

Victims And Victimology In India– Need For Paradigm Shift

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Abstract- The Criminal Justice system in India is derived from the British model where control and prevention of crimes, punishment and rehabilitation of offenders and protection of individuals and their property are some of the accepted principles. Many countries of the world have realized the need to extend assistance and services to the victims of crime thereby changing their way of dealing with them. Nevertheless, the position of victims has not yet changed in India where they are treated as mere witnesses for prosecuting and punishing the offenders. As such they are deprived of their rights.

This paper intends to analyze the plight of victims of crimes under the Indian Criminal Justice System. The present descriptive and analytical secondary data based study has been conducted with an objective to understand the legal provisions in the Indian Criminal law with respect to rights of victims vis-à-vis various rights they entitled to in other countries. This paper also suggests changes that could be brought in the Criminal Justice system to ensure victim's rights and to bring in the concept of victimology. Enacting laws for victim's welfare and ensuring them conducive environment are some of the suggestions of the study.

Index Terms- Victims, Victim's rights, Criminal Justice System, Victimology, Victim's welfare.

I. INTRODUCTION

When a crime happens there may be numerous offenders, victims and the criminal justice administrators otherwise called the crime investigating officers. The role played by all of them is different – the offender is the one who commits the crime, affected by various factors and circumstances; the victims are those who suffer physical, social, financial or emotional injury or harm which needs to be promptly redressed by providing them easy access to justice¹ and finally, the justice provider and the persons involved in the mechanism in rendering justice is collectively known as the criminal justice system. The criminal justice system is a mechanism established by governments in its endeavour to control crime by punishing and imposing penalties on those who violate laws². The following are, *inter-alia*, five important components of the criminal justice system:

- Law enforcement
- Prosecution
- Defence attorney
- Courts and
- Corrections.

Unfortunately, the rights of victims are not considered as one of the major components of the criminal justice system in India.

Thus, the author of this paper has analyzed the concept of victimology as applied in various countries and is desirous to put forth the changes that may be brought in the criminal justice system in India considering the victims as the fulcrum of the system. Victimology can be regarded as a more holistic approach than criminology, acknowledging the systemic injustices that may lead victims to become perpetrators themselves. It also helps reduce the likelihood that perpetrators will commit additional offenses, because it can help them rethink about the individuals they might otherwise victimize³.

II. CONCEPT OF VICTIMOLOGY

Victimology is the scientific study of victimization, which includes the relationship between victim and the accused, the interaction between victim and the criminal justice system i.e. the police and the courts and the correctional officials⁴. This concept also has an implied relationship with social groups, institutions, media, business and social movements.

“Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss⁵ or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

Victimization is the process of being victimized or becoming a victim, the action of singling someone out for cruel or unjust treatment. We can say that victimization is the relation between victim and the accused, there is no exact definition available on it. There are different theories of victimization which are as follows:

- Primary victimization
- Secondary victimization (post crime victimization)

¹ Prof. N.V. Paranjape: Criminology, Penology, Victimology (2018) p. 763

²<https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/the-criminal-justice-system>

³unafei.or.jp/english/pdf/PDF_rms/no56/56-07.pdf

⁴ Supra 2.

⁵ Andrew Karman: crimes victims: An introduction to victimology (2003) P. 7.

- Re-victimization (repeatedly became the victim)
- Self-victimization (variety of reason to justify abuse)

Victimology can also be regarded as the study that outlines the steps to be taken to prevent victimization against crimes and provide legal remedies to the victims of crime. The impact of victimization on crime affected persons drew attention of criminal law jurisdictions around the world and they were convinced that victims need to be treated with compassion and dignity and their fundamental rights must be protected and preserved.

III. ADVENT OF VICTIMOLOGY

Victimology has traced back to 1920's itself. But in 1940 the founders of this branch of knowledge, Mendelsohn, Von Hentig and Wolfgang initiated the use of the term victimology. This is not a new concept; even before the study on victims was started, there were numerous victims in the society.

IV. DEVELOPMENT OF VICTIMOLOGY⁶

[1] 1924	[2] Edwin Sutherland includes a chapter on victims in his criminology textbook
[3] 1937	[4] Benjamin Mendelsohn publishes his writings on the rapist and his victim.
[5] 1941	[6] Hans von Hentig publishes article on victim and criminal interactions.
[7] 1947	[8] Benjamin Mendelsohn coins the term "victimology" in a French journal.
[9] 1948	[10] Hans von Hentig publishes his book The Criminal and His Victim.
[11] 1949	[12] Frederic Wertham first used the word "victimology" in a book Show of Violence.
[13] 1957	[14] Margery Fry proposes victim compensation in the London Times.
[15] 1958	[16] Marvin Wolfgang studies homicide victims; uses the term "victim precipitation".
[17] 1963	[18] New Zealand enacts the first Criminal Compensation Act.
[19] 1965	[20] California is the first state in the USA to start Victim Compensation.
[21] 1966	[22] Japan enacts Criminal Indemnity Law.
[23] 1966	[24] USA starts to survey crime victims not reported to the police.
[25] 1967	[26] Canada creates a Criminal Compensation Injuries Act as does Cuba and Switzerland.
[27] 1968	[28] Stephan Schafer writes the first victimology textbook The Victim and His Criminal.
[29] 1972	[30] The first three victim assistance programmes are created in St. Louis, Missouri, San Francisco, California and in Washington, D. C.
[31] 1973	[32] The first international symposium on victimology is held in Jerusalem, Israel.

