VICTIM PARTICIPATION IN CRIMINAL PROCEDURES

A Report to Assist REDRESS

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EXECUTIVE SUMMARY

I. INTRODUCTION

1. Oxford Pro Bono Publico (OPBP) was invited by REDRESS, a London-based human rights organisation, to analyse modes of victim participation in criminal proceedings in different jurisdictions. REDRESS intends to publish recommendations and/or a model legal framework for victim participation in criminal justice systems for the prosecution of international crimes. Based on the results of this OPBP research project, REDRESS will collect further information from legal practitioners on the ground and develop the findings presented in this project.

Jurisdictions Covered

2. This report examines five common law (Australia, England and Wales, India, Ireland, United States) and four civil law jurisdictions (Brazil, Denmark, Italy, Norway). Each type of legal system has been separately analysed.

3. The reasons for this are explained as follows. There are certain important differences in the way common law and civil law systems are structured, though these are not uncontested, and both systems are constantly evolving to incorporate attributes that might not be traditionally associated with them. Even so, the general model for common law systems seems to be of ‘reactive’ rather than ‘proactive’ law-making in that adjudication is based pre-dominantly on assessing individual cases on the facts, rather than hoping that extensive codification will sufficiently deal with any hypothetical situation that might arise in the future. Perhaps because of this piecemeal approach to law-making, common law judges seem less concerned with policy arguments and academic literature when compared with their civil law counterparts, and more concerned with doing justice in that particular case. Furthermore, the ‘law-

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1 We use the term ‘victim’ with some reservations, and full awareness of its problematic connotations for the presumption of innocence. The reason we have chosen to adopt this terminology in spite of this is to maintain consistency with the many national legal systems that also use the same term.


3 Michael Bohlander, ‘Radbruch Redux: The need for revisiting the conversation between common and civil law at root level at the example of international criminal justice’ (2011) 24 Leiden Journal of International Law 393, 405.

4 Ibid.
making’ function of judges, through interpretation and development, is more pronounced in case of the common law which has developed largely as a result of the doctrine of precedent.  

4. Specifically when it comes to criminal trials, civil law judges are likely to play a more active role in the trial,⁵ and accept evidence through dossiers as opposed to oral evidence subject to cross examination as is the norm in the common law trials. ⁶ Common law contains strict exclusionary rules of evidence⁷ (such as rules against hearsay⁸ and bad character⁹) as compared to civil law trials which accept more broad-ranging evidence due to their nature as a single truth-seeking inquiry.¹⁰ This is reflected in the idea that:

When the task of obtaining and adducing evidence is put in the hands of the parties, there is inevitably a need for more rules to regulate the handling of evidence than when a system puts the task of evidence management in the hands of a court.¹¹

5. This may also be because in the civil law system, the ‘adversarial’ stage (i.e., the stage at which evidence is challenged) is dominantly pre-trial rather than during trial,¹² and not because common law systems offer higher or better safeguards of justice. Further, exclusionary rules appeal more to logic in common law systems where the judge decides on the admissibility of evidence, and the verdict is reached ultimately by a jury. By contrast, in civil law systems that do not usually use juries, it is the judge who is also

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⁵ Baragwanath (n 2) 464. Ian Williams explores the evolution of stare decisis and traces ‘binding’ precedents of one kind back to the late sixteenth/early seventeenth century, though there does seem to be a degree of flexibility available to judges throughout the history of the common law as per his account: Ian Williams, ‘Early Modern Judges and the Practice of Precedent’ in Paul Brand and Joshua Getzler (eds), Judges and Judging in the History of the Common Law and Civil Law From Antiquity to Modern Times (1st edn, Cambridge University Press 2012).


¹¹ See for instance the principle of ‘free proof’ in civil law systems under which it is impermissible to exclude whole categories of evidence: Summers (n 6) 122.

¹² Jackson and Summers (n 2) 30.

¹³ Ibid (n 2) 9.
the trier of fact. Therefore, to exclude evidence to which the trier of fact has already been exposed to would have limited utility.  

6. As pointed out above, this is not to suggest that there can be no ‘fruitful transnational dialogue’ between the two systems, and there remain important convergences between these systems, in spite of an exaggerated focus on their differences in approach, structure and judicial thought. However, there remains sufficient basis for a parallel analysis of jurisdictions from each legal tradition. 

7. A few more caveats must be issued before any comparison can be effected. Even within these two broad categories, the jurisdictions are not identical. India stands out as a common law jurisdiction that has abolished juries, while in other countries, juries may be required only for the most serious offences. The legal framework in both the USA and Australia is federal. Consequently, Australia has multiple state-level Victims of Crimes statutes and non-penal ‘Charters’, and these Charters are binding to different extents. In states without a statute, the common law continues to govern. Similarly, in the US, different states have regulated the rights of victims to varying degrees, with California going to the extent of affording them constitutional status. In these situations, an attempt has been made to sift out generalisations based on a study of many different state and federal legal resources. 

8. While Ireland and Italy has been analysed, it is notable that neither of them have formally implemented Directive 2012/29/EU of The European Parliament and of The Council of 25 October 2012 Establishing Minimum Standards On The Rights, Support And Protection Of Victims Of Crime, And Replacing Council Framework Decision 2001/220/JHA (‘Victims’ Directive’). The deadline for implementation of the Victims’ Directive is 16 November 2015. It is anticipated that implementation of the Victim’s Directive will result in substantial amendments to subsisting law on the treatment of victims.

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14 This argument is not valid for common law systems that have either done away with juries, or made them optional at the discretion of the accused: ibid (n 2) 32, 71-72. See also Laura Hoyano, ‘Book Review: The Internationalisation of Criminal Evidence: Beyond the Common Law and Civil Law Traditions by John D Jackson and Sarah J Summers’ (2013) 11 Criminal Law Review 939, 939-940. 
16 Jackson and Summers (n 2) 3 – 20; Mazzone (n 7) 953-954. 
17 India also allows states a great degree of autonomy, but it remains a ‘union’ with a bias towards the central legislative and executive bodies- Constitution of India 1949 Art 1 (1). 
II. RESEARCH QUESTIONS

9. The following research questions were examined in respect of each jurisdiction for the purposes of this study

I. In light of relevant legislation, case law and policy documents, does your jurisdiction provide for victim participation in criminal proceedings for all alleged victims in any of the following forms?

1. Are there provisions for support services (including counselling, use of an interpreter, interim compensation and other measures) at the time of complaint?
2. Are there provisions for witness protection during the investigation?
3. Are the alleged victims consulted while deciding whether to prosecute? Are private prosecutions allowed?
4. What are the rights available to the alleged victims during trial (specify if they are entitled to have their own legal counsel)—specifically examine: the right to deliver opening and closing statements, the right to call witnesses, rights of cross-examination, the right to raise objections, the right to have a support person, intermediary or interpreter, access to special measures (for example, giving evidence through television links, taking breaks during testimony, having a video-recorded chief examination, removal of wigs and robes for court proceedings etc).
5. At the time of sentencing, are there any provisions for victim impact statements? Is the reward of compensation allowed at sentencing? If yes, who bears this cost? Are there any other forms of rehabilitation guaranteed to the victims? Do these depend on a finding of guilt?
6. What rights rest with the alleged victim in respect of the appeal?
7. Are there any rights available to the victim when it comes to enforcement?
8. Are there any other rights that facilitate victim participation not covered in the above chapter?
II. Are there any **special categories** of alleged victims (eg child witnesses, witnesses with intellectual or mental disability, witnesses alleging sexual abuse etc) to whom the above rights are available? If yes, define those categories and answer the above question in respect of each category.

III. **STRUCTURE**

10. The following section on summary conclusions picks up one stage of the trial at a time and provides an introductory paragraph that explains how the common and civil law systems studied have dealt with victims’ rights at that stage. The tables in each section present a summary of the law relating these rights in all the jurisdictions surveyed. The detailed legal provisions, sources and references can be located in the country reports that are provided as Appendices to this Report. Additionally, an Annexure at the end contains a list of all the important legal resources relied on, organised according to jurisdiction.
IV. SUMMARY CONCLUSIONS

11. This section provides a comparison of rights available in all the different jurisdictions examined under categories drawn from the above research questions. The salient points emerging from this examination have been listed here, along with tabulated summaries.

   a) Legal Framework Surrounding Victims

   Definition of Victim

12. Common law: Three (England and Wales, India, USA) out of the five jurisdictions surveyed define the term ‘victim,’ as elaborated upon in Table 1. All three recognise indirect victimisation, and correlate victimhood with some kind of harm, loss or injury.

13. Civil Law: One jurisdiction (Denmark) does not have any legal definition for victim. In one jurisdiction (Brazil) the word ‘victim’ is associated with harm suffered. However in the remaining two (Italy, Norway) it is correlated with legal position of the person within the criminal justice system. In Italy, the ‘victim’ is different from an ‘injured party’ who can apply to become a *parte civile* with the right to bring civil claims in the criminal proceedings. The ‘victim’ is the holder of the interest sought to be protected by criminal law, while the injured party is anyone who suffers harm as a result of the commission of crime.

   Complaint Procedures and Support Services

14. Common Law: It is not mandatory to be the victim of a crime in order to report it in any of the common law jurisdictions surveyed. Anonymous complaints are allowed in two jurisdictions (Australia, England and Wales) though in one of these (Australia) they are only allowed in case of the serious offences. Only one jurisdiction (Australia) has a separate procedure for crimes with international elements, and requires that such complaints be made only to the Australian Federal Police, and can proceed only in the name of the Commonwealth Attorney General.

15. Four of the five jurisdictions surveyed (Australia, England and Wales, Ireland, USA) provide some kind of information about counselling and support services. Four jurisdictions provide links to interpreter services (Australia, England and Wales, Ireland, USA).
to the victim when the complaint is lodged. The provisions in one jurisdiction (USA) are comprehensive enough to include childcare and transportation assistance. While the police will generally provide information regarding all these services, the services themselves may be provided by private actors, or voluntary or charitable organisations.

16. **Civil Law:** Only one jurisdiction (Italy) allows for anonymous complaints, and that also in very limited cases. In two jurisdictions (Brazil, Italy), it is mandatory for the victim to be the complainant in certain prosecutions, depending on the nature of the crime and the role played by the victim in the proceedings. One jurisdiction (Italy) recognises a special type of complaint if the crime was committed in foreign territory, though this follows the same formalities as other complaints.

17. Two jurisdictions (Brazil, Norway) offer counselling at the time of complaint. One jurisdiction provides the services of an interpreter at the time of complaint (Denmark). In one jurisdiction (Norway) the victim can ask for an expert to be appointed to assess damage. In one jurisdiction (Brazil), there are also multiple other support measures that can be ordered by the judge on a needs basis.

**Private Prosecution**

18. **Common Law:** In one jurisdiction (England and Wales) private prosecutions are allowed in respect of any crime. In four jurisdictions (Australia, India, Ireland, USA), private prosecution is allowed for some crimes but not others. In one of these jurisdictions (Australia), the prosecution can be taken over by the public prosecutor without any qualification, while in one other (England and Wales), it can be taken over in some circumstances but not others. In one jurisdiction (India) there is the additional option of a private counsel for the victim or complainant assisting the public prosecutor.

19. **Civil Law:** In three jurisdictions (Brazil, Denmark, Italy), private prosecution is allowed for a limited number of offences. In two jurisdictions (Brazil, Norway) private prosecution is also allowed where the prosecutor fails to offer indictment. The victim will have to pay the cost of this prosecution, though there remains the possibility of State aid (Brazil), or applying for costs based on a successful prosecution (Denmark). In all cases of private prosecution, the public prosecutor retains some or all rights over the prosecution.
20. In one jurisdiction (Brazil), there is also a public prosecution subject to independent legal representation where prosecution—usually for sexual or violent offences—cannot proceed until the victim has consented. In one jurisdiction (Italy) the victim can conduct a parallel investigation with the public prosecutor.

