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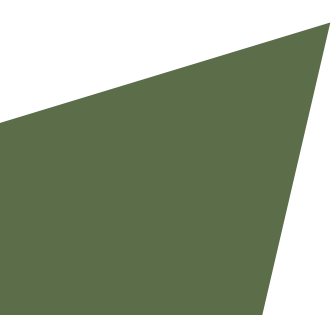
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# **Victim Impact Assessment**

**Ayush Choudhary**

## ABSTRACT

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*Victim Impact Assessment (VIA) or rather we can say Victim Impact Statement (VIS) is an essential viewpoint during the time spent agreement of justice. It fortifies the participatory model of criminal justice framework, wherein both the charged and the victim are huge and intertwined in equity conveyance component. VIS has gotten little help from star denounced activists who affirm that the acknowledgment of such articulations would clear a path for enthusiastic extortion and resulting improvement of quantum of sentence. The case has, nonetheless, been pounced upon by victimologists the world over, who have hailed equivalent to a positive affirmation of the privileges of the victim in the condemning process. Simply, a victim impact assessment is a composed or verbal explanation made as a major aspect of the legal lawful procedure, which permits a survivor of wrongdoing the chance to talk during the condemning of the charged. It offers a chance to the person in question or his/her relatives to expand the injury and hardships looked because of which the crime is committed. The current status of the person in question or family, including the burdens confronted, additionally become obvious to the appointed authority and permits him to settle on a choice.*

*While VIS has been considered as huge and included as a component of the criminal justice process in a few countries over the world, India has remained rather unaffected and immaculate. A few victimological approaches have been remembered for late years in the criminal strategy of the land, yet sway articulations appear to have evaded the officials. This is especially of noteworthiness considering Indian decisions where the courts have emphasised that discipline must react to the "general public's sob for justice".*

**Keywords:** victim; impact statement; justice; wrongdoing; casualties.

## INTRODUCTION

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In today's world the purpose of criminal justice is to protect the rights of the individuals from the intentional criminals who violates the rules made in the society. Nowadays, this protection towards the individuals is achieved by punishing the violators with the rules that are mentioned in the law that are made. Howsoever the criminal law which is the backbone of providing us with justice have never looked towards its by product "the victims". As lamented by Krishna Iyer J<sup>1</sup>.- "It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature".

Simply speaking, the victim is a forgotten party to the criminal justice system. The historical evolution of the penal system, from private vengeance to state administered justice has resulted in a criminal justice process in which the victims play only the secondary role<sup>2</sup>. All focus are on punishing the offender whether to punish him or how to protect his rights, the victims always left with himself to find some sort of assistance coming his way, but more often there is nothing. The violation of his rights, the irruption of his dignity is somewhat of no matter to anyone. His role in this whole scenario is to elaborate the case to the officials, and rest its upto them on how to progress the proceedings.

The framers of the Constitution dedicated two long well drafted articles for the well-being of the accused, namely, Article 20 and 22, but nothing for the victims. VIS has simply come into play inorder to increase satisfaction with the justice process. "A VIS is a statement made by the victim and addressed to the judge for consideration in sentencing. It usually includes a description of the harm in terms of financial, social, psychological and physical consequences of the crime. In some jurisdictions, a VIS also includes a statement concerning the victim's feelings about the crime, the offender and a proposed sentence, referred to as a victim statement of opinion"<sup>3</sup>. VIS basically takes the physical and psychological impact of the crime that a victim faces.

"Sentencing brings a great deal of satisfaction if it meets the expectations of the one wronged. The sentence hearing stage mandates a valuable right for the accused. A similar voice, as of right, has not been strangely accorded to the victim"<sup>4</sup>. VIS attempts to remove the prohibition by giving a chance to the

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<sup>1</sup> *Rattan Singh v. State of Punjab* (1979) 4SCC 719.

<sup>2</sup> Raineri A.S., "Re-Integrating the Victim into the Sentencing Process: Victim Impact Statements as an Element of Offender Disposition", *Queensland U. Tech. LJ*, 11, 1995, page. 79.

<sup>3</sup> Erez E., Victim Impact Statements - Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, No. 33, September 1991.

<sup>4</sup> Bajpai G.S., Gupta S., Victim Justice-A Paradigm Shift in Criminal Justice System in India, New Delhi, Thomson Reuters, 2016, pp. 63-64.



victim to elaborate the scenario of what all happened with him in the the open court. Although it may sometimes be in writing, or read out by the advocate, or in a way of video recording that is played in the court. This helps in getting the victim involved in the legal process and he doesn't feel that he has been handcuffed.

