourages victims from speaking up to present the cases and voice their effects, interfering with jeopardizing their ability to pursue justice. Louis Brandeis declared this: “I declare this in administering criminal justice, the end justifies the means to proclaim that the government can do crimes to convict a private criminal would lead to terrible retribution.” In India, if the crime is punishable by either imprisonment or a fine or both (or the death penalty in rare instances) it is still not possible to say for sure whether any of them will help in the rehabilitation of the victims. Also, as has often been noted, there is a problem with India's criminal justice system not a lack of rules, but a lack of infrastructure to enforce those laws. It

does more the due process is embarrassing. India's justice system has been strained for rehabilitation, reform, and rehabilitation so that no stakeholder feels that their interest is being ignored. This article though completes a deep dive into the development and history of the “criminal justice system” within India and deals with the various reforms that it has undergone in the last centuries. The Indian Penal Code was created a century ago, and this research paper's hypothesis focuses on how little has changed in our system since then. It discusses how the system has failed to close its loopholes and how, when laws have been amended, the executive branch has been unable to implement the changes. Human rights cannot be separated from the individual, according to the rule of law, but what the authorities frequently overlook is that both victims and criminals are owners of human rights. Additionally, while the state might be the main party in a lawsuit, the complaints and interests of the real victims should come first.

II. Unmasking The Divide: Exploring Offender's Rights Through The Rift Between Legal Doctrine And Practical Reality

Law enforcement, the justice system, and prisons include what is known as “catch, convict, and the true trinity” which splits the above-mentioned system into 3 parts². Prisons are usually linked with violent crime, fear, and an emotional mix of justice. However, the Indian jail system serves a variety of objectives in addition to imprisoning people. Protecting society and the prisoner from his acts is the short-term objective³. Rehabilitation and reform is at the heart of the system. Model Prison Handbook jumps to the need to identify reform attitudes towards the prison system. This notion was first adopted in the Indian Prison Committee 1919-20⁴. It is surprising to note that the pre-independence concept has not yet materialized.

The number of prisoners grew rapidly every year. In 2019, there will be a total of approx the number of prisoners is 4,81,387 which will increase to 5,54,034 in 2021⁵.

² Dip Jyoti Bez, Reformative and Rehabilitative Treatments of Offenders: A General Overview (2018) 2(1)MSSV Journal of Humanities and Social Sciences

³ Model Prison Manual 2016

⁴ “RPS Teji, ‘The Prison, Object and Reforms’ (Delhi District Court E-Journal) <<https://delhidistrictcourts.nic.in/ejournals/RPS%20TEJI%20-%20PRISON%20OBJECT%20REFORMS.pdf>> Accessed 21 June 2023”

⁵ National Crime Records Bureau, Prison Statistics in India-2021 Executive summary (31 December 2021)

What is even more alarming the issue is the inconsistent rise in the number of undertrial criminals from 3,32,916. 4,27,165, while the number of criminals decreased by 21,715 from 2019-2021⁶. This focuses on the ever-present subject of pending lawsuits. 77 percent, according to the Indian Law Report people are waiting for judgment. Such a large number of pending cases creates a catastrophic chain of events⁷. Overcrowding in prisons where there is a lack of staff needed to manage prisons creates a hostile prison environment that further exacerbates health problems, drug addiction, etc.⁹ Furthermore, in 2021 according to India's Prison Statistics 2021, only 1,918 people were convicted prisoners were rehabilitated⁸. The number of prisoners who received free legal aid exceeded 1 lakh marks⁹. Though, the quality of assistance given is still uncertain. Gloomy rehabilitation and treatment measures contradict the principles of the prison system and impact the principles of the prison system life of prisoners. Therefore, it is equally necessary to provide convicts with the support they need to alter their

behaviour and decrease the number of new crimes they commit after being released from jail, in addition to the rehabilitation programs provided to the victims. Education and literacy keep the concept of crime at bay. According to statistics, it is 40.2%. of the prisoners received less than a 10th standard education and about 25% were illiterate¹⁰. However, just 1.3% of convicts were bearers of a technical degree or diploma. As a result, there is a relationship between the level of education and the degree of crime committed. Because of this, educational changes truly need to be updated, as well as the way that prisons operate. 38,784, 32,544, 14,083, and 4,350 in 2021 38,784, 32,544, 14,083, and 4,350 prisoners benefited from basic education, adult education, higher education, and IT courses¹¹. Higher education is spreading. In 2014, Maharashtra established study centers across the state, which helped 1,800 prisoners get an education¹². Although this number is undoubtedly small, these