**Table 1: Summary of Surrounding Legal Framework (Common Law)**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Definition of ‘Victim’</th>
<th>Complaint Procedures and Support Services Provided on Complaint</th>
<th>Private Prosecution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>There is no clear definition of ‘victim’ in common law or statute, though some criminal codes have limited definitions for specific crimes. It is common to recognise both ‘primary’ and ‘secondary’ (i.e., indirectly affected) victims. This categorisation impacts the extent of assistance provided, rather than the nature.</td>
<td>Complaints are made by any witness, including the victim, without having to pay any fees. Complaints can be made in person, through telephone calls or via the internet. Anonymous complaints are possible for less serious offences. Offences with international elements are known as ‘Commonwealth crimes’ and complaints against them are made to the Australian Federal Police. The law requires that these crimes proceed to prosecution only in the name of the Commonwealth Attorney-General and with his or her written consent.</td>
<td>Although rarely used, private prosecutions are permissible for Commonwealth crimes and some state crimes. Different jurisdictions impose differing preliminary hurdles for this—such as requiring leave of the Supreme Court, payment of security or the signature of a court registrar. The Director of Public Prosecution (‘DPP’) generally retains the right to take over private prosecutions.</td>
</tr>
<tr>
<td>England and Wales</td>
<td>A victim is a person who has suffered harm, including...</td>
<td>Based on the level of interaction the victim wants, the Code of Practice for Victims of Crime in England and Wales (the Code) sets out a...</td>
<td>Private prosecutions are possible. The Crown Prosecution Service (CPS), exercising the discretionary powers of...</td>
</tr>
<tr>
<td>Country</td>
<td>Definition of Victim</td>
<td>Victim Services Provided</td>
<td>Criminal Conduct Authority</td>
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<tr>
<td>India</td>
<td>‘Victim’ means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression includes his or her guardian or legal heir.</td>
<td>- Number of ‘entitlements’ to the following: enhanced ‘service’ in case of a victim of serious crime; a needs assessment to evaluate how much support a victim needs; referral to victim support organisations; receive information on Restorative Justice; making a complaint if victims don’t receive information and services that they are entitled to. Interpreters are provided at public expense.</td>
<td>The DPP may, where certain circumstances arise, take over such private prosecutions.</td>
</tr>
<tr>
<td>Ireland</td>
<td>There is no definition of victim in Irish law.</td>
<td>The Commission for the Support of Victims of Crime (the ‘Commission’) under the Ministry for Justice and Equality provides funding for victim services. It is supported by the Victims of Crime Office - a full time executive office that</td>
<td>Private prosecutions can only be invoked for the prosecution of summary offences. However, the investigatory jurisdiction of the victim in sustaining a private</td>
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<tr>
<td>USA</td>
<td>A ‘crime victim’ is a person directly and proximately harmed as a result of the commission of a federal offense or an offense in the District of Columbia. It includes family members and other lawful representatives.</td>
<td>private prosecution is only allowed in the case of employees of the federal government. Additionally, the Supreme Court ruled that federal courts can appoint private attorneys to prosecute a criminal case if the executive branch refuses to do so. At the state level, many state courts and legislatures have effectively banned private prosecutions of criminal cases.</td>
<td>Victims have a right to engage, but are not provided with, an attorney to safeguard their rights. In certain cases, for example the Special Victims Counsel program in the U.S. military, victims are given the right to free legal counsel.</td>
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<td>A criminal complaint is usually a written statement made under oath before a magistrate judge a judicial officer. The complaint and supporting materials may be submitted by telephone or reliable electronic means. This procedure remains unchanged for those international crimes that have been incorporated into US law. The Department of Justice has guidelines for information pertaining to support services that are offered but not guaranteed to crime victims. Victims should be informed and assisted with respect to transportation, parking, childcare, translator services, and other investigation-related services.</td>
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<td>maintains Departmental oversight of the Charter. The Commission and Office fund the following national helplines and services: Amen, Crimes Victim Helpline, Dublin Rape Crisis Centre, Woman's Aid Dublin, AdVIC, Barnardos, CARI. Collectively, these helplines provide counselling, court accompaniment, outreach services, training, awareness raising, lobbying and interpreter services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Definition of ‘victim’</td>
<td>Complaint Procedures and Other Support</td>
<td>Private Prosecution</td>
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<tr>
<td>Brazil</td>
<td>A victim is the person (natural or moral) or abstract entity (e.g.: society, customs) which is injured by a criminal conduct in accordance with the definition of the crime.</td>
<td>Complaints can be oral or written and can also be lodged online. There are no fees to be paid. In two types of prosecution (private prosecution and public prosecution subject to victim representation), which only involve certain types of crimes (generally related to the privacy of the victim), a complaint by the victim is required. Once the indictment is offered and the prosecution officially starts, victims are entitled to multidisciplinary support services, including social, psychological, health-related and legal measures, to be determined by the Judge if she believes them to be necessary. The Ministry of Justice introduced victim counselling by a Circular in 1998. Victim counselling institutions are independent, run by volunteer counsellors and the police have no influence on the organization or on the concrete assistance and advice provided to the victim.</td>
<td>Private prosecution is possible in two situations: 1) in relation to crimes that can only be prosecuted under this type of suit (e.g.: crimes against honour – defamation, calumny and moral injury –, invasion of property without violence, fraud to execution, damage of property); or 2) as a substitute for public prosecution, when the Prosecutor in charge fails to indict the accused by the legal deadline. The costs are to be borne by the claimant, though in case of poverty, and if the victim has not sought free legal counselling, the Judge may appoint a private counsel to represent her and waive any other judicial costs. In relation to minors or mentally ill victims, and those who lack a legal representative or whose legal representative’s right collides with their own, the Judge may appoint a special curator (curador especial) to initiate the private prosecution. In case of the first type of prosecution, the Prosecutor may amend the charges, request new evidence and participate in the prosecution with all of her regular powers. In the second scenario, the Prosecutor may exercise all of her rights, if she so wishes.</td>
</tr>
</tbody>
</table>
victims who turn to victim counselling.

In addition, there can also be a public prosecution subject to the representation of the victim. This is a type of public prosecution, that is initiated and conducted by the Prosecutor, but can only be initiated once the victim has expressed her will to proceed with the prosecution of the accused. This procedure applies to certain specific crimes (for instance, rape and other sexual crimes committed against legally capable persons, threat of violence, violation of secrecy of communications).

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>The Danish legislation does not contain a definition of the word victim (<em>foruretede</em>) in spite of the fact that the Administration of Justice Act refers to ‘the victim’ in several places.</td>
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<tr>
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<td>There are no formalities required when lodging a criminal complaint as long as the complaint is addressed to the police. A complaint can be filed in the victim’s own language and the police will – if necessary – provide the victim with access to an interpreter.</td>
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<td>Private prosecution is possible only in relation to a very limited number of crimes in the Criminal Code (<em>Straffeloven</em>), e.g. defamation. But even in these cases the public prosecutor can initiate public prosecution if the public interest requires this. If this is done, private prosecution is no longer possible, but the victim is allowed to join the public prosecutor as a party to the case. Furthermore, the victim is allowed to take over the prosecution if the public prosecutor in such a situation decides to stop the (public) prosecution. Private prosecution is subject to the procedural rules that apply to civil litigation which means that the alleged victim has to pay a court fee when initiating a private prosecution and the</td>
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<tr>
<td>Country</td>
<td>Legal Framework</td>
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</tr>
<tr>
<td>Italy</td>
<td>The Code of Criminal Procedure 1988</td>
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<td>draws a clear distinction between victims of the crime <em>stricto sensu</em> and persons injured by the crime.</td>
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<tr>
<td></td>
<td>The person injured by the crime (<em>danneggiato dal reato</em>), on the other hand, is the person who suffered physical or mental harm as a consequence of the crime. The two notions overlap, but remain conceptually distinct. Only injured persons can bring their civil claims against the accused within the criminal proceedings. Claims can only be brought if the injured party decides to become (<em>parte civile</em>). The role of the victim is particularly important during the investigative phase; however, the victim does not have autonomous powers to initiate criminal or civil proceedings. The status of</td>
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<tr>
<td>Country</td>
<td>Summary</td>
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<tr>
<td>Norway</td>
<td>The Criminal Procedure Act builds on a principle of two groups of victims: victims in general, and victims with appointed legal counsel (primarily victims of sexual offences and serious violent offences) who are afforded a number of rights that are not afforded to the first group. More broadly victims must be understood as any person who can pursue claims against the alleged offender in criminal proceedings. Victims of crime have access to counselling through the counselling offices for victims of crime (Rådgivningskontorene for kriminalitetsofre) situated in every district. Furthermore, a victim can request that an expert is appointed by the court during the investigation to assess the personal injuries to the alleged victim if this is necessary in order to determine a civil claim. Private prosecution is possible if an offence is not subject to public prosecution, if an offence is only subject to public prosecution when the common good calls for it, and if the public prosecutor has refused to indict or has withdrawn an indictment. In other words, alleged victims always have a subsidiary right to initiate private prosecution. If public prosecution is initiated, the victim is allowed to join with the public prosecutor as a party to the case.</td>
</tr>
</tbody>
</table>

b) Pre-trial Procedural Rights

**Right to Investigation of Complaint**

21. Common Law: Two jurisdictions (England and Wales, India) recognise a duty to investigate crimes, in an impartial and efficient manner. In one jurisdiction (Ireland), this duty is recognised in an unenforceable instrument. In one jurisdiction (Australia) there is a way to complain against the police using an internal complaints mechanism. In three other jurisdictions
(England and Wales, India, Ireland), complaints can be made to an independent commission, while in one jurisdiction (USA) the complaint is made directly to the Department of Justice. In one jurisdiction (India), there can be penal consequences for failing this duty, though such prosecutions are rare. In this jurisdiction (India) there is also a specific procedure to complain to a senior police official for police refusal to lodge a complaint.

22. Civil Law: In three jurisdictions (Brazil, Denmark, Norway), there is a duty on the police to investigate a complaint. There can be administrative (Brazil, Denmark, Norway) or judicial ways (Denmark) of enforcing this duty. In one jurisdiction (Italy), there is a duty to investigate in a time-bound manner but the victim has no way of enforcing this duty. In one jurisdiction (Norway) a victim who has a legal counsel is entitled to receive updates about the investigation. In two jurisdictions (Denmark, Norway), the victim must be informed if the investigation is dropped.

Rights Relating to Decision to Prosecute and Charge

23. Common Law: In one jurisdiction (Australia-Western Australia only), there is a duty to consult the victim before deciding whether to prosecute. Two jurisdictions (Australia, Ireland) recognise this duty through a non-binding instrument. Two jurisdictions (Australia, England and Wales) recognise the right of the victim to be informed whether or not the case proceeds to prosecution, and one jurisdiction (Australia) recognises that in case there is no prosecution, the victim must be given reasons. In one jurisdiction (Ireland), a reasoned decision must be conveyed to the family of the deceased victim if the prosecutor decides not to proceed. In one jurisdiction (England and Wales) a review of the decision of the prosecuting agency can be requested of the agency itself, and in case of dissatisfaction with this review, and independent review can be applied for. In one jurisdiction (Ireland), this is judicially reviewable on a very narrow set of grounds. In two jurisdictions, there are no rights to consultation, information or review (India, USA).

24. None of the jurisdictions allow the victim the right to alter charges. In one jurisdiction (USA) if the State files a motion to dismiss charges, then the victim must be consulted.
25. **Civil Law**: In one jurisdiction (Brazil) the prosecution cannot proceed without the consent on the victim in cases of public prosecution subject to legal representation of the victim; for other public prosecutions there is no such requirement. In one jurisdiction (Italy, Norway), the decision not to prosecute can be challenged administratively (Norway) or before the investigating judge (Italy). In one jurisdiction (Norway), the victim has a right to be informed of the prosecutor’s decision, as well as her right to initiate a private prosecution in case the public prosecutor decides not to proceed.

26. In one jurisdiction (Denmark) the victim has a right to be informed if the prosecution is abandoned. In two jurisdictions (Denmark, Norway) the victim has the right to be informed about the indictment and in one of these (Norway) she can appeal administratively the decision to withdraw an indictment. In one jurisdiction (Italy), the victim must be notified of the prosecutor’s decision to prosecute.