[33] 1974	[34] The first police-based victim advocate project is started in Fort Lauderdale, Florida, USA
[35] 1975	[36] The first "Victim Rights' Week" is organized by the Philadelphia District Attorney, Pennsylvania, USA.
[37] 1976	[38] John Dussich launches the National Organization of Victim Assistance (NOVA) in Fresno, California, USA.
[39] 1976	[40] Emilio Viano launches the first scholarly journal devoted to victimology.
[41] 1976	[42] James Rowland creates the first Victim Impact Statement in Fresno, California, USA.
[43] 1979	[44] The World Society of Victimology is founded in Munster, Germany.
[45] 1980	[46] Mothers Against Drunk Drivers (MADD) is founded by Candi Lightner after one of her twin daughters was killed by a drunk driver who was a repeat offender.
[47] 1981	[48] President Ronald Reagan proclaims the first national Victims' Rights Week in April
[49] 1982	[50] the first Victim Impact Panel established by MADD to educate drunk drivers about how their victims suffered, started in Rutland, Massachusetts, USA.
[51] 1984	[52] The Victims of Crime Act (VOCA) establishes the national Crime Victims Fund from federal crime fines to pay for state victim compensation and services .
[53] 1985	[54] The United Nations unanimously adopts the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
[55] 1987	[56] The US Department of Justice opens the National Victims Resource Centre in Rockville, Maryland.
[57] 1988	[58] The first "Indian Nations: Justice for Victims of Crime" conference is held by the Office for Victims of Crime in Rapid City, South Dakota, USA.
[59] 1990	[60] The European Forum for Victim Services was founded by all the national organizations in Europe working for victims of crime in consultative status with the Council of Europe and the UN.
[61] 1999	[62] The United Nations and the US Office for Victims of Crime publish the Guide for Policymakers on the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Handbook on Justice for Victims: On the Use and Application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

⁶Md. Atiqur Rahman :Victimology : Concept and History of Victimology. P.8

[63] 2002	[64] On 11 April, 66 the Rome Statute was ratified & went into force on 1 July at which time the International Criminal Court became effective and it included the creation of a Victim and Witness Unit.
[65] 2003	[66] On October 2nd the Tokiwa International Victimology Institute, in Mito Japan opened its doors to promote victim rights, to conduct seminars, courses, publish an international journal, and host annual symposia and lectures and research about victimology.
[67] 2004	[68] The World Society of Victimology at its annual Executive Committee meeting in Orlando, Florida adopts a dramatic new strategic plan to commit itself to the ideals and promises of the UN Declaration .
[69] 2005	[70] Japan puts the UN Basic Principles of Justice for Victims of Crime and Abuse of Power into their national legislation by adopting a new fundamental law for crime victims. To ensure that the principles would be initiated, the Prime Minister established a cabinet level committee. The new law includes services for victims, restitution from the offender, information about criminal justice and a right to formally participate in the criminal justice process.

proving the offender guilty and awarding punishment. After playing their role as witnesses in the proceedings, the victims are forgotten and marginalized. They are not provided with any assistance and when they are not cared of, it creates a sense of angst in them which may subsequently lead to distortions in the Criminal Justice System. Therefore, there is a dire need to shift our focus from the offenders to the victims who have suffered substantial injury. As like how the transformation to crimes from torts took place we also need such transformation on this regard. In case of a cognizable offence, if a victim of the offence approaches the police to give information, the police is obligated to record the information in writing and the same after being read out to the victim/informant has to be signed by the informant. The police cannot refuse to provide the informant with a copy of the First Information Report according to sec. 154(1) and (2) of Cr.P.C. The victim/informant can send the information in the form of writing to the Superintendent of Police provided the police denies to record the same under sec.154 (3) of Cr.P.C. If in case the police officer refuses to investigate the matter, he/she is required to state the reason for not proceeding with the issue to the informant in the form of facts. This is laid down in sec. 157(2) of Cr.P.C. Generally, the complainants are not treated well by the police and at times instead of attending to their grievances they are being harassed at police stations. Not every time the complaints are recorded truthfully by the police and in many cases the facts are either manipulated or distorted according to their convenience. Offences that are cognizable are made as non-cognizable and vice-versa. We can also find that many a times accused himself gives the complaint and the investigation is initiated by him. These may be some potential reasons why the victims get themselves detached from the system as such.