⁶ Ibid

⁷ India Justice Report 2022

⁸ National Crime Records Bureau (n 5)

⁹ Ibid

¹⁰ National Crime Records Bureau (n 5)

¹¹ Ibid

¹² "Swati Shinde Gole, 'Prisoners turn to education for better life after release in Maharashtra' *Times of India* (11 February 2023) <<https://timesofindia.indiatimes.com/city/pune/prisoners-turn-to-education-for-better-lifeafter-release-in-maharashtra/articleshow/97811812.cms?from=mdr>> accessed on 21 June 2023"

initiatives are essential to guarantee that prisoners receive adequate educational opportunities.

According to Becker's crime model, committing a crime is wanted and preferred if the anticipated benefits surpass the anticipated costs, such as the costs of any foregone legal selections. Because there are greater employment options for those with higher educational levels, the cost of criminal involvement rises.

Therefore, it is not only crucial but also vitally important to guarantee that higher educational requirements are reached in jail. An analysis by the Rand Corporation observed that released inmates with completed schooling requirements had a 43 percent higher likelihood of not committing any crimes after three years of their release¹³.

A detailed list of issues to be included in the prison system that eventually promotes inmates' recovery is provided in the model prison manual¹⁴. The topics covered in these programs include academic

instruction as well as the professional and spiritual growth needed for convicts to grow and change their perspectives. These rules can provide convicts a lot of advantages if they are correctly obeyed. While promoting education is vital for grownups, nurturing it is also crucial to make sure that young people also benefit from it. The fundamental The Child as per Model Rules of 2007 declares: "Traditional goals criminal justice, revenge, and repression must give way to rehabilitation and correction goals of juvenile justice." Providing high-quality education is the greatest method to accomplish this rehabilitative process. The existing method does not evaluate a juvenile's prior credentials, which is crucial for determining the juvenile's future educational path. Additionally, children frequently obtain vocational training rather than formal education because of a lack of exposure that results in apathy. To ensure complete development and rejuvenation, new techniques must be created. The provision of mental health care to convicts is vital in addition to guaranteeing their access to education. A foundation for addressing inmates' mental health difficulties is provided under the Mental Health Act of

¹³ Lois M. Davis et al., 'Evaluating the Effectiveness of Correctional Education' (*RAND*, 2014)

https://www.rand.org/pubs/research_reports/RR266.html accessed on 21 June 2023

¹⁴ *Model Prison Manual 2016*

2017. However, there must be a gap between the law's letter and the reality bridged Orissa Jail Department has stated its displeasure about going to jail from time to time for psychiatrists when there is a high demand for them¹⁵ According to the NCRB there was a number of prisoners suffering from mental health problems increased by 22 percent¹⁶. Thus it becomes essential that mental health services are provided in every prison. In addition to conventional mental health services, emerging ones must be investigated as methods to help inmates. Staff and doctors must be adequately educated and routinely deployed to achieve continual change in prisoner attitudes. One such emerging practice is the development of spiritual,

development lessons Spiritual teachings emphasize the necessity to be virtuous, faithful, peaceful, selfless, and so on. If such values can support renew one's character. In one study Among South African prisoners, religious prisoners were found to have less negative emotions than non-religious prisoners¹⁷. Thus in the limits of spiritual well-being rehabilitation is essential.