**Other Passive Rights**

27. **Common Law**: One jurisdiction recognises the right to receive updates about investigation (England and Wales). Two jurisdictions (Australia, Ireland) recognise the right to receive updates regarding investigation and prosecution, though through an unenforceable instrument. In one of these jurisdictions (Ireland), there is an enhanced undertaking in respect of keeping victims of sexual and violent offences informed about the progress of the case. In one jurisdiction (India) the complainant, who may not be the victim, has a right to receive a single update at the conclusion of the investigation. In one jurisdiction (Ireland) the DPP has undertaken to facilitate a meeting between the victim and the lawyers prosecuting the crime. In one jurisdiction (USA) there are unenforceable guidelines on providing information to the victim, but these deal more with logistical information rather than updates regarding investigation.

28. **Civil Law**: In two jurisdictions (Denmark, Norway), there is a limited right to access the case file, though this right is enjoyed to a much greater extent by the victim’s counsel. In one jurisdiction (Brazil), access to the case file is decided by the police. In another jurisdiction (Italy) the victim has access to the case file, along with a right to make copies of relevant documents, only for the hearing on indictment, in relation to which hearing she must also be notified of the date and time.
29. In three jurisdictions (Denmark, Italy, Norway) there is a right to legal counsel, though in two (Denmark, Norway) it is confined mainly to violent offences. In one of these jurisdictions (Italy), legal aid to appoint counsel is granted in the case of serious offences, or if the victim cannot afford it. In two jurisdictions (Denmark, Norway), the victim has a right to guidance, as well as to a contact person after lodging the complaint. In one jurisdiction (Norway), the victim enjoys the right to appoint a proxy for the exercise of her rights, and if she has a legal counsel, to be separately questioned about the effects of the offence on her.

Table 3: Summary of Pre-trial Procedural Rights (Common Law)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Duty to Investigate</th>
<th>Consultation on Decision to Prosecute, Charges</th>
<th>Other Passive Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Under common law, in the absence of exceptional circumstances, police officers do not owe a duty of care to an individual to investigate a complaint. The Victims of Crimes Acts provide some indirect protection: they require designated persons and agencies to establish guidelines and policies to provide for complaint mechanisms. Pursuant to these provisions, state police services now have internal complaint mechanisms or external victim services coordinators to process victim complaints.</td>
<td>The ultimate decision to prosecute remains with the prosecution in all Australian jurisdictions. Only one state, Western Australia, has an explicit legislative requirement for (certain) victims to be consulted prior to prosecution. Some DPPs have departmental policies to consult victims before a decision is made to modify or withdraw charges. This is also a right recognised in the Charter. The ultimate decision to prosecute is left to the prosecutor’s discretion. However, all Charters require that victims be informed of the prosecutor’s decision to proceed. Where the prosecutor decides not to proceed, most jurisdictions have policies entitling victims to receive reasons for the decision.</td>
<td>All Charters recognise these victims’ right to information about investigations and prosecutions.</td>
</tr>
</tbody>
</table>
| England and Wales | Under common law, the police do not owe a duty of care in negligence in relation to the investigation of crimes. Following the Human Rights Act 1998, claims grounded in Articles 2 (right to life) and 3 (prohibition of torture) have outlined a duty to undertake an independent and impartial investigation in case of serious crimes.

In the case of a failure or refusal to investigate, the victim make a complaint to the Independent Police Complaints Commission (IPCC). | Victims are entitled to be notified about decisions to prosecute by either the Police or the CPS. The option of judicial review is not available but victims can request a review of a CPS decision not to pursue a prosecution under the CPS Victim Right to Review Scheme. The outcome of this review can also be independently reviewed.

There is no entitlement to request the CPS to adjust the nature of charges. | The entitlements under the Code include the following: to be informed about aspects of the police investigation, such as if and when a suspect is arrested, charged, bail conditions. |
|---|---|---|---|
| India | There is a duty to detect and bring offences to justice. The penalty for its breach can be three months’ imprisonment and/or forfeiting three months’ worth of salary. The Supreme Court has ordered the setting up of decentralised Police Complaints Authorities at the state and district level to deal with police-related complaints but this has not been done in most states.

In case of cognizable offences if a police officer refuses to file the complaint, the complainant can send the substance of her | None. | The complainant (not necessarily the victim) has the right to be informed about police investigation report as is forwarded to the Magistrate who may take cognisance of the offence based on the report. |
complaint to the Superintendent of Police, who, on being satisfied that the information discloses the commission of a cognisable offence, can either conduct the investigation himself, or direct the investigation to be conducted by someone else.

<table>
<thead>
<tr>
<th>Ireland</th>
<th>The police is not under a legal duty to investigate every complaint and, enjoys a large measure of discretion in deciding whether to investigate. They have nevertheless undertaken to investigate complaints by victims through the Charter. Any victim aggrieved by a decision of the police is entitled to lodge a formal complaint with the Garda Síochána Ombudsman Commission.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Office of the DPP has given an undertaking in the Charter to consider any views expressed by the victim in deciding whether to prosecute. In addition, the Office undertakes to reconsider a prosecutorial decision which it has made if the victim expresses her disagreement with that decision. While decisions of the DPP are, in theory, judicially reviewable, such a review will only be acceded to on very limited grounds where it can be shown that the Director acted in bad faith or in pursuit of an improper motive or policy. In case of deceased victims only, under the Charter, the DPP undertakes to provide the family with the reason, whenever possible, behind the Office's decision not to maintain a prosecution.</td>
</tr>
<tr>
<td></td>
<td>The police undertake to explain to the victim the steps involved in a criminal investigation, and to keep them informed of the investigation. The Garda Victim Liaison Office (GVLO) is not only responsible for supporting the implementation of the Victims’ Charter, but also support to Family Liaison Officers (FLOs) who are appointed to victims and their families in serious cases such as murder or false imprisonment. The DPP also makes an express commitment in the Charter to ensuring that the victim is kept fully informed of developments in relation to the</td>
</tr>
</tbody>
</table>
prosecution of offences (especially those of a violent or sexual nature) and to facilitating a pre-trial meeting between the victim and the solicitor and counsel dealing with the case to discuss the case.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Duty to Investigate</th>
<th>Consultation on Decision toProsecute, Charges</th>
<th>Passive Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>If the police or law enforcement agency refuses or neglects to investigate, can make complaints to the Department of Justice. While federal laws that address police misconduct cover the action of state, county, and local jurisdictions, only the Department of Justice may file suit for violations of the police misconduct provisions.</td>
<td>The victim needs to be consulted if the government files a motion to dismiss criminal charges.</td>
<td>According to non-binding Department of Justice guidelines, when the prosecution agency files charges, the responsible official should provide information and about and assistance with prosecution-related services.</td>
</tr>
</tbody>
</table>

**Table 4: Summary of Pre-trial Procedural Rights (Civil Law)**
The victim may appeal to the relevant Chief of Police. If this appeal fails or even if the victim has not resorted to it, there is always a possibility of filing a general administrative claim against the act of the Chief of Police (or the police officer), or of filing a judicial civil claim against her actions, if the victim considers them to be arbitrary or in violation of any law.

A victim can appeal administratively to the public prosecutor against the police’s decision to abandon the investigation.

Denmark

When the police receive a complaint the police must evaluate whether there is a reasonable suspicion that an offence has been committed. If that is the case, the police must initiate an investigation.

If the alleged victim wishes to file a complaint about this investigation, this must be directed to the police commissioner. The police commissioner’s decision can then

| The victim has a right to receive notice if the prosecution or investigation is abandoned (though a broader right exists for more serious offences). |
| The police are obliged to inform the victim of an indictment. |
| Denmark also has a unique system called *tiltalefrafald* where the police decides not to prosecute even though they are under the impression that the offender is guilty—for instance, where the crime has been committed by a |

After lodging a complaint, the victim has a right to guidance, and a right to a contact person.

The right to legal counsel exists primarily for violent offences (though it can extend where it’s necessary to have legal assistance when assessing a civil claim related to the offence). Their role is to aid the victim during questioning, to assist her in determining possible civil claims, to provide guidance and personal support. If the victim does not wish to have an attorney
be appealed administratively to the public prosecutor.

When dismissing a complaint the police are obliged to inform the persons who have a reasonable interest in the dismissal. The police must also inform these persons that the decision can be appealed administratively to the public prosecutor.

The victim has a right to be informed if the investigation is abandoned.

Young, first time offender. The victim is not entitled to appeal this decision.

The constitutional duty to prosecute implies that the public prosecutor (Pubblico Ministero or PM) and the police forces have the duty to investigate each notitia criminis of which they receive notice or become aware autonomously. This investigation must be completed within six months, though this period can be extended by an application to the investigating judge (Giudice di Inquisizione). The victim can ask to be informed of the outcome of the investigation and if such notice is omitted, the victim has the right to appeal the decision to close the case directly before the Supreme Court of Cassation. Upon receiving notice of the prosecutor’s request to close the case, the victim is given a fundamental opportunity to challenge this determination by appealing against such a request to the GIP. The victim’s application must contain an indication appointed by the court, she is free to engage her own attorney at his or her own expense.

The right to access documents for victims is subject to the general administrative regulation on access to documents that states that access to documents in a criminal case can only be given after the completion of the case. In contrast, the victim’s legal counsel has access to not only the victim statements but also to other material related to the victim, e.g. medical opinions. However, she must not, without the consent of the police, inform the victim of the content of the material. The victim can request to access the documents of the case.

In order to exercise her prerogative, a victim can appoint a legal counsel to assist her and participate in the proceedings, though legal aid is provided only in some circumstances (such as mafia offences and sexual offences). Otherwise, victims receive free legal aid and assistance only if their income is particularly low.

Italy
**Per le Indagini Preliminari** or GIP to 18 months. However, there is no way for the victim to enforce this.

If she has previously so demanded, the victim must also receive notice of the prosecutor’s request for an extension of the time limit for the investigation. Upon receiving this communication, the victim has five days to submit pleadings to the investigative judge as to the denial of such an extension.

Once the term for the investigation has expired, if the PM neither requests to close the case, nor brings charges against the accused, the victim may require the direct engagement in the investigation of a Higher Prosecution office, which is the prosecution office that is normally responsible for appellate proceedings.

Where the prosecutor, at the end of the investigation, decides to bring a case against the accused, she must notify the accused, and then formulate a request to the judge of the preliminary hearing (GUP) to set up the trial.

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**Norway**

When the police receive a complaint the police must initiate an investigation into the alleged offence subject to public prosecution if reasonable grounds calls for it.

If dismissing a complaint the police are obliged to inform the victim who has filed the complaint. They must also inform the victim that the decision can be appealed administratively, that an appeal should be submitted to the

The rights that the alleged victim have after lodging a complaint consist of a right to guidance, a right to a contact person, a right to counsel, a right to appoint a proxy, a right of access to documents and
If the police investigation is found to be inadequate, the victim can complain to the police.

The legal counsel of a victim has a right to suggest that certain investigative steps should be taken. Victims with legal counsel have a right to be kept informed of important developments, prior to information being released publicly if practicable. They also have a right to notice for the first questioning of the offender, and of court hearings during investigation. Other victims will only receive notice of progress if deemed necessary. All victims have a right to receive notice of seizure of property by the police if it is alleged to belong to them, and if the police decide to stop the investigation. They also have a right to appoint a proxy for the exercise of these rights.

Victims have a right to receive notice of an indictment and to receive information about the content of the indictment, as well as withdrawal. A decision to withdraw the indictment can be subject administrative appeal.

A legal counsel is appointed mainly in cases of sexual or violent crimes to be informed of all investigatory steps involving the victim, to be present during such steps, and to participate in the questioning of the victim by the police. The court may choose to appoint a single counsel for many victims.

Victims have a right to access documents of the case subject to third party rights. They have a right to receive a copy of the case documents of the case if it is necessary to safeguard their interests and it is deemed unobjectionable. The victim’s counsel has a right to receive a copy of the victim’s statement, but this must not be handed to the alleged victim without police consent.