VIS officially perceives a victim's affliction and injury coming about because of the demonstration of another. It goes about as an aid to alleviate the victim of the torment experienced and the infringement endured. Some place it likewise will in general imply a 'comprehensive methodology' with respect to the criminal equity framework towards the person in question. As expressed by Professor Mary Giannini<sup>5</sup> "the casualty accesses a discussion that straightforwardly and exclusively recognises her victimhood. The snapshot of condemning is among the most open, formalised and ceremonial pieces of a criminal case. By giving victims an intelligible and continuous voice as of now comparable to that of respondents and examiners, a privilege of allot signals both society's acknowledgment of victims' sufferings and their significance to the criminal procedure".

VIS somewhat helps in the process of recognising the catastrophic effect of the crime on the victim and his close ones. In another way it enables the accuse to realise the pains and sufferings that occurred to the victim due to his wrongful act. His sense of guilt somehow assists him in becoming a better human being.

## EFFECTS OF VICTIM IMPACT ASSESSMENT

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Davies, Russell and Kunreuther<sup>6</sup> found that victims who were consulted about their will by the judge were more satisfied with the outcomes of the case rather than those who were not consulted. Another study stated that victim remain happy only when they believed that they had somehow influenced the criminal justice process. It has also been demonstrated that victims evaluation while the case is being sentenced was more positive when they attended the sentence.

VIS has shown a tremendous effects on victims. Providing crime victims with the opportunity to give necessary statements in front of the judge and the prosecutor has made many changes in the legal process. VIS regarding two significant passionate responses of wrongdoing, outrage and nervousness, inferred that in spite of the fact that conveying a VIS doesn't offer ascent to coordinate restorative impacts, sentiments of tension reduction for casualties who experience higher sentiments of procedural equity. Additionally, expanding sentiments of command over the recovery procedure could prompt a lessening in the sentiments of outrage and tension as well. Consequently, VIS has been some place corresponded

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<sup>5</sup> Giannini M.M., "Equal Rights for Equal Rites? Victim Allocution, Defendant Allocution and the Crime Victims' Rights Act", *Yale Law & Policy Review*, 26, 2008.

<sup>6</sup> Davis, Russell and Kumreuther, *The role of the complaining witness in an urban criminal court*, New York, Vera Institute of Justice, 1980.

with the mental recuperating process. In spite of the fact that not same for all victims, it has a positive effect on the people in question. In like manner, overall there has been endeavours to coordinate the victims in the justice procedure remembering his cooperation for the condemning stage.

## PROCEDURAL FRAMEWORK

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Under the Indian Penal Code, 1860, there is a size of discipline and the court chooses the quantum of discipline as per this scale. The Apex Court has held in *Bachan Singh v. State of Punjab*<sup>7</sup>, that capital punishment, as an elective discipline for homicide isn't nonsensical and thus not infringing upon articles 14, 19 and 21 of the Constitution and also articulated the principle of awarding capital punishment just in the 'rarest of rare cases'. The Supreme Court additionally set out the expansive frameworks of the conditions when capital punishment ought to be forced in *Machhi Singh v State of Punjab*<sup>8</sup>. Considering these decisions, if VIS is surely presented in India through authoritative measures, it ought to have the option to withstand any test made on the ground of protected legitimacy. This shows that Vis should be heard during the time of the judgement as this has a great impact on the victims, more or less they become satisfied with the punishment that is given to them.

At the point when an individual who has been the victim of a cognizable offence offers data to the police with respect to the equivalent, the police is required to diminish the data into composing and read it over to the source. The source is required to sign it and get a duplicate of the FIR<sup>9</sup>. On the off chance that the police won't record the data, the person in question – witness is permitted to send it recorded as a hard copy and by post to the Superintendent of Police concerned<sup>10</sup>. On the off chance that the police won't research the case for reasons unknown, the cop is required to tell the source of that fact<sup>11</sup>. On the other hand, victim is entitled by Section 190 of the Code of Criminal Procedure (Cr.P.C.) 1973 to abstain from heading off to the Police Station for change and legitimately approach the Magistrate with his grievance. The examination procedure is only a police work and the victim has a job in particular if the police think of it as important. They might be called for recording of proclamation, clinical assessment or for ID. Other than this, till police report (charge sheet) is documented under Section 173 Cr. P. C. 1973, the victim has no job.