However, there are two important factors to ensure that this reform measure is properly addressed the extent of police supervision and case processing must be confirmed. One of the world's least effective police forces is that of India. The approved strength of police is 195.39 per 1,00,000 while the actual force is 155.78/1,00,000¹⁸. On the other hand, the UN-prescribed ratio is 222 per 1,00,000¹⁹. Therefore, The police force is insufficient

¹⁵ Debabrata Mohapatra, 'Lack of psychiatrists' visits in jails in Odisha raises concern' *Times of India* (4 July 2022) <[https://timesofindia.indiatimes.com/city/bhubaneswar/lack-of-psychiatrists-visits-to-jails-raisesconcern/](https://timesofindia.indiatimes.com/city/bhubaneswar/lack-of-psychiatrists-visits-to-jails-raisesconcern/articleshow/92640627.cms)

[articleshow/92640627.cms](https://timesofindia.indiatimes.com/city/bhubaneswar/lack-of-psychiatrists-visits-to-jails-raisesconcern/articleshow/92640627.cms)> accessed 21 June 2023

¹⁶ Ambika Pandit, '22% rise in the number of mentally ill jail inmates: NCRB' *Times of India* (11 September 2022)

<<https://timesofindia.indiatimes.com/india/22-rise-in-number-of-mentally-ill-jail-inmatesncrb/articleshow/94124324.cms#:~:text=Percentage%20wise%2C%20those%20suffering%20from,%25>

[%20\(23\)%20were%20detenues](https://timesofindia.indiatimes.com/india/22-rise-in-number-of-mentally-ill-jail-inmatesncrb/articleshow/94124324.cms#:~:text=Percentage%20wise%2C%20those%20suffering%20from,%25)> accessed 22 June 2023

¹⁷ Sung Joon Jang and Byron R Johnson, 'The effect of religiosity on emotional well-being among prisoners', (*Research Outreach*, 27 May 2020) <[https://researchoutreach.org/articles/effect-religiosity-emotional-](https://researchoutreach.org/articles/effect-religiosity-emotional-wellbeing-among-prisoners/)

[wellbeing-among-prisoners/](https://researchoutreach.org/articles/effect-religiosity-emotional-wellbeing-among-prisoners/)> accessed 22 June 2023

¹⁸ "Government of India, Ministry of Home Affairs, Rajya Sabha Unstarred Question No. 3266

¹⁹ Joysheel Shrivastava, 'Indian Criminal Justice System: Navigating The Three Rs Of Retribution, Reformation, And Rehabilitation' *The Leaflet* (8 July 2021) <<https://theleaflet.in/criminal-justice-system-does-it-want-retribution-reformation-or-rehabilitation/>> accessed 22 June 2023

compared to what is needed. The outcome is an overworked and mistreated police force. 74 percent of police station staff as well as 73.6 percent of police officials said that their working circumstances had an impact on their health²⁰. It is doubtful that the police will feel pleased or valued as a consequence of such a terrible circumstance, and as a result, they frequently resort to custodial violence, which is a regrettable norm. Article 7 of the ICCPR is included as an inherent right in the Indian Constitution Article 21²¹. Thus, preventing the occurrence of such a situation becomes much more successful. a significant basic freedom. In the case of Nandini Satpati vs. P.L Dani, the court conducted that the physical violence or threats by the police, mental torture, atmospheric pressure, and coercion are violative²². Other cases like Raghbir Singh

Vs. The state of Haryana²³ and Sunil Batra Vs. Delhi Administration²⁴ condemned the violence associated with deprivation of liberty and encouraged its elimination. Custodial deaths are not tolerated by the Supreme Court, as demonstrated by the case of Ramkrit Yadav v. UP and Anr., in which the court refused to give bail to a police officer who was the defendant of a custodial death²⁵. These occurrences not only hinder the police system but also erode public confidence, which ultimately makes the system less effective. The overworked police officials maintain a dominating position inside the prison system and are frequently accused of abusing their power in addition to engaging in violence while in custody.