Victims with legal counsel have a right to be separately questioned about the consequences of the alleged offence.
c) Pre-trial Substantive Rights

**Interim Compensation**

30. **Common law:** Three jurisdictions (Australia, India, USA) have provisions to award interim compensation or emergency funds to help the victim meet urgent expenses. This can be awarded *inter alia* on the recommendation of the police, or on the determination made by an independent commissioner or tribunal.

31. **Civil law:** There are no provisions for interim compensation in any of the four jurisdictions. However, in one jurisdiction (Brazil) upon showing proof of authorship of crime, the assets of the accused might be frozen or seized to ensure resources for compensation in case of conviction.

**Witness Protection**

32. **Common law:** Four jurisdictions (Australia, England and Wales, Ireland, USA) have full-fledged witness protection programmes, while in one jurisdiction (India) the protection is guaranteed in a limited territorial jurisdiction (Delhi) or nationally, for a limited category of people (whistleblowers). In two jurisdictions (Australia, England and Wales), restraining orders can be ordered against the accused in case of family violence. In one jurisdiction (Ireland), relocation of certain witnesses can be ordered, and it is an offence to try to seek out the new identity of witnesses who have been thus relocated, or to intimidate witnesses in general. Anonymity of certain victims (based on age or nature of offence) is allowed in one jurisdiction (Ireland).

33. **Civil Law:** All four jurisdictions provide for measures to ensure the physical safety of intimidated or threatened witnesses. In one jurisdiction (Brazil), support measures for such witnesses include medical and psychological support. Two jurisdictions (Brazil, Italy) also provide for financial assistance if the victim has to stop working. Three jurisdictions (Brazil, Denmark, Italy) provide for relocation and giving a new identity to the witness. Two jurisdictions (Denmark, Norway) allow anonymity as a means of protection while in one jurisdiction (Brazil), the police might be required to keep the whole investigation confidential.
### Table 5: Summary of Pre-trial Substantive Rights (Common Law)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Interim Compensation</th>
<th>Witness Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>All jurisdictions provide for compensation schemes. Each state varies in its procedures and threshold requirements. Provisions for interim compensation are particularly diverse. For example, Victoria has established a Victims of Crime Assistance Tribunal which can hear applications for urgent expenses, including interim awards. In Tasmania, interim awards are available only at the sole discretion of the relevant Commissioner.</td>
<td>Witness protection provisions exist in all jurisdictions, though their scope varies. In general, the protections are defined not by the status or legal entitlement of the victim as such, but by the nature of the criminal conduct alleged. Restraining-type orders are available nationally in the context of family-violence. The details vary considerably and a formal complaint to the police is not always necessary. Queensland provides a mechanism for the protection of victims through Domestic Violence Orders.</td>
</tr>
<tr>
<td>England and Wales</td>
<td>None.</td>
<td>Restraining orders are available nationally in cases of family violence. The UK Protected Person Service provides protection to any individual member of the public (witness or not) deemed to be at risk of serious harm.</td>
</tr>
<tr>
<td>India</td>
<td>The District Legal Services Authority is empowered to grant awards of interim (on the recommendation of the police) and final (or order of the trial court) compensation to victims in all criminal cases.</td>
<td>Suggested measures of police protection for witnesses have not been given statutory recognition—save to a limited extent in the case of whistleblowers in corruption cases. The Delhi High Court has laid down guidelines for witness protection for cases that lie within its jurisdiction.</td>
</tr>
<tr>
<td>Ireland</td>
<td>None.</td>
<td>The Witness Protection Programme is operated by the police to ensure that the course of justice is not perverted through the intimidation of witnesses. It an offence for any person to try to identify the whereabouts or any new identity of a witness who has been relocated under the programme. It is a statutory offence to intimidate witnesses or their</td>
</tr>
</tbody>
</table>
families. Anonymity is granted to victims of sexual assault, human trafficking, and child victims and witnesses.

The Office for Victims of Crime can file *amicus curiae* briefs and provide emergency funds for federal criminal justice agencies to provide support services.

Victims have the right to be reasonably protected from the accused. The United States Federal Witness Protection Program is administered by Department of Justice for crime victims who would also qualify as threatened witnesses before, during, and after trials.

### Table 6: Summary of Pre-trial Substantive Rights (Civil Law)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Interim Compensation</th>
<th>Witness Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>The judge, on the application of the victim or the prosecutor, or on her own initiative may require at any phase of the investigation or of the prosecution, the temporary seizure of any assets obtained as a product of the crime. The victim may also require the freezing of the accused’s assets, but only once the indictment is offered and the prosecution is officially started. In both cases, sufficient proof of the crime and authorship is required. The purpose is to guarantee the payment of compensation/reparation and other procedural expenses. However, while they may be requested at the investigative phase (in the case of temporary seizure) or at any phase of the judicial proceedings, they may only be enforced upon conviction.</td>
<td>Victims exposed to threat or coercion who agree to collaborate with the proceedings, together with their close family, are entitled to a non-exhaustive list of support services to be determined on a case-by-case basis by the competent administrative authority, <em>including</em> social, medical psychological support, monthly financial support for individual and family expenses (if the victim is unable to work), support in the accomplishment of the victim’s civil obligations, and suspension of work activities, without prejudice of salary in the case of public servants. They are also entitled to protective measures, <em>including</em> home security, telecommunications security, armed escort, transfer of residence or provisional accommodation, protection of identity (alteration of name and registration number) and confidentiality of actions taken pursuant to the witness protection program. The police authority has the duty to ensure the confidentiality of any investigation whenever the interests of society so demand.</td>
</tr>
<tr>
<td>Denmark</td>
<td>None.</td>
<td>Where questions arise concerning the protection of a witness, the police can – in cooperation with the prosecutor and the Police</td>
</tr>
</tbody>
</table>
### Intelligence Service (PET)

Institute protective measures for that witness, e.g. in the form of patrolling and guarding. In exceptional cases, where these measures are not considered sufficient, the Police Intelligence Service can implement witness protection measures within the framework of the witness protection program. In the most severe cases, this may include a complete change of identity and the witness can also be helped to establish a new life in another country. If the prosecution applies for a witness to remain anonymous it can order the defence counsel to not disclose the name, address and position of a witness.

<table>
<thead>
<tr>
<th>Country</th>
<th>None.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>Victims who give their testimony during criminal proceedings can benefit from the witness protection programme. These measures aim at protecting the physical integrity of the witness and her family and ensuring financial assistance in order to grant them a reasonable standard of living. These measures may also entail the change of location and identities of her dependants and family members. The protective measures are suggested by the prosecutor and administered by a specialized administrative commission appointed by the Secretary of State and Ministry of Justice.</td>
</tr>
<tr>
<td>Norway</td>
<td>None.</td>
</tr>
<tr>
<td></td>
<td>Witness protection is ensured through rules on exclusion orders, violence alarms, anonymity and a witness protection programme.</td>
</tr>
</tbody>
</table>

### d) Rights in Relation to Trial

**Pre-trial Detention**

34. **Common Law:** In three jurisdictions (Australia, England and Wales, USA), the authorities deciding on the issue of bail are obliged to consider the victim’s views. In one jurisdiction (England and Wales) victims have the right to be informed about the outcome of bail proceedings. In one jurisdiction (Ireland) there is a specific provision to make the bail conditional on the accused making no contact with a specified person (usually the victim).
35. **Civil Law**: In one jurisdiction (Brazil) victims have the right to be informed of any decisions related to bail; they can enrol themselves as ‘Accusation Assistants’, and in this case, they can also request the judge for pre-trial detention. In one jurisdiction (Norway), victims with a legal counsel have the right to be informed of hearing related to pre-trial detention, as well as a change in the custodial status of the accused in respect of pre-trial detention.

**Rights at Trial**

36. **Common Law**: Three jurisdictions (Australia, England and Wales, India) allow access to an interpreter. In one jurisdiction (England and Wales), the victim is allowed access to their statement to refresh their memory, and the right to separate seating areas from the accused. In two jurisdictions (England and Wales, Ireland), victims can have support persons present with them during the trial. One jurisdiction (Ireland) offers separate waiting facilities for victims. In two jurisdictions (England and Wales, USA), the victim can ask to confer with the prosecution lawyer in court. In one jurisdiction (India) if it is unreasonable or inconvenient for a witness (including the victim) to testify, the court may issue commissions for the evidence to be collected outside court.

37. In one jurisdiction (USA), victims have the right to be heard. In one jurisdiction (India), the case may actually be dismissed if the complainant (who may or may not be the victim) is absent before the framing of the charge, or on the day the accused is to testify.

38. **Civil Law**: In Brazil and Italy, Accusation Assistants and parte civile respectively are entitled to a very comprehensive rights regime including the rights to present evidence and cross-examine witnesses. In one jurisdiction (Denmark), the victim is obliged to give evidence, and by virtue of being a witness, cannot sit through the testimony of other witnesses. In one jurisdiction (Italy) there may be a pre-trial hearing to admit evidence that may be destroyed in later stages, in respect of which the victim has comprehensive rights (to notice of date and time of hearing, to access part of the case file, and to examine witnesses). In other cases, the following rights are available to victims, generally with the permission of the court (although in Denmark many of these are confined only to victims with counsel):
✓ To have a specific questioning procedure to be held (Brazil)
✓ The right to be heard (Brazil)
✓ To ask written questions of an expert witness (Brazil)
✓ To appoint a technical assistant in respect of expert evidence (Brazil, Italy)
✓ To request new evidence to seek a clarification on any issue (Brazil)
✓ To have counsellors accompany victim in court (Brazil)
✓ To have a separate waiting area for the victim (Brazil)
✓ To give evidence through a live link (Brazil, Denmark, Italy)
✓ To give evidence in the absence of the accused (Brazil, Norway, Denmark)
✓ To get frequent breaks while testifying (Brazil, Denmark)
✓ To have a pre-trial conversation with the prosecutor (Norway)
✓ To request specific evidence (Italy, Norway)
✓ To block the case from going to mediation (Norway)
✓ To have their legal counsel cross-examine witnesses (Denmark)
✓ To give statements on relevant matters of procedure (Denmark)
✓ To have in camera trials (Denmark, Italy)
✓ To give anonymous evidence (Denmark)
✓ The right to an interpreter (Denmark)

Other Passive Rights

39. Common Law: In one jurisdiction (Australia), there are strong rights to be informed about trial procedures where victims are appearing as witnesses, and victims be given at least a copy of their statement. In one jurisdiction (England and Wales), there is a right to be notified of court dates, and an opportunity to interact with the prosecuting lawyer before trial. Two
jurisdictions (England and Wales, Ireland) offer court familiarisation visits. In the two remaining jurisdictions (India, USA), there are no other passive rights connected to the trial.

40. Civil Law: In one jurisdiction (Brazil) the victim has a right to legal counsel and legal aid. In three jurisdictions (Brazil, Denmark, Italy) the victim has the right to be informed about the date and time of one or more hearings. In one jurisdiction (Italy), the document containing the charges that is sent to the accused must also be shared with the victim, while in another (Brazil), the victim has the right to access all the evidence presented at the indictment hearing.