The victim has a state in the award of bail to a denounced. S. 439 (2) Cr.P.C., 1973 perceives the privilege of the complainant or any "bothered party" to move the high court or the court of meetings for wiping

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<sup>7</sup> AIR 1980 SC 898

<sup>8</sup> 1983 AIR 957

<sup>9</sup> Section 154 (1) and (2) Code of Criminal Procedure 1973.

<sup>10</sup> Section 154 (3) Code of Criminal Procedure 1973.

<sup>11</sup> Section 157 (2) Code of Criminal Procedure 1973.

out of a bail allowed to the charged. A conclusion of the report by the indictment can't be acknowledged by the court without hearing the victim. Additionally, aggravating of an offence can't in any way, shape or form occur without the investment of the complainant<sup>12</sup>. The victim of wrongdoing may move the administration to choose an extraordinary examiner for a given case<sup>13</sup>, however S. 301(2) commands that such legal advisor of the private party "will act under the bearings of the open prosecutor...and may, with the authorisation of the court, submit composed contentions after the proof is shut for the situation". Further, however, there is no lawful arrangement in the code for giving a lawful guide to survivors of wrongdoing, S.12(1) of the Legal Services Authorities Act, 1987 entitles each individual "who needs to file or defend a case:" to legitimate administrations subject to the satisfaction of the "signifies" test and the "by all appearances" criteria<sup>14</sup>. The victim's privilege of support in the post-preliminary phase of the procedures is perceived to the degree that an intrigue against a request for quittance can be liked, with the earlier leave of the high court by both the government and the complainant.<sup>15</sup>

Some different arrangements worth referencing, so far as rape victims are concerned are S. 228A Indian Penal Code, 1860 which disallows the divulgence of the personality of the victims in any production concerning the offence, S.327(2) Cr.P.C.1973 which accommodates in-camera procedures in preliminaries and annulment of S. 155(4) Indian Evidence Act, 1872 which allowed the reprimand of the believability of a prosecutrix by alluding to her "unethical character".

In 2009, Section 357A was embedded into the Code of Criminal Procedure, 1973, to offer impact to victim compensation scheme. It cleared a path for a legal plan for the installment of remuneration to the victim for any misfortune or injury caused to him by the wrongdoer.

In ***Mallikarjun Kodagil(Dead) V. State of Karnataka (2018)***, the Supreme Court stressed the need to have a victim impact statement "inorder to provide the convict with the appropriate punishment that he deserves" This case brings up many problems that the victims of crimes face.

On **12.10.2018**, in the matter of Mallikarjun Kodagali (Dead) represented through Legal Representatives versus State of Karnataka & Ors.,The Hon'ble Supreme Court held that "It is necessary to seriously consider giving a hearing to the victim while awarding the sentence to a convict. A victim impact statement or a victim impact assessment must be given due recognition so that an appropriate punishment is awarded to the convict. In addition, the need for psycho-social support and counselling to a victim may also become necessary, depending upon the nature of the offence. Access to mechanisms of justice and redress through formal procedures as provided for in national legislation, must include the

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<sup>12</sup> Section 320 Code of Criminal Procedure 1973.

<sup>13</sup> S.24(8) Code of Criminal Procedure 1973.

<sup>14</sup> S.12(1)(h) and S. 13(1) of the Legal Aid Services Act 1987.

<sup>15</sup> S. 378(1) read with s. 378 (3) Code of Criminal Procedure 1973.

right to file an appeal against an order of acquittal in a case such as the one that we are presently concerned with. Considered in this light, there is no doubt that the provision to Section 372 of the Cr.P.C. must be given life, to benefit the victim of an offence.”<sup>16</sup>

The travails and tribulations of survivors of crime start with the injury of the wrongdoing itself and, sadly, proceed with the troubles they face in something as basic as the enrollment of a First Information Report (FIR). The trial proceeds, every now and again, in the examination that may not really be fair, especially in regard of violations against ladies and kids. Access to justice as far as moderateness, successful lawful guide and exhortation just as satisfactory and equivalent portrayal are additional issues that the victim has to fight with and which sway on society, the rule of law and equity conveyance. **(According to para 3)**