In certain cases, guards would offer inmates special treatment or contraband in exchange for a bribe²⁶. While it's true that some of these situations are motivated by avarice, it's difficult to ignore the issue of inadequate compensation for labour performed. Police-system custodial rape serves as another disincentive. In a recent

²⁰ Atman Mehta, 'It's not like Singham: Policeman in India work 14 hours a day and get few weekly offs' *Scroll* (26 October 2019) <[https://scroll.in/article/941656/its-not-like-singham-policemen-in-india-work-14-hours-a-](https://scroll.in/article/941656/its-not-like-singham-policemen-in-india-work-14-hours-a-day-and-get-few-weekly-offs)

[day-and-get-few-weekly-offs](https://scroll.in/article/941656/its-not-like-singham-policemen-in-india-work-14-hours-a-day-and-get-few-weekly-offs)> accessed 22 June 2023

²¹ Prajwal Verma 'Law and Custodial Death' (*LiveLaw*, 12 January 2023) <<https://www.livelaw.in/columns>

[/custodial-death-constitution-article-21-indian-penal-code-torture-nhrc218757](https://www.livelaw.in/columns/custodial-death-constitution-article-21-indian-penal-code-torture-nhrc218757)> accessed 23 June 2023

²² *Nandini Satpati v P.L Dani* (1978) SCR (3) 608

²³ *Raghbir Singh v State of Haryana* (1980) SCR (3) 277

²⁴ *Sunil Batra v Delhi Administration* (1980) SCC (3) 488

²⁵ *Ramkrit Yadav v State of UP & Anr* Crl Misc. Bail Application No. 10162/2022

²⁶ RPS Teji (n 4)

case, *P. Rajakumar vs. Additional Director General*, the issue of the victim being hanged upside down and beaten with lathis²⁷ was brought to light. In her intimate areas, lathis were placed. These occurrences seriously undermine the correctional system's efforts at reformation and rehabilitation.

The police force must be increased to comply with the UN mandate. There is a need to be an efficient system that ensures, at best, the elimination of custodial violence. To guarantee a robust procedure, the parliament must enact the torture bill that is now on the table²⁸. The police's tension and aggressiveness would ultimately decrease if steps were taken to improve their mental health. So that the police do not appear to be devalued, the payment structure may also be revised. Education is hardly guaranteed to the prisoners without the police cooperating, better prison reform is possible by reducing the number of prisoners on trial. This is possible by reducing the time needed to resolve cases. This is mostly made feasible by choosing the necessary number of judges.

In 2022, the number of judges per million

²⁷ *P. Rajakumari v The Additional Director General* (2014) WP No. 23320/2014

²⁸ Prajwal Verma (n 21)

inhabitants was 21.03/1,000,000 population²⁹. Therefore, Justice Minister VS Malimath's commission suggested that the permissible strength should be 50 judges per 1,000,000 population³⁰. The small number of judges affects not only the judiciary but also the judiciary. In addition, The judges themselves are worn out and overworked. The enclosures span years, and justice is not done. Furthermore, the real case-handling process deviates from the prescribed one. A maximum of three adjournments may be allowed by Order XVII Rule of the Code of Civil Procedure, 1908, unless there are unique practices, although the reality is quite different³¹. Furthermore, attorneys frequently offer lengthy remarks that are both irrelevant and an attempt to broaden the case. Therefore, it has to be changed by including judicial appointments. Instead, it should be mandated that the seat never be vacant for more than a predetermined amount of time, and the length of the proposals should be constrained. A

²⁹ "India has about 21 judges per million people" *Economic Times* (10 February 2022) <<https://economictimes.indiatimes.com/news/india/india-has-about-21-judges-per-million-people/articleshow/89481479.cms>> accessed 23 June 2023

³⁰ Dr. Justice V S Malimath Committee, Committee on Reforms of Criminal Justice System (March 2003, vol 1)

³¹ Code of Civil Procedure 1908

successful rehabilitative system will only be possible with a powerful police and court system and a prison system that places a major emphasis on offering education and other services to inmates.

III. Victims' Rights And Rehabilitation: A Blind Spot in Indian Criminal Justice System

“For too long, the victims of crime have been the forgotten persons of our criminal justice system. Rarely do we give victims the help they need or the attention they deserve. Yet protecting our citizens – to guard them against becoming victims – is the primary purpose of our penal laws. Thus, each new victim personally represents an instance in which our system has failed to prevent crime. Lack of concern for victims compounds that failure.” - President Ronald W. Reagan³²

Famous expressions such as ‘innocent until proven guilty’ or ‘it is better 100 guilty Persons should escape than that one innocent person should suffer’ have effectively brought the offenders’ rights to the forefront. The rights of victims have indeed suffered as a result, even though it

cannot be argued that the rights of criminals were fully realized. The victims' rehabilitation and compensation—who have surely endured the most pain as a result of the incident—is merely a trivial afterthought.