Table 7: Summary of Rights Available in Relation to the Trial (Common Law)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Pre-trial detention</th>
<th>Rights during Trial</th>
<th>Other Passive Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Relevant authorities must consider victims’ perceived need for protection in deciding bail applications. Usually, it will be for the DPP or police prosecutor to bring a victim’s concerns to the attention of the court or other bail authority. Victims themselves do not present bail submissions.</td>
<td>Ordinarily, the victim is only a witness in the proceedings. Under common law, interpreters and support persons are allowed only at the discretion of the Presiding Judge. For some jurisdictions, this has been statutorily modified. Some cases have traced this to the right to fair trial of the accused, who will be unable to comprehend the victim’s testimony in the absence of a translator.</td>
<td>Although varying in language and detail, all Victims of Crime Acts recognise the right of victims to be told about the trial process and the rights and responsibilities of witnesses. Despite differences in language, it appears that this right relates to situations where the victim will be appearing as a witness in the trial. In two jurisdictions, this information must be requested by the victim.</td>
</tr>
</tbody>
</table>
|              |                     |                     | There is no entitlement for victims to access casefiles, though victims who provide a witness statement will }
<table>
<thead>
<tr>
<th>Country</th>
<th>Rights and Support Provided</th>
<th>Role of Victim</th>
<th>Code Entitlements</th>
</tr>
</thead>
<tbody>
<tr>
<td>England and Wales</td>
<td>Victims are entitled to have their Victim Personal Statement, which includes information about the impact of the crime on their lives, and their concerns about crime, provided to the court in connection with bail hearings in a timely manner by the CPS. The Witness Care Unit has a duty to inform the victim of the outcome of bail hearings.</td>
<td>The role of the victim is confined to being a witness at trial. Victims are entitled to see their witness statement to refresh their memory. Additionally, they can request access to a separate entrance to the court; to meet the CPS to ask about the proceedings; to be seated in an area separate to the accused and their family; be given a point of contact in the court so they can be informed about the proceedings. Victims are entitled to have friends, family and other supporting persons with them in court. All witnesses are entitled to assistance from the Witness Care Unit and their Witness Care Officer, including the organising of interpreters.</td>
<td>The Witness Care Unit has a duty to inform the victim of court dates and locations within one working day of the Unit receiving notice from the court. The Witness Care Unit also has a duty to refer the victim to support services where the accused pleads not guilty, or where the victim will be called to give evidence. Code entitlements include: being informed of court dates; making a court familiarisation visit; meeting the CPS prosecutor to ask questions.</td>
</tr>
<tr>
<td>India</td>
<td>None.</td>
<td>The role of a victim is confined to being a witness at trial. However, for more serious offences, the Magistrate may discharge the accused if the complainant is absent any time before the framing of the charge. Even for other cases, the Magistrate may discharge the accused if the complainant is absent on the day appointed for the accused’s appearance, unless the Magistrate decides that the appearance of the complainant is unnecessary. All witnesses are entitled to have their testimony translated and read out to them before it is recorded if they do not understand the language of the court. If they give testimony in another language (not being</td>
<td>None.</td>
</tr>
<tr>
<td>Country</td>
<td>Rights and Measures</td>
<td></td>
<td></td>
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<tr>
<td>Ireland</td>
<td>Victims have no legal right to contribute to determinations concerning pre-trial detention (bail). However, the court, while granting bail can impose a condition on the accused to maintain no contact with any specified person (who could be the victim). Courts Service has also introduced pre-trial visits. A Garda Liaison Officer will usually arrange for the volunteer to meet the victim to conduct a pre-trial visit to the court. If desired, such a volunteer can accompany the victim through the trial. Some of the measures which the Courts Service have introduced to support victims at trial include: the creation of victim waiting rooms, the creation of a dedicated victim suite, the introduction of video link facilities in courtrooms, and the introduction of a customer liaison office. Further, ‘Victim Support at Court’ (‘VSAC’) is a non-statutory organisation which provides support both before and during court proceedings by trained volunteers.</td>
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<tr>
<td>USA</td>
<td>The victim has a right to be heard in any proceedings where release of the accused becomes a possibility. Victims have the right: not to be excluded from any such public court proceedings unless the court determines testimonies would be altered by the victims’ presence; to be reasonably heard at public times.</td>
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</tbody>
</table>

English, and not being the language of the court) then this must be translated before a record of the evidence is made.

If witness’ testimony cannot be given without unreasonable delay, expense or inconvenience, the court may issue a commission to the relevant authority to take such evidence.
concern, including bail hearings. proceedings; to reasonably confer with the attorney for the prosecution; to be free from unreasonable delay and to be treated with fairness, respect, and privacy. If a victim believes that her rights as a crime victim have been violated she is able to file a writ of mandamus to appeal the improper fulfilment of government duties.

Table 8: Summary of Rights Available in Relation to the Trial (Civil Law Systems)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Pre-trial Detention</th>
<th>Rights during Trial</th>
<th>Other Passive Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>Victims are entitled to be informed of all judicial decisions in relation to pre-trial detention of the accused. After the indictment, if the victim is officially engaged as an Accusation Assistant, she also has the right to request the Judge for pre-trial detention.</td>
<td>In private prosecutions, victims have all the rights normally available to the Prosecutor In public prosecutions, victims are entitled to participate in all phases of prosecution as Accusation Assistants. All they have to do is request to be enrolled as such to the Judge at any time after the indictment and before the end of prosecution. They participate in proceedings from the moment of their enrolment onwards. The Accusation Assistant does not need to agree with the Prosecutor in seeking the conviction of the accused. She may well seek acquittal or reduction of the sentence. The specific rights of the Accusation Assistant are: 1) right to request new evidence, including the appointment of witnesses (as long as the maximum quantity allowed per prosecution is not exceeded); 2) right to directly question witnesses; 3) propose amended charges in jury proceedings; 4) participate in oral debates in all types of proceedings; 5) present reasons or counter-reasons in appeals filed by the Prosecutor; 6) file interlocutory appeals or supplementary appeals.</td>
<td>Once the indictment is issued, victims are entitled to the following: 1) right to legal aid and legal counsel, which is available to everyone; 2) right of access to all the evidence presented in the indictment; 3) right to be informed of the dates of hearings; 4) right to a separate space before and during hearings; 5) right to protection of intimacy, honour and private life, in the form of...</td>
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<tr>
<td>Country</td>
<td>Measures</td>
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<tr>
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</tr>
<tr>
<td>Norway</td>
<td>If the testimonies of accused persons, victims and witnesses diverge among themselves, any party may request a specific questioning procedure to be held. In this procedure, the persons who offered divergent statements are re-examined. There is also a provision conferring victims the right to ask written questions of experts, to request further clarification in relation to their technical reports and to appoint a technical assistant of her own choice. In fact, victims are entitled to request new evidence in relation to any issues that require further clarification. In relation to other special measures, there is one provision which confers victims the right of a separate space before and during hearings. If the Judge verifies that the presence of the accused at the hearing may intimidate or cause fear or humiliation she may determine that the testimony of the latter be given through videoconference, or, that the deposition proceeds in the presence of the accused’s attorney. Judges also have a general residuary power under which to consider options such as taking frequent breaks, or allowing support persons in court. Victims have the right to offer testimony and to be heard. Counsellors can accompany the victim to hearings.</td>
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</tr>
<tr>
<td>Denmark</td>
<td>None. The court can allow the victim’s legal counsel to cross-examine witnesses and/or give statements in relations to procedural matters of importance to the victim, e.g. questions on whether the alleged offender should be present during the examination of the victim and whether the trial should be closed. The victim is obliged to give evidence, unless the accused is related to her, or she risks self-incrimination or a substantial loss of welfare or other substantial damage by doing so. The court can</td>
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<tr>
<td></td>
<td>determination of measures that the Judge sees as appropriate, including the realization of closed-doors or confidential proceedings; 6) right to multidisciplinary support services, including social, psychological, health and legal nature, to be determined by the Judge if she believes them to be necessary. Upon request from the victim, the police are obliged to inform the victim of the time and place of the trial.</td>
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</tbody>
</table>
compel evidence even in spite of these consequences. Due to the extensive duty to give evidence, there are also protective provisions for the victim. The court can order the accused to leave the room while she is examined, decide that her name, position and address is kept secret, order that the trial should be closed to the public, and order that the names of the parties should be kept secret. As regards the questions of whether the victim can give evidence through television links/telephone and is allowed breaks during testimony, this is left to the discretion of the court. Since the victim is a witness, the victim is not allowed to be present during examination of other witnesses and the offender (if the victim does not have to give evidence during the trial, she is allowed to be present during the entire trial).

As pointed above, counsellors can accompany the victim to hearings, and the State will pay for an interpreter where required.

<table>
<thead>
<tr>
<th>Italy</th>
<th>None.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>None.</td>
</tr>
</tbody>
</table>

Where there is the concrete risk that a piece of evidence may be lost or tampered if its acquisition were postponed to a later stage, the prosecutor may request that the evidence be admitted during a particular pre-trial hearing called ‘incidente probatorio’. The victim has the right to be informed of the date and place where the hearing takes place and to participate in it. The victim is entitled to access part of the case file and prior statements of the individual to be heard during the pre-trial hearing; in this context, the victim’s counsel can also participate in the examination of such person.

If the subject of the hearing is the acquisition of an expert-opinion, the victim can nominate her own expert. The victim can also submit a request for the PM to set up a pre-trial hearing for the acquisition of specific evidence. The PM is not obliged to grant this request, but if she rejects it, she must do so by means of a decree that states the reasons for this rejection.

The victim is informed of the date of the first hearing—20 days before a trial requiring a preliminary hearing, and 60 days before if a pre-trial hearing is not required. The prosecutor must notify to the victim copy of the document containing the charges that she serves to the accused during the investigation phase.
While the ‘victim’ has few rights, the *parte civile* has extensive rights during trial through her legal counsel. Her activities are normally situated after the presentation of the case by the prosecutor and prior to the beginning of the defence case. These include: delivering oral statement during the preliminary hearing; presenting evidence at trial; calling witnesses; cross-examining witnesses called by other parties; delivering closing arguments.

If the *parte civile* falls within a low income bracket, she is entitled to receive free legal aid, and in this case she has the right to appoint an interpreter free of charge if she doesn’t speak fluent Italian.

When a victim is called to testify in court, regardless of being a *parte civile*, the judge can order that the testimony be given behind closed doors. The testimony of the individuals who have been admitted to a witness protection programme can also be obtained via videoconference.

<table>
<thead>
<tr>
<th>Norway</th>
<th>As mentioned, a victim with a legal counsel has a right to receive notice of pre-trial detention of the alleged offender as well as notice of extension of the detention and release.</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Victims with legal counsel have a right to a conversation with the prosecutor on the case before the trial. Furthermore, victims have a right to be present during the (entire) trial. They can request that the offender be absent during their testimony or that they be allowed to testify anonymously.</td>
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<td></td>
<td>A victim with a legal counsel has a right to suggest that certain evidence shall be presented by the public prosecutor during the trial. If the public prosecutor declines to present the evidence, the victim with a legal counsel can ask the court to decide the matter.</td>
</tr>
<tr>
<td></td>
<td>The appointed legal counsel of a victim has a right to deliver statements on procedural matters in relation to her. Such a victim has a right to deliver a statement after presentation of each piece of written evidence and after each testimony, and to deliver a closing statement.</td>
</tr>
</tbody>
</table>
An interpreter will be provided for the victim during the trial if necessary. Finally, the victim has a right to block the transfer of a criminal case to mediation.

e) Post-conviction Procedural Rights

Right to Appeal

41. **Common Law:** In only one jurisdiction does the victim have a right to appeal the verdict (India). One jurisdiction (Australia-South Australia) allows the victim to request the public prosecutor to consider an appeal in case of any determination and the prosecutor is obliged to take the views of the victim into account. In one jurisdiction, a similar consultation is allowed for orders on sentences (Australia-Victoria). In one jurisdiction (England and Wales) the victim is entitled to have the appeals procedures explained to her. In two jurisdictions (Australian, England and Wales) victims have the right to be informed if an appeal is being made, although in one (England and Wales) if it is the accused who is applying for a review, the reviewing body decides if the victim should be informed. In one jurisdiction (USA), though it is the State that files an appeal, the victim has the right to be heard on appeal.

42. **Civil Law:** In one jurisdiction (Brazil) the victim can file an appeal if the prosecution has not done so by the legal deadline. In one jurisdiction (Italy) the victim can request the prosecutor to consider an appeal and the prosecutor must give reasons if she refuses to file an appeal thereafter; the *parte civile* can appeal in respect of civil claims. In two jurisdictions (Denmark, Norway), the victim has a right to be informed about the appeal, and in one of these (Norway) such a duty exists in any case where a civil claim has been heard.