What follows in a preliminary is regularly auxiliary exploitation through rehashed appearances in Court in an antagonistic or a semi-threatening condition in the court. Till at some point back, optional exploitation was as forceful and scaring questioning, yet an increasingly sympathetic understanding of the arrangements of the Indian Evidence Act, 1872 has made the preliminary somewhat less awkward for the victims of an offence, especially the survivor of sexual wrongdoing. In such manner, the judiciary has been proactive in guaranteeing that the privileges of casualties are tended too, yet much more should be finished. Today, the privileges of a blamed far exceed the rights for the rights of an offence in numerous regards. **(According to para 4)**

Among the steps that need to be taken to provide meaningful rights to the victims of an offence, it is necessary to seriously consider giving a hearing to the victim while awarding the sentence to a convict. A victim impact statement or a victim impact assessment must be given due recognition so that an appropriate punishment is awarded to the convict. In addition, the need for psycho-social support and counselling to a victim may also become necessary, depending upon the nature of the offence<sup>17</sup>. **(According to para 8)**

The language of the stipulation to Section 372 of the Cr.P.C. is very clear, especially when it is appeared differently in relation to the language of Section 378(4) of the Cr.P.C. The content of this arrangement is very clear and it is kept to a request for vindication went for a situation organised upon a protest. The word 'complaint' has been characterised in Section 2(d) of the Cr.P.C. what's more, alludes to any claim made orally or recorded as a hard copy to a Magistrate. This has nothing to do with the enrolment of a

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<sup>16</sup> Case available at <https://indiankanoon.org/doc/111899692/>

<sup>17</sup> Para 8 of the Case available at <https://indiankanoon.org/doc/111899692/>

FIR, and therefore it isn't at all important to consider the impact of a victim being the complainant to the extent the stipulation to Section 372 of the Cr.P.C. is concerned. **(According to Para 78)**

It is in this setting that VIS becomes critical in the midst of the developing worries of victimologists to bring the casualties over into the procedure. It guarantees an option to be heard, the option to voice one's resentment, disappointment and experience emerging out of the wrongdoing and perhaps, to try and express their assessment with respect to the guilty parties' attitude.

## INTERNATIONAL VIEW

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The seventh United Nations Congress on Prevention of Crime and Treatment of Offenders, held at Milan, Italy, 1985 dove deep into the subject of victims' privileges and came out with a Comprehensive Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was later embraced by the U. N. General Assembly in its goals 40/34.<sup>18</sup>

The Declaration recognised the fundamental needs of victims to empower them to look for change. The four pivotal angles underlined towards a victim situated methodology were access to justice and reasonable treatment, compensation, remuneration and victim help. The Victim Impact Statement is imparted to the protection and when the announcement has been gone into court it turns into a matter of open record in Canada and South Australia<sup>19</sup>.

In 2004, Congress overwhelmingly passed the Crime Victims' Rights Act. The Act built up an "expansive and incorporating legal bill of rights" intended to "make crime victims full members in the criminal justice system". The government enactment is vital since it included (among other things) an ensured directly for all victims in bureaucratic cases to be "sensibly heard" at any condemning<sup>20</sup>.

In the USA, two models express the present opportunities for victims' contribution in the condemning procedure. The principal model requires or permits the readiness of a composed VIS that is presented at the condemning hearing, regularly as a connection to the pre-sentence report. The subsequent model develops first by giving the casualty the privilege to formal speech an oral explanation by the victim at the hour of condemning. The gathering answerable for setting up the victim impact data shifts, going from probation divisions to investigators' workplaces, to victim administration offices. The VIS additionally varies in substance and structure, going from straightforward agendas in certain states to protracted spellbinding explanations, both oral and composed, in others. As plea bargains deals are the

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<sup>18</sup> UN General Assembly, Declaration of basic principles of justice for victims of crime and abuse of power, 40 UNGA Resolution 34, 1985. Available <http://www.un.org/documents/ga/res/40/a40r034.htm>

<sup>19</sup> <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/justice/2212.pdf>

<sup>20</sup> Riley M.B., "Victim Participation in the Criminal Justice System: In re Kenna and Victim Access to Presentence Reports", *Utah Law Review*, 2007, p. 236.

most widely recognised approach to discard cases, numerous states have passed laws that permit or command casualty cooperation and contribution to request bargaining<sup>21</sup>.

In the Netherlands, the option to convey an oral VIS was stood to survivors of serious brutal wrongdoings in 2005. The execution of this privilege is joined by the chance of presenting a composed VIS, which is added to the record of the criminal case. In any case, in the Netherlands, the substance of the VIS is restricted as in victims can just talk about the outcomes of the wrongdoing, and are not permitted to talk about the realities or wanted punishment<sup>22</sup>.