As Robert J. Miller, former Nevada Governor, noted, “We were treating victims somewhat like inanimate objects to be present, to say their piece and then removed from the process.”³³ The legal principles of the declaration for crime victims as well as abuse of power (hereafter the Declaration of UN), which was approved on 29 Nov 1985, at the 96th Plenary Meeting of the UN General Assembly³⁴, were the foundation for any significant change in the criminal justice system's victim orientation. It acknowledged that there were legal flaws and that there needed to be basic standards set up under international law³⁵ to safeguard victims' rights. To establish a victim-centered judicial system, the UN Declaration classified victims' rights into 4

³² President Ronald W. Reagan, Notable Quotables (VC ARCHIVE) <https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pg1b.html> accessed 24 June 2023

³³ Robert J. Miller, Notable Quotables (VC ARCHIVE) <https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pg1b.html> accessed 24 June 2023

³⁴ S. Muralidhan, Rights of victims in the Indian Criminal Justice System (2004) *National Human Rights Commission Journal* <<https://www.ielrc.org/content/a0402.pdf>> accessed 24 June 2023

³⁵ Ibid

key groups: getting justice and receiving fair treatment, (ii) compensation, (iii), restitution as well and (iv) help. To assess the significance of victims' rights in India, we take a closer look at the range of such types of rights from the Indian viewpoint. Indian criminal law is based on (i) the CrPC (Criminal Procedure Code), (ii) the Indian Evidence Act, and (iii) the Indian Penal Code. The CrPC section describes "victims". "a victim is a person who has suffered loss or injury as a result of the cause of the act or omission of which the defendant is accused and the term "victim" includes his guardian or legal heir"³⁶ Constitution Section 51A contains clauses "To develop compassion towards living beings" and "to develop humanism", can be interpreted as a concept of victimology inside Constitution with a somewhat imaginative expansion. Also included in the Constitution's Article 21 safeguard against unjustifiable interference with life and liberty are measures requiring the state to compensate victims of criminal violence³⁷. The lack of study and information on victimology in criminal cases was later filled by many commissions and reports. Each of these

³⁶ Code of Criminal Procedure 1973, s 2(wa)

³⁷ D D Basu, Constitutional Law of India (8th edn, Lexis Nexis Butterworths Wadhwa Nagpur 2011

was centered on the rights of victims, their rehabilitation, their recompense, etc.

IV. Victims' Rights and Access To Justice

Among those who are imprisoned in India, undertrials make up 77 percent of the population. Naturally, there will be more legal cases pending as a result³⁸. India is battling a substantial backlog of open cases in its district and high courts, according to statistics provided by IJR ("India Justice Reports") as of Dec. 2022³⁹. There are currently a startling 49,000,000 active cases (4,90,00,000). A startling 5,600,000 of these cases have been unsettled for more than ten years⁴⁰, while about 190,000 have been pending for more than three decades. Approximately 49% of high court cases and 29% of lower court cases are on average still outstanding after more than 5 years.

In addition, the Supreme Court of India is overburdened with 70,000 or more open

³⁸ Jahnavi Sen, Overcrowded Prisons; Cases Pending per Judge Rising: India's Criminal Justice System in 9 Charts *The Wire* (04 April 2023) <<https://thewire.in/rights/overcrowded-prisons-cases-pending-per-judge-rising-indias-criminal-justice-system-in-9-charts>> accessed 24 June 2023

³⁹ Ibid

⁴⁰ Ibid

cases⁴¹. After reading these depressing statistics, one is inclined to feel sympathy for the offenders who must wait in agony in jails. People frequently overlook the fact that the victim is also suffering while waiting for justice to be administered, in addition to the culprit. This undermines justice for all parties involved, including the accused and the victims who are either awaiting favourable justice or another form of restitution for the damage they have experienced. Dr. Marion G. Roberston comments to this effect, saying, it was so obvious that the victim was abused by the system; from the moment of the crime's effect through the sentencing process and release, victims were not viewed as proper wards of the system⁴².