Enforcement Rights

43. **Common Law:** In three jurisdictions (Australia, Ireland, USA) victims have a right to be notified of changes in the custodial status of the convict. In one jurisdiction (Australia), some states will also allow the victim to make submissions on the issue of parole, while in another (Ireland) the Prison Service has a duty to consider the impact on the victim in cases of temporary
release, though through a non-binding instrument. In two jurisdictions (England and Wales, India) there are no such facilities. One jurisdiction (India) allows the victim a copy of the judgment on payment of prescribed fees; one jurisdiction (USA) recognises the right of the victim to be notified when the verdict is reached.

44. **Civil Law:** In two jurisdictions (Brazil, Norway) the victim has a right to be informed about the judgment; in one jurisdiction (Denmark), this right is confined to the victim’s counsel unless a civil claim was being pursued as part of the proceedings. In two jurisdictions (Brazil, Norway), the victim has the right to be informed about the change in custodial status of the convict. In one jurisdiction (Italy) convicts may be asked to work directly for the benefit of the victim.

**Table 9: Summary of Post-conviction Procedural Rights Available in Relation to the Trial (Common Law)**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Right to Appeal</th>
<th>Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Victims in Australia do not have a right to lodge an appeal. Victims in South Australia have a statutory right to request that the DPP consider an appeal against a determination made in relation to the relevant criminal proceeding. The DPP is statutorily obliged to give due consideration to the request. Similarly, in Victoria, DPP guidelines require a report to be prepared assessing the appealability of each sentence. That report must refer to the expressed opinions of the victim. All but two jurisdictions specifically entitle victims to be informed of matters relating to appeals. In Queensland, South Australia and Western Australia information about appeals is provided only if it is requested by the victim.</td>
<td>Legislation in each state entitles victims to be informed (at their request) of certain events after an offender has been given a custodial sentence. The primary statutory right is a passive right to be informed of any changes to the offender’s custodial sentence. This is usually done through ‘Victim Registers’ into which victims can enrol. Two jurisdictions (New South Wales, Victoria) directly entitle victims to make submissions to parole boards regarding early release of offenders.</td>
</tr>
<tr>
<td>England and Wales</td>
<td>Code entitlements include: being informed of any appeal by an accused and the outcome of such an appeal.</td>
<td>None.</td>
</tr>
</tbody>
</table>
If the appeal is to the Court of Appeal or Supreme Court specifically, the victim is entitled to a meeting with the CPS to have the nature of the appeal and proceedings explained.

Should the offender appeal to the Criminal Cases Review Commission, the victim is only entitled to be notified if the Commission’s review of the impact on the victim determines she ought to be informed of the review.

<table>
<thead>
<tr>
<th>India</th>
<th>The victim has a right to appeal against any order of acquittal or conviction for a lesser offence or inadequate compensation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ireland</td>
<td>None.</td>
</tr>
<tr>
<td>USA</td>
<td>The victim has no right to appeal but can file a writ of mandamus if she thinks that her rights have not been respected. If State officials have failed in</td>
</tr>
</tbody>
</table>

| While victims are not automatically entitled to a copy of the judgment, any person affected by the judgment concerned can make an application to receive a copy, which will be given on payment of prescribed amount, or, if the Court so decides for some special reason, free of cost. The victim (or any other person) can also apply under the Right to Information Act 2005. |
| Under the Charter, the Prison Service undertakes to take account of, in all cases of temporary release, any possible risk to a victim and to make every effort to prevent an offender in prison from causing further upset to a victim. |
| The Irish Prison Service has introduced a Victim Liaison Service to keep victims informed about decisions about detention. When a victim makes a request, the Prison Service Victim Liaison Officer will enter into direct contact with them to inform them of any significant development in the management of the offender’s sentence as well as any impending release. |

| Victims have the right to be notified when a verdict has been reached. Victims have the right to be reasonably |
complying with regulations passed to ensure victims’ rights, she can complain to the Department of Justice. If the State files an appeal, she has the right to be heard. notified of parole proceedings and anything involving the crime, release, or escape of the accused.

Table 10: Summary of Post-conviction Procedural Rights Available in Relation to the Trial (Civil Law)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Right to Appeal</th>
<th>Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>As mentioned, victims enrolled as Accusation Assistants have the right to offer interlocutory appeals and to offer reasons or counter-reasons to the appeals filed by the Prosecutor against the judgment. Otherwise, in general, victims are entitled to file appeals in relation to the judgment only if the Prosecution has not done so by the legal deadline. There is a debate in scholarship and in case-law as to whether victims may challenge both the judgment and the sentence, or only the former, though the dominant opinion seems to be that sentences cannot be thus appealed.</td>
<td>The victim has the right to be informed about content of all the judgments. During the enforcement of the judgment, the victims have the right to be informed of any changes in the detention status of the perpetrator.</td>
</tr>
<tr>
<td>Denmark</td>
<td>The victim does not have the right to appeal unless the case has been initiated through private prosecution. If the victim has requested to be informed of an appeal, then the public prosecutor is obliged to provide such information.</td>
<td>The victim does not have a general right to be informed of the outcome of the case, unless she has pursued a civil claim during the criminal litigation. The victim’s legal counsel (if any) will receive a transcript from the court, but the counsel is not allowed to hand over the transcript to the victim without permission.</td>
</tr>
<tr>
<td>Italy</td>
<td>The victim can request the prosecutor to consider an appeal. The prosecutor is not bound to comply with such a request, but in this case she must communicate the reasons behind her rejection.</td>
<td>The role of victims becomes relevant where the offender is placed under the supervision of a social worker. Eligible inmates are indeed given a series of ‘behavioural’ orders by the Supervisory Courts. These orders may demand,</td>
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</table>
The *parte civile* can appeal against the acquittal decision, but only in relation to the civil claims. This appeal must be lodged within 30 or 45 days, depending on the complexity of the case. If the Appeal Court upholds the request of the *parte civile* and the prosecutor has not filed an appeal on the criminal matters, the Court can reverse the previous decision only in relation to the civil aspects. In this case, the Court directs the *parte civile* to bring his claim before the civil judge in order to determine the amount of the compensation due to him. The individual who became *parte civile* before the court of first instance maintains this status also during the subsequent appellate proceedings. The *parte civile* therefore preserves the passive rights that she held at the previous stage, but her ability to introduce new evidence is limited by the general rules on appellate proceedings.

Norway

Victims with legal counsel have a right to receive notice of an appeal, and to be informed of hearings in the Supreme Court despite legal counsel not being provided during such a hearing. If a civil claim has been tried during the trial, the public prosecutor has a separate duty to give notice to the victim of the appeal and the content of the appeal. Victims have a right to receive notice of the result of a case and information on access to documents of final judgments. If a civil claim has been tried during the trial, the court is obliged to give notice of the result to the alleged victim and the victim’s legal counsel.

The victim has a right to receive notice if the offender: is to serve some of the sentence outside of prison; is allowed to partake in work outside of the prison; is allowed leave or interruption of the punishment; escapes; is released; or is offered parole. This right is conditional on it being of significance to the victim to receive such notice.
f) Post-conviction rights (Substantive Rights)

Victim Impact Statements

45. **Common Law:** Three jurisdictions (Australia, England and Wales, USA) allow victims to influence the sentencing process through victim impact statements, or being otherwise heard. One jurisdiction (Ireland) allows for this in serious cases, while in one jurisdiction (India) there is no provision for victim impact statements at all.

46. **Civil Law:** Only one jurisdiction (Norway) allows a victim impact statement in court, though there is no guidance for what weight should be accorded to it.

Compensation and Reparation

47. **Common Law:** One jurisdiction (Australia) makes provisions for victims to claim compensation in criminal proceedings sometimes even in the absence of a finding of guilt. In four jurisdictions (England and Wales, India, Ireland, USA), compensation is linked to a conviction, though in two of these jurisdictions (England and Wales, Ireland), there is a parallel procedure for claiming compensation which does not require proof of conviction. In one jurisdiction (India), compensation is always paid by the State, while in another (USA) it is always borne by the convict. In the remaining jurisdictions (Australia, England and Wales, Ireland) compensation can be sought from the State or the offender. Jurisdictions differ in how compensation is computed, though two jurisdictions (Ireland, USA) seem to have a narrower concept than the others in that they relate the compensation to actual expenses rather than pain or suffering.

48. In three jurisdictions (Australia, England and Wales, India) there is a provision made for financial assistance or costs, distinct from compensation for the harm suffered as a result of the crime.

49. **Civil Law:** When it comes to compensation in criminal proceedings, in all four jurisdictions, the court can require that the accused pay upon conviction, though in two (Denmark, Norway), the State may be asked to pay if the offender and any relevant insurer is unable to, and in another (Italy), it is only the *parte civile* that can make such a claim. Two jurisdictions
(Denmark, Norway) offer a victim-offender mediation programme. One jurisdiction (Italy) offers publication of the final judgment as a form of reparation.

**Table 11: Summary of Post-conviction Rights –Substantive Rights (Common Law Systems)**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Victim Impact Statements (VIS)</th>
<th>Compensation and Reparation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>All states acknowledge victims’ right to present a VIS at the time of sentencing. Most jurisdictions permit written or oral presentation, and also allow secondary victims to present VISs. In some cases, photographs, diagrams and medical reports may be appended. It is mandatory to give the defence notice of the VIS. The weight to be given to VIS varies: in Queensland, the court ‘must’ have regard to the nature and seriousness of the offence, assessed in part by the VIS. In contrast, courts in NSW may consider a VIS when appropriate.</td>
<td>Legislation in every jurisdiction entitles victims of crime to financial assistance. The eligibility requirements vary between the states but generally require that eligible persons be victims of a violent act that occurred in that state. Victims in all states may be eligible for the schemes even if there is no conviction or finding of guilt against the defendant. The period of limitation is usually between 1 and 3 years of commission of the offence.</td>
</tr>
<tr>
<td>England and Wales</td>
<td>Victims are entitled to have their Victim Personal Statement (VPS) delivered to the Court before sentencing, along with an indication of whether they want to read it out in court. The Court then decides whether the victim can have her VPS read out in court before sentencing. Code entitlements include: assistance in making a Victim Personal Statement so the victim can articulate in court, and to</td>
<td>The Court is empowered to order a convicted offender to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence. A court must consider making a compensation order in any case where it is empowered to do so. It must give reasons, on passing sentence, if it does not make a compensation order in a case where it is empowered to do so.</td>
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<td>Victims may also seek compensation from public funds through the Criminal Injuries Compensation Scheme. Compensation under this scheme is not dependent on guilt of the offender, but does depend on</td>
</tr>
<tr>
<td>Country</td>
<td>Description</td>
<td>Additional Information</td>
</tr>
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<td>-------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>India</td>
<td>None.</td>
<td>The District Legal Services Authority is empowered to grant interim and final compensation. This supplements the more limited power of criminal courts to award compensation. The Supreme Court has held that it is mandatory, in every criminal case, for a court to consider whether compensation should be awarded. The court may also, if it thinks fit, order the Government to bear the expenses incurred by the complainant or any witness in attending court proceedings.</td>
</tr>
<tr>
<td>Ireland</td>
<td>The judge is required to consider the impact of certain specified offences on the victim when determining the sentence to be imposed in circumstances where the offence in question is sexual, non-fatal or violent in nature. No inference about the crime having had low or no impact can be drawn in the absence of a VIS.</td>
<td>There are two distinct methods of securing compensation as a victim, (i) through The Criminal Injuries Compensation Tribunal funded by the State and (ii) funded by an offender, upon conviction. The Tribunal can award compensation to primary and secondary victims. In circumstances where the injuries are non-fatal, an application for compensation must be made no later than three months after the incident. There is no time limit for fatal applications. Such compensation only covers bills, expenses and loss of earnings. It does not provide general compensation for pain or suffering nor does it cover losses attributable to stolen or damaged property. It covers only those offences that were part of criminal proceedings. Further, a limited restorative justice initiative exists in relation to offences by children.</td>
</tr>
<tr>
<td>USA</td>
<td>The right to be ‘reasonably heard’ requires the court to allow an oral statement or can be limited to a written submission. One district court has held that a written submission will be sufficient.</td>
<td>Restitution is provided for under the Mandatory Victim Restitution Act but it depends on the guilt of the accused. Restitution can include return of property or value of property; the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care; cost of rehabilitation; loss of income; funeral or related expenses; necessary</td>
</tr>
</tbody>
</table>
child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

At the state level there are notable differences in terms of compensation. The majority of crime victim compensation systems in the United States require claims to be made after criminal proceedings have taken place. Counselling expenses, lost wages, medical expenses, and other crime-related expenses are under criminal court authority to determine whether restitution is a reasonable form of financial redress.