In United Kingdom, there exists the qualification of victims to victims personal statement (VPS). These are explanations recorded by the Police or some other position assigned by them. The reason for a VPS has been expressed to give casualties a progressively organised chance to state how the wrongdoing has influenced them, permit victims to communicate their interests according to bail or dread of terrorising or whether they feel that the wrongdoing was persuaded on contemplations of sex, confidence, sexuality, race or inability and so forth., their desire to guarantee remuneration or important help. VPS gives prepared data to the criminal justice organisations of the effect of the wrongdoing and guarantees a handy way in the administration of equity by the condemning court. The VPS can be made whenever before condemning of the guilty party and is considered by the court the extent that it considers fitting while deciding the sentence. Arrangements identifying with the creation of VPS and its uses in criminal procedures are remembered for the Code of Practice for Victims of Crime<sup>23</sup>.

## SCOPE OF VIS IN INDIA

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The Supreme Court, the most noteworthy court of the land, has unmistakably explained that "The court will be bombing in its obligation if fitting discipline isn't granted for a wrongdoing which has been carried out against the individual victim as well as against the general public to which the lawbreaker and victim have a place. The discipline to be granted for wrongdoing must not be superfluous however it ought to adjust to and be steady with the abomination and mercilessness with which the wrongdoing has been executed, the monstrosity of the crime justifying open hatred and it should 'react to the general public's weep for justice' against the lawbreaker"<sup>24</sup>.

In *Alister Anthony Pareira v. State of Maharashtra*<sup>25</sup>, where a vehicle driven by the accused who was drunk, slaughtered seven people and wounded eight others, the High Court convicted the denounced

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<sup>21</sup> *Supra* n. 2, p. 84-85

<sup>22</sup> *Supra* n. 3, p. 18

<sup>23</sup> "Victim personal statements", Available at [http://www.cps.gov.uk/legal/v\\_to\\_z/victim\\_personal\\_statements/](http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/)

<sup>24</sup> *State of U.P. v. Shri Kishan* AIR 2005 SC 1250; *State of M.P. v. Saleem* (2005) 5SCC 554; *Ankush Maruti Shinde v. State of Maharashtra* AIR 2009 SC 2609; *Bikram Dorjee v. State of West Bengal* AIR 2009 SC2539.

<sup>25</sup> AIR 2012 SC 3802

under Sections 304A(causing death by negligence) and 338(causing grievous hurt by act imperilling life or individual wellbeing) Indian Penal Code, 1860 and condemned him to three years detainment. In offer before the Supreme Court, while diving on the issue of condemning, the court considered the way that the mother (of one of the people in question) had no complaint against the blamed however petitioned for remuneration. As needs be, the court approved the measure of Rs. 8.5 lakhs paid as pay yet expressed that the despicable demonstration warrants discipline proportionate to crime and maintained the punishment granted by the court beneath. In one more instance of death because of a street mishap, the **Delhi High Court**<sup>26</sup> underlined that the criminal justice system would look empty if justice isn't done to the survivor of crime. Such justice must mull over the impact of the offence on the victims family. It as needs is guided the police to get ready Victim Impact Report (VIR) in regard of such cases.

A few estimates should be taken in India so as to urge the victims to give VIS, such measures can be that the explanation that is given by the victim ought not be available to questioning, VIS ought to be taken by holding a camera preliminary procedures. In India, the administration needs to apportion assets for preparing experts, for example, specialists, analysts, therapists and monetary foundations so as to empower them to give victims help with composing VIS.

## CONCLUSION

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Giving the victims their value has for quite some time been past due. The criminal justice framework needs to coordinate the victims during the time spent in justice delivery. Truly participative methodologies can possibly lessen the hole among victims and guilty parties, empower a less tyrant atmosphere and advance a more inclusionary society. Victim Impact Statement is a significant advance towards that end and India must make vital changes to permit the consideration of effect articulations at the phase of condemning. The dread of impacting the brains of judges might be negated by the way that world over there is a rising worry for Victims, permitting such proclamations to be incorporated yet not affecting the final judgment. Neither does it encroach on the justice system, since 'fairness' requires introduction by both the gatherings and not simply the accused.

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<sup>26</sup> *Satya Prakash v. State* (2013) 3 MWN(Cri) 373.