V. Rehabilitation And Restitution

The fundamental guidelines and principles state that compensation includes numerous elements like satisfaction, rehabilitation, compensation, restitution, and a guarantee that it will not happen again⁴³. But before

we delve into the ideas, it must be understood as well as rehabilitation and compensation could not be a single concept, it could not be the same for every crime victim and thus, falling under the black star law is much more difficult. In other terms, as enemies of the state, victims of torture, sexual assault, domestic violence against children, or victims of unlawful society must be handled differently. In many circumstances, rehabilitation shouldn't involve returning them to their previous situation while the crime was ongoing and unabated. Instead, it's crucial to act differently and offer an entirely new type of care.

The 154th Report of the Law Commission highlighted the importance of prioritizing the requirements and the rights of victims of crime because crimes frequently cause serious harm to people instead of simply symbolic damage to society⁴⁴. As vital as offenders' religious conversion is the rehabilitation of crime victims. Among other difficulties, victims go through trauma, stress, and a loss of respect for

⁴¹ Ibid

⁴² Dr Marion G. Roberston, 'Notable Quotables' (VC ARCHIVE) <https://www.ncjrs.gov/ovc_archives/ncvrv/2005/pg1b.html> accessed 24 June 2023

⁴³ Barcelona Panda, 'Victims' Right to Rehabilitation: India, UK, and US Experience' *Manupatra*

<<http://www.manupatra.com/roundup/348/Articles/Article%20Victim.pdf>> accessed 25 June 2023

⁴⁴ Law Commission of India, Code of Criminal Procedure 1973 (Law Com No 154, 1996)

themselves and their way of life. In *Olga Tellis versus Municipal Corporation of Bombay*, the court acknowledged that a violation of the right to alimony might jeopardize a person's right to life as per Article 21⁴⁵. The system must ensure adequate upkeep, support, and assistance in helping victims return to normal life by treating them with respect, care, as well as human decency. The provision of health services for people with physical impairments, mental health help for trauma and stress, and community support for treatment of challenges and damage caused by the crime are all included in comprehensive rehabilitation measures for victims. Even when a crime goes unpunished owing to inadequate proof, the rehabilitation of victims should be prioritized over the punishment of offenders.

VI. Compensation

The Judicial Commission's 152nd Report suggested the addition of Section 357-A, which called for paying victims' compensation during sentencing⁴⁶. The payouts were set at Rs. 25,000 for physical

harm that did not result in death and Rs. 1,000,000 in the event of death⁴⁷. Nevertheless, as noted in the Law Commission's 154th report, the government did not enact this suggestion. The panel took a step further and stressed the necessity of a new Section 357-A of the Code to develop an all-encompassing framework for the courts to provide fair and equitable compensation to all victims⁴⁸. This program would provide support for dependents in the event of accident-related mortality as well as compensation for loss, damage, or damage to the applicant's property as a consequence of the injury. Unfortunately, the administration ignored this advice as well.

The Committee of Malimath, which intended to overhaul India's criminal justice system, voted to advise taking into account tactics used in the UK to enhance victim assistance in 2003⁴⁹. The Commission highlighted that regardless of whether the criminal is detained, found guilty, or freed, the state should be

⁴⁵ *Olga Tellis v Bombay Municipal Corporation* (1985) SCR Supl (2) 51

⁴⁶ S. Muralidhan (n 34)

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Pavithra V. & Riktha Muralidhar, *Victim Rights in India: Is the Focus of the Criminal Justice System Shifting from the Accused to the Victim?* (2021) 4(2) *International Journal of Law Management and Humanities*

required to provide compensation to victims of all heinous crimes. It suggested creating a victim compensation fund that would be overseen by Legal Services Authority⁵⁰. Consequently, Section 357A of the Criminal Code A procedure was started that was a ground-breaking step for victim recovery in the Indian criminal justice system.