Table 12: Summary of Post-conviction Rights –Substantive Rights (Civil Law)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>VIS</th>
<th>Compensation and Reparation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>None.</td>
<td>There are two general ways in which victims may seek compensation. First, there is the possibility of requesting the Judge to fix the minimum uncontroversial value of reparation at the criminal judgment itself, as a result of a conviction. This can then be enforced in a civil court. The second possibility is to seek the determination of its value before a civil court. In this case, a conviction is not necessary.</td>
</tr>
<tr>
<td>Denmark</td>
<td>None.</td>
<td>Victims can seek compensation from the State and the offender, but can also initiate a purely civil claim in respect of the harm suffered. They can get compensation from the State if the victim has suffered a personal injury. The offence should have been reported to the police within 72 hours of it commission and the victim should also have filed a civil claim during the trial. The State is only liable to pay if compensation is not received from the offender or from insurance, or if the request for compensation is received more than two years after the time of the offence. A victim-offender mediation programme is available if both the victim and the offender consent to mediation and the alleged offender has confessed to the criminal offence. Participation in the programme is not a substitute for punishment.</td>
</tr>
<tr>
<td>Italy</td>
<td>None.</td>
<td>The award of compensation depends on the finding of guilt of the accused; provided this, the judge can order the convicted person to pay compensation for the harm caused to the <em>parte civile</em> and for the expenses incurred by her. If the amount of the compensation cannot be determined, the judge can limit herself to recognising the existence of such obligation and direct the <em>parte</em></td>
</tr>
<tr>
<td>Norway</td>
<td>Oral VIS are allowed though there is nothing to indicate what legal weight they carry.</td>
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<td>----------------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td></td>
<td>Victims have two possible ways of seeking compensation: from the state and from the alleged offender. The State is only liable to pay if compensation is not received from the offender or from insurance, or if the request for compensation is received more than two years after the time of the offence. If the victim wishes to pursue a civil claim of compensation for the offence during the criminal trial, this is possible. The public prosecutor will pursue the compensation, unless the victim has been appointed a legal counsel. The public prosecutor can refuse to present a claim before the court if the claim is not in proportion to the inconvenience it will cause. The public prosecutor’s refusal can be appealed administratively. The court can refuse the presentation of the claim if it is obvious that the claim can be pursued more appropriately during separate civil litigation. A victim-offender mediation programme is available if both the victim and the offender consent to mediation and the alleged offender has confessed to the criminal offence.</td>
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</tbody>
</table>

**g) Pre-trial Measures for Special Categories of Victims**

50. ‘Special categories’ of victims is a broad term. It can mean different categories depending on the jurisdiction and special measure under discussion and usually covers one or more of the following groups: child victims, victims of sexual assault, vulnerable victims, intimidated victims, disabled victims, victims from aboriginal communities and victims of mafia-related or terrorist offences.

**Reporting and Investigating**

51. **Common Law**: The following safeguards are noteworthy:

- Specially trained police officers (Australia, India)
Video-recording for the statement of certain categories of victims (Australia, India, England and Wales)

- Requiring that police officers dealing with children are not wearing their uniform (India)
- Criminalising a refusal to file a complaint of sexual violence (India)
- Providing for a speedy medical examination in case of sexual offences, only by registered medical personnel (India)
- The ability for sexual violence victims to share information and assist other investigations without being required to formally complain (Australia)
- Requiring that complaints of violence against women be recorded only by women officers (India)
- The use of special educators or interpreters for disabled victims of violence against women (India)
- The presence of family or support persons when dealing with the police (England and Wales)
- Recording the statement of some categories of victims outside the police station in a convenient location (India)

52. **Civil Law**: Additional safeguards relating to reporting and investigating for special categories of victims are found only in one jurisdiction (Norway) where child witnesses can be questioned only in the presence of a family member (or other trusted person) in their homes. Female child victims can be questioned only by female police officers.

**Counselling and other Support**

53. **Common Law**: Two jurisdictions (Australia, India) have provisions for special counselling support for children, while Australia also has schemes for disabled victims, and victims of sexual violence.

54. **Civil Law**: The following measures available:

- Medical and psychological support (Brazil)
- Fostering for child victims (Brazil)
- Mandatory school attendance for child victims (Brazil)
- Restraining orders (Brazil, Italy)
- Monetary support or interim compensation (Brazil, Italy)
✓ Family restoration programmes (Brazil)
✓ Suspension of accused’s license to carry weapons (Brazil)

**Witness Protection**

55. **Common Law**: Anonymity is the default rule for victims of sexual violence in two jurisdiction (Australia, India) and is allowed in another (England and Wales).

56. **Civil Law**: There are no additional safeguards for witness protection for any special categories of victims.

**Table 13: Summary of Pre-Trial Measures Relating to Special Categories of Victims (Common Law)**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Reporting and Investigating</th>
<th>Counselling</th>
<th>Witness Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>States generally provide special procedures for interviewing children or persons with disabilities. For example, the Queensland Police guidelines provide for specially-trained officers to interview children and persons with special needs, where possible, and that support persons should be available during the interview. There are also procedures for video recording of interviews with children. Queensland also provides a unique mechanism for victims of sexual assault. Using alternative reporting options, victims can inform the police of their circumstances without formally reporting the crime to the police. The information allows police to use the information for other investigations and potential prosecutions.</td>
<td>New South Wales, Northern Territory and South Australia have specialist services for victims of sexual assault, and domestic violence. Other jurisdictions can refer victims to specialist counselling services provided by external agencies. Queensland, for example, lists specialist services for domestic and sexual offences, child victims and victims of mentally ill offenders.</td>
<td>All states have also legislated to prevent the publication of information that might tend to identify a complainant in a sexual assault matter.</td>
</tr>
<tr>
<td>England and Wales</td>
<td>If the victim is a child, or a vulnerable or intimidated witness subject to enhanced entitlements, she has additional entitlements such as having someone (such as a parent or guardian, or someone else normally above 18 years of age) present while the statement is taken; to ask for someone to help if they do not have.</td>
<td>None.</td>
<td>Certain victims, such as victims of sexual crimes, have an entitlement to anonymity.</td>
</tr>
</tbody>
</table>
understand the questions; to have the statement video recorded to make it easier to explain what happened; be told about the special measures available when she visits court. Finally, such victims are entitled at any time during the investigation and trial to speak to someone specially trained to listen to them.

India

During investigation, while a police officer is generally entitled to require attendance of witnesses at the police station, however certain witnesses (including victims) cannot be required to attend any place apart from their residence: a man under 15 or over 65 years of age, a woman, or a mentally or physically disabled person.

Not conducting a lawful investigation, or refusing to record information regarding certain offences relating broadly to violence against women is an offence. While usually, sanction of the relevant government is required before a public officer can be prosecuted, this does not extend to certain offences relating to violence against women.

In case of offences related to violence against women, the information is to be recorded by women officers. In case the victim here is also disabled, the information needs to be recorded by a police officer at the residence of the person, or at any convenient place selected by the victim in the presence of a special educator/interpreter. This exchange must be videographed. Similarly, the victim’s statement to the Magistrate should be taken on an expedited basis, with similar safeguards.

For offences committed under the Protection of Children from Sexual Offences Act 2012 (POCSO Act), the complaint in these cases should be recorded as soon as possible and no later than 24 hours.

Under the POCSO Act, the SJPU or police are required to refer the matter to a Child Welfare Committee as soon as possible and no later than 24 hours.

There are no policies for physical protection but anonymity of the victim should be maintained in cases of sexual violence. Under the POCSO Act, if the child is in need of protection, the SJPU or police are required to make arrangements for protection within 24 hours. The media has a strict obligation during this time to ‘complete and authentic’ reporting, and to refrain from (through control of reporting on the trial). Vulnerable or intimidated victims may also be granted anonymity in the press by the court.
cases can be made to Special Juvenile Police Units (SJPU), or to the local police. Where the complainant is a child, the recording will be in simple language so that it is comprehensible to her. No person shall be subject to any criminal or civil liability for reporting an offence in good faith under the POCSO Act. While lodging a complaint, an interpreter shall be provided if required upon prescribed payment of fees.

The statement of the child will be recorded in her residence, or in a place of her convenience, as far as practicable, by a woman police officer who shall not be in uniform, and shall ensure that the child does not come in contact with the accused. No child can be detained overnight at a police station. Any statement of the child can be recorded only in the presence of her parents or other trusted person, and an interpreter may be provided (by the police or the Magistrate as the case may be) upon prescribed payment of fees. The Magistrate or the police officer may also seek the services of an expert in case of a disabled child. Wherever possible, the statement of the child is to be recorded by audio-visual means. The medical examination of a child has to be done within 24 hours by a registered practitioner, or in the absence of such a practitioner In case of a girl child, the examination will be conducted by a female doctor in the presence of a parent or other trusted person.

Table 14: Summary of Pre-Trial Measures Relating to Special Categories of Victims (Civil Law)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Reporting and Investigation</th>
<th>Counselling and Other Support Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>None.</td>
<td>Child victims are entitled to a non-exhaustive list of support services to be determined on a case-by-case basis by the competent administrative authority, including temporary social support,</td>
</tr>
<tr>
<td>USA</td>
<td>None.</td>
<td>None.</td>
</tr>
<tr>
<td>Ireland</td>
<td>None.</td>
<td>None.</td>
</tr>
</tbody>
</table>

None.

None.

None.

The police shall ensure that the identity of the child is protected from the public media at all times.
medical, psychiatric or psychological treatment, institutional fostering, inclusion in surrogate family program, family counselling, mandatory attendance at school, and provisional financial support in case of crimes committed by parents or responsible persons. If the accused is a family member, the child victim is entitled to their removal from the communal home, and the inclusion of the accused in a program seeking the restoration and preservation of the family.

Women victims of domestic violence are entitled to a non-exhaustive list of support services to be determined on a case-by-case basis by the competent Judge, including provisional financial support to be provided by the accused, restitution of assets misappropriated by the accused, interim compensation for damages, inclusion in community support programs of social and psychological nature, suspension of the right of the accused to close contracts and negotiations involving common assets. They are also entitled to removal of the accused from common residence, suspension of the accused’s entitlement to carry weapons, prohibition of certain conduct by the accused, and to leaving the common residence.

| Denmark | None. | None. |
| Italy | None. | In case of victims of serious sexual offences, special precautionary measures can be taken, such as restraining orders that prevent the suspect from living in the house shared with the victim or accessing places that the victim visits on a regular basis. The investigative judge can also order the suspect of these offences to pay a periodic allowance to the victim or her close relatives. |
| Norway | When the victim is a child (below 16 years of age), the parents of the child or a person that the child trusts have access to be present at questioning conducted by the police (unless the person is the offender in which case a temporary guardian can be appointed). The police | None. |
are obliged to conduct the questioning in a considerate manner and (if possible) the questioning should take place at the home of the child. Female child victims of a sexual offence should (if possible) be questioned by a woman.

h) Trial Measures Relating to Special Categories of Victims

Decision to Prosecute and Modification of Charges

58. Common Law: One jurisdiction (Australia-New South Wales) recognises the right to of victims of sexual or violent offences to be consulted on a decision not to prosecute, or a decision to modify or drop charges. One jurisdiction (England and Wales) recognises a similar right of child victims to be consulted in case of modification of charges.

59. Civil Law: There are no additional safeguards available in this respect.

Rights at Trial

60. Common Law: It is notable that in India a lot of procedural guidelines are found in judicial decisions and guidelines that have not found expression in law or policy. That having been said, the following rights that are available at trial are noteworthy:

- Giving evidence by live link (Australia, England and Wales, India, Ireland, USA)
- Having screens, curtains, single visibility mirrors or other devices to shield the victim from having to look at the accused while testifying (Australia, England and Wales, India)
- Allowing in camera proceedings, particularly in cases of sexual violence (England and Wales, India)
- Removal of wigs and gowns (England and Wales, Ireland)
- Allowing communication aids (England and Wales)
- Using pre-recorded testimony in court (England and Wales, Ireland, USA)
- Allowing the help of intermediary for testifying in court (England and Wales, Ireland)
✓ Using a separate legal counsel in cases of sexual violence (India, Ireland)
✓ Relaying questions for cross-examination through the judge in cases of sexual violence (India)
✓ Giving frequent breaks to the witness (India)

61. **Civil Law:** In one jurisdiction (Denmark) the examination of the child witness should happen in the absence of the accused, while in two others (Italy, Norway) there is the option of conducting it outside the courtroom. In one jurisdiction (Italy) there is also the option of pre-recording testimony in a special closed hearing, in the presence of support persons, with the examination being done through the judge. Audio-visual distortion might be used in such a hearing. In one jurisdiction (Italy) there is the possibility of legal aid for the victims of some crimes irrespective of their financial status.

**Table 15: Summary of Trial Measures Relating to Special Categories of Victims (Common Law)**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Decision to Prosecute</th>
<th>Rights at Trial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>In New South Wales, the right to consultation on the decision to prosecute is triggered where an accused has been charged with a serious crime involving sexual violence or that resulted in actual bodily harm or psychological or psychiatric harm to the victim. In those circumstances, a victim will be treated as vulnerable and thus trigger the protections.</td>
<td>Eligibility for special measures in court depends on many factors: age, Aborigines and Torres Strait Islander status, mental illness, developmental disabilities, cultural and linguistic affiliation and whether the victim has been subjected to sexual violence. In general, the following measures are available for court proceedings: giving evidence by way of CCTV; screens or physical barriers to shield the victim from the accused; a prohibition on cross examination by self-represented defendants; support persons; closed proceedings; written statement as a witness’ evidence in chief; pre-recording of evidence at a special sitting. Most state legislation requires that the DPP apply to the court for a witness to be treated as vulnerable and thus trigger the protections.</td>
</tr>
</tbody>
</table>
consulted before a decision is made to modify or withdraw charges.

<table>
<thead>
<tr>
<th>England and Wales</th>
<th>In the case of child victims, they are additionally entitled to be made aware, and possibly offered a meeting with the CPS to discuss a decision by the CPS to make major changes to the nature of the charges against the defendant.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In the Crown Court, if the court believes the witness would be unable or unwilling to give evidence unless the public gallery is cleared, the judge may order the evidence to be heard in camera. They can also request special measures: screens or curtains so the victim does not have to see the accused, to give their evidence via video-link, to give evidence in private in cases of sexual offence or where the court is satisfied that some member of the public may seek to intimidate the witness, the removal of wigs and gowns by the barristers and judges, giving pre-recorded video statements as their chief prosecution evidence; the use of communication aids and/or the assistance of registered intermediaries.</td>
</tr>
</tbody>
</table>

| India             | None.                                                                                                                                                                                                 | In case of sexual offences, the trial is to be conducted in camera. The Supreme Court has ordered that all complainants in cases of sexual violence should be provided with their own legal counsel, but this guideline has not found expression in any statute. Further, the Supreme Court has stated that it is permissible for victims in case of sexual offences to testify using video conferencing, or use screens or other devices to avoid seeing the accused. It was indicated that it is desirable for cross-examination of such victims to be conducted by relaying the questions to the Court, who would use appropriate language before relaying the questions to the AV. Additionally, frequent breaks should be given to the victim in such cases. As far as possible, cases of sexual assault against women should be tried by female judges. |
|                   |                                                                                                                                                                                                 | Under the POCSO Act, the family or guardian are entitled to take the assistance of a legal counsel of their choice, or have one assigned to them as legal aid. The examination, cross examination or re-examination of the child is conducted by relaying questions to the judge, who would then ask them of the child concerned. The court may permit frequent breaks to the child and is under an obligation to allow family and friends of the child to be present in court. The court must minimise the child’s court visits and protect her from aggressive questioning or character assassination. The court shall ensure that the identity of the child |
is generally kept undisclosed and that the evidence of the child is recorded within 30 days. The child must not be exposed to the accused, which can be done by using video conferencing, single visibility mirrors, curtains, or any other device. The cases are generally to be tried in camera. While recording the testimony of the child, upon payment of prescribed fees, the court may take the assistance of an interpreter or (in case of a disabled child) other expert. Even for sexual offences against children not dealt with under POCSO, the court may take measures to ensure that the witness is not confronted by the accused while still maintaining the accused’s right to cross examination.

<table>
<thead>
<tr>
<th>Country</th>
<th>None.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ireland</td>
<td>The victim is allowed her own counsel in cases of sexual violence where the accused applies to adduce sexual history evidence of the victim. The victim is entitled to legal aid in this respect. In any proceedings on indictment for an offence a person other than the accused may, with the leave of the court, give evidence through a live television link. A court shall not grant leave unless it is satisfied that the person is likely to be in fear or subject to intimidation in giving evidence otherwise. Further evidence can be given by victims, among other witnesses, via a live television link in cases of physical or sexual abuse where the testifying witness is under 18 years of age or is a person with a ‘mental handicap’. When evidence is being given through a live television link neither the judge, solicitor or barrister shall wear a wig or gown. A video recording of any evidence given by a person under 18 years of age or with a ‘mental handicap’ through a live television link at the preliminary examination of a sexual or violent offence shall be admissible at trial. Questions can also be put through an intermediary where a victim, among other witnesses, is giving evidence via video link. A child or person with a mental disorder may give a VIS via television link in which case neither the judge, solicitor or barrister shall wear a wig or gown. Questions may be put to a child or person with a mental disorder who is delivering a VIS through an intermediary.</td>
</tr>
<tr>
<td>USA</td>
<td>None.</td>
</tr>
<tr>
<td></td>
<td>There is precedent for child victims to be allowed to testify on closed-circuit television or videotape if the court finds that the child could not testify in person because of fear, or that there is a substantial likelihood that the child would suffer emotional trauma. In the case of arraignments, defendants may agree to video teleconferencing for arraignment and</td>
</tr>
</tbody>
</table>
a victim’s right to be present and reasonably be heard must be accommodated if the court is in public session during this video teleconferencing.

Table 16: Summary of Trial Measures Relating to Special Categories of Victims (Civil Law)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Rights during Trial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>None.</td>
</tr>
<tr>
<td>Denmark</td>
<td>A child witness must be questioned in the absence of the accused.</td>
</tr>
<tr>
<td>Italy</td>
<td>For victims below sixteen years, their testimony can be acquired at any time through a specific pre-trial hearing (<em>incidente probatorio</em>). The judge can order that the examination take place outside the courtroom, in specialised facilities or in the place where the child lives. The examination of any minor at trial is conducted by the president of the bench, upon requests and indications coming from the parties. The parties cannot, however, examine the minor directly. The examination can be done through a member of the child’s family or an expert psychologist. Moreover, when the victim is a minor, the trial is always held behind close doors for its entire duration. Victims of domestic abuse, stalking, and female genital mutilation are entitled to receive free legal aid regardless of their economic condition and income. Additionally, the testimony of the victim of serious sexual offences can also be acquired by means of the special pre-trial hearing (<em>incidente probatorio</em>). The victim of serious sexual offences can request the judge that the trial be held in whole or part behind close doors. The examination of victims of sexual violence, human trafficking, and stalking offences may take place pursuant to the adoption of a number of measures aimed at hiding the voice and face of the victim. Videoconference, however, is still not a permissible means through which to provide testimony in this case.</td>
</tr>
<tr>
<td>Norway</td>
<td>If the offence is a sexual offence and the victim is below 16 years of age or mentally challenged, questioning of the victim should as a rule take place outside court.</td>
</tr>
</tbody>
</table>
i) Post-conviction Rights Relating to Special Categories of Victims

Compensation

62. Common Law: In one jurisdiction (USA) there are provisions for mandatory and automatic restitution in cases of domestic abuse. In one jurisdiction (India), there are more avenues to seek compensation in cases of sexual violence than in other cases.

63. Civil Law: There is an additional Solidarity Fund from which victims of mafia-related or terrorist offences can get compensation in one jurisdiction (Italy).

Enforcement

64. Common Law: In one jurisdiction (England and Wales), victims of sexual or violent offences can enrol to receive updates about the different stages in the offender’s sentence, including release.

65. Civil Law: In one jurisdiction (Denmark), victims of sexual or violent offences have the right to be informed of a change in the convict’s custodial status, as well as her participation in a radio, television or newspaper interview while she is in prison.

Table 17: Summary of Post-conviction Measures Relating to Special Categories of Victims (Common Law)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Compensation and Rehabilitation</th>
<th>Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>None.</td>
<td>None.</td>
</tr>
<tr>
<td>England and Wales</td>
<td>None.</td>
<td>Victims of violent or sexual assault, where their offender is sentenced to 12 months in prison or more, are offered the statutory Probation Service Victim Contact Scheme, which, through a Victim Liaison Officer, notifies the victim about different stages in their offender’s sentence. Participation in the Victim Contact Scheme also entitles the victim to make representations to the Parole Board in its evaluation of an offender’s release and the conditions that might attach to that release, and to be informed regarding conditions for release place on the offender by the Parole Board. If the Offender is mentally disordered, similar entitlements apply. If the victim is under 18 years of age, is a vulnerable adult, or is otherwise unable to</td>
</tr>
</tbody>
</table>
participate in the Victim Contact Scheme, their parent, guardian or carer will be offered the service in their place. Code entitlements include being informed about the upcoming release date of the offender (through the Victim Contact Scheme).

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Compensation and Rehabilitation</th>
<th>Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>The Supreme Court has ordered the setting up of a Criminal Injuries Compensation Board to compensate women for the pain, suffering, shock and loss of earnings they might suffer as a result of rape. The National Commission for Women has also issued guidelines based on this judgment. By filing a writ petition, rape victims can also claim compensation against the state for failure to protect their right to life, broadly defined. Under the POCSO Act, the court may direct payment of compensation in addition to the punishment, for any physical or mental trauma caused to the child or for rehabilitation.</td>
<td>None.</td>
</tr>
<tr>
<td>Ireland</td>
<td>None.</td>
<td>None.</td>
</tr>
<tr>
<td>USA</td>
<td>There is automatic and mandatory restitution for criminal cases where convictions for abuse take place.</td>
<td>None.</td>
</tr>
</tbody>
</table>

**Table 18: Summary of Post-conviction Measures Relating to Special Categories of Victims (Civil Law)**
<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>Since in cases of mafia and terrorism crimes it is unlikely, or difficult, to secure compensation from the offender, victims can apply for compensation to state-run Solidarity Fund</td>
<td>None.</td>
</tr>
<tr>
<td>Norway</td>
<td>None.</td>
<td>None.</td>
</tr>
</tbody>
</table>
ANNEXURE: LIST OF AUTHORITIES

AUSTRALIA

Statutes
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Bail Act (NT)
Bail Act 1980 (Qld)
Bail Act 2013 (NSW)
Bail Act 1985 (SA)
Bail Act 1977 (Vic)
Bail Act 1982 (WA)
Constitution of Australia
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Corrections Act 1986 (Vic)
Corrective Services Act 2006 (Qld)
Crimes (Administration of Sentences) Act 1999 (NSW)
Crimes (Domestic and Personal Violence) Act 2007 (NSW)
Crimes (Sentence Administration) Act 2005 (ACT)
Crimes (Sentencing Procedure) Act 1999 (NSW)
Crimes (Sentencing) Act 2005 (ACT)
Crimes Act 1914 (Cth)
Criminal Code Act 1899 (Qld)
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Criminal Code Act 1955 (Cth)
Criminal Code Compilation Act 1913 (WA)
Criminal Law (Sentencing) Act 1988 (SA)
Criminal Law (Sexual Offences) Act 1978 (Qld)
Criminal Procedure Act 1986 (NSW)
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Director of Public Prosecutions Act 1983 (Cth)
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