The High Court of Madras granted compensation to the victim⁵¹ in the matter of Palaniappa Gounder vs. Tamil Nadu State (AIR 1977 SC 1323), which was a crucial decision. With certain revisions, the highest court maintained the ruling. The high court on the appellant in this case modified the defendant's death sentence to life in prison and a fine of Rs. 20,000⁵². The deceased's son and daughter were also ordered to pay a fine of Rs. 15,000 in line with CrPC 1973 Section 357(1)(c)⁵³. The SC determined that the courts had the power to impose fines for the crime of murder Indian Penal Code Section 302 after considering the applicant's plea for special authorization⁵⁴. The high court put

the "cart before the horse" by allowing the "propriety of fine to depend upon the amount of restitution," the court chastised, noting.

Overall, the implementation of thorough procedures has lagged despite the historical acceptance of the right to recompense for crime victims.

The Law Commission's proposals to implement a more inclusive compensation mechanism were not followed by the government. The Malimath Committee's suggestions led to the adoption of Section 357A, which launched a victim compensation fund handled by the Legal Services Authority. This was a major step forward in victim rehabilitation.

VII. Assistance

Assistance should be given so that the victim could receive justice, be adequately rehabilitated, and receive compensation. This comprises the option to favour an appeal if the victim is dissatisfied with the verdict⁵⁵. The 154th Law Commission Report, which was released after the Malimath Committee's findings that suggested and urged the same revision to

⁵⁰ Ibid

⁵¹ *Palaniappa Gounder v State of Tamil Nadu* AIR 1977 SC 1323

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Barcelona Panda (n43)

the CrPC⁵⁶, examined the right of victims to petition in criminal cases. Through the Amendment Act of 2008⁵⁷, the legislature implemented a provision in the parliament in line with section 372 of the code, in response to recommendations from the Law Commission as well as the Malimath Committee. The purpose of this provision is the establishment of the right of appeal. It reads: "Provided that the victim shall have the right to appeal against any order passed by the court acquitting the accused or convicting for a lesser offense or imposing inadequate compensation and such appeal shall be to the court to which an appeal ordinarily lies against the order of conviction of such court"⁵⁸.

In addition to assistance, victims are allowed to consult with any attorney of their choosing⁵⁹. Giving the victim representation rights is a part of this as well. The state is what acts as the opponent in criminal proceedings according to the above-mentioned system. One of them is this. The victim is cut off from the entire process, making them a passive bystander in the

judicial system, which is one of the justice system's main drawbacks in India. Additionally, the victim becomes indifferent as a result of their concerns being disregarded in favor of those of society and the offender. A victim of this type was overheard asking, "Why didn't anyone consult me? Not the State of Virginia, but I was the victim of kidnapping⁶⁰. In many cases, victims are pre Barcelona Panda (n43)pared to settle provided they receive enough compensation and don't even want the criminal to go to jail. In any event, locking up the offender will not help the victim in any way and will simply encourage retributive justice.

VIII. Conclusion

Only a small number of government organizations are dedicated to making the Criminal Justice System of India therapeutic for those involved in crimes as well as for the victims. As the primary means of resolving the victim's complaints, India's criminal justice system is incredibly vengeful and advocates incarceration for the offender. A criminal who is imprisoned is cut off from his

⁵⁶ "Dr. Pawankumar Mishra & Vivek Kumar, Criminal Justice Delivery System and Rights of Victim: Need for Introspection (2016) 7 *Indian Journal of Law and Justice*"

⁵⁷ Ibid

⁵⁸ Code of Criminal Procedure 1973, s 372

⁵⁹ Barcelona Panda (n43)

⁶⁰ 'Notable Quotables' (VC ARCHIVE) <https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pg1b.html> accessed 25 June 2023

normal surroundings and boundaries and placed in a prison setting that mostly has negative impacts. Additionally, the long wait for justice and the enormous number of unresolved cases prevent both the victim and the perpetrator from receiving justice. Additionally, it frequently results in a decision that is less favourable for the victim and more aggressive to the offender when the victim is unable to present his or her case. This compromises the victim's entitlement to reparations, financial restitution, and real justice. In other words, after the decades of independence, the Indian legal system has remained rather static, and a more robust framework is now required that safeguards both the victims and the perpetrators of crime and rehabilitates both so they may go on living productive lives in society.