Though victims under sec. 190 of Cr.P.C. have the right to approach the Magistrate directly with his complaint thereby avoiding the redress by visiting the police station, the process of investigation is entirely in the hands of the police. The victims have their role only when the police feel so. Only in certain states the police are instructed to provide the victims with the information regarding the investigation process when they ask for it. The plight of the victims is pitiable until and otherwise the police file the charge sheet under sec.173 of Cr.P.C. The Magistrate after taking cognizance of the charge sheet decides as to whether the proceedings can be dropped and if so, he issues notice to the informant to hear his grievances as required of him. But the dropping of the proceedings would not provide the victim with an opportunity to be heard. Under sec.250 of Cr.P.C. the informants are required to pay compensations to those accused of offence without just cause/reason under the direction of the Magistrate. It is recognized under sec.357A of Cr.P.C. that conviction of the offender is not required to provide victims with financial reliefs. Also, the compensation can be availed through the Code of Criminal Procedure, 1973.

The state governments along with the central government will provide the scheme for compensation. Compensations under this scheme can be provided for the victims of a crime who have suffered substantial loss or damage as well as for their dependants who need compensations. Based on the recommendation made by

V. PLIGHT OF VICTIMS IN INDIA⁷

In India victims are deprived of their rights under the criminal justice system and they are treated as mere witnesses for prosecuting and punishing the offenders. Victims who have suffered harm are just compensated for the damages that they have suffered through civil law and the accused is held responsible for such compensation. Compounding the victim is considered as justice under the Indian Criminal Justice System.

- I. The Constitutional Remedies for Human Rights Violation
- II. The Criminal Procedure Code, 1973 (herein Cr.P.C)
- III. The Fatal Accidents Act, 1855
- IV. The Probation of Offenders Act, 1958
- V. The Motor Vehicles Act, 1988

Victims of a crime are awarded with compensation for the loss they have suffered based on the above mentioned statutes.

Protecting citizens and their property from any kind of harm is considered as the primary objective of the state under the Criminal Justice System. The state, therefore, carries on this duty by ensuring that the citizens do not take law into their hands to satisfy their interests. When a crime is committed, against the norms and principles of the society, state itself becomes a victim for prosecuting and punishing the offender. Criminal Justice system concentrates on the crime, the offender, trial of the case,

⁷ Nida Zainab Naqvi, *Rights Of Victims In India's Criminal Justice System- Analysis*, Eurasia review (Feb. 22, 2016),

<https://www.eurasiareview.com/22022016-rights-of-victims-in-indias-criminal-justice-system-analysis/>.

the court for awarding compensations, the District/ State Legal Service Authority will decide on the quantum that can be awarded as compensation. Further, under sec.358 of Cr.P.C., the court is empowered to order compensations to be made by a person to another who was wrongfully arrested by the police officer due to the incorrect information given by the former. If a person is convicted for a non-cognizable offence, expenses that he has incurred for proceeding with the prosecution is refunded to him based on the order of the court under sec.359 of Cr. P.C.

Under sec.5 of the Probation of Offenders Act, 1958, trail court is empowered to pass an order to award compensation to the victim. Such an order can only be passed by the trail court. The means through which fine can be recovered by attaching and selling of the offender's movable property and arrears of land revenue from movable as well immovable property is provided under sec. 421 of Cr.P.C. The courts under sec.431 of Cr.P.C. are empowered to recover money, except fine, which is payable in compliance with any order made as if it were a fine under the Code.

The recommendations from the *Malimath Committee* clearly stated that justice for victims and the Indian criminal justice system are inseparable. It argues that victims of a crime have to be involved in the criminal proceedings as a matter of right and they must be allowed to seek compensation for the loss or damage suffered. It emphasizes for holistic justice to the victims. It has also accurately pointed out that the increase in the number of hostile witnesses over the years is a result of inadequacy of law in protecting the witnesses.

In India we can find that numbers of offences committed are increasing whereas the reporting of the crimes is decreasing though numerous number of people every year are suffering both physical as well psychological damages which are the effects of the crime inflicted upon them. Due to fear of victimization by the perpetrators and their reprisals, the victims as well their relatives most of the times fail to provide information regarding the crime inflicted upon them. Therefore, crime prevention and detention becomes arduous for the police. Undoubtedly, witnesses play a major role in assisting the police in investigation process as well adducing evidence in the court to ensure successful criminal prosecution.

VI. RIGHTS OF VICTIMS- AN INTERNATIONAL PERSPECTIVE

The rights of the victims in America and Canada are analyzed below. In America, under the Crime Victims' Rights Act (18 U.S.C. § 3771. Crime victims' rights), victims have the right to

- Be protected from the accused
- Court proceedings and parole
- Participate in the escape or release of the accused
- Participate in court proceedings unless if restricted by the court.
- Be heard at the court which includes the right to plea, sentence and release without any delay

- Restitution both fully and timely in accordance with law
- Be treated fair and with respect to ensure his/her dignity and secrecy.
- Conferred with an attorney on behalf of/for the Government to deal with the case⁸.

Under the Victims Bill of Rights Act, 2015, the victims are provided with statutory rights in Canada. They have the right to be heard and seek information, participate in trial and other court proceedings, ensure protection from the state especially the federal department when there is a breach of their rights and restitution. When a complaint is lodged by the victim for breach of his/her rights, under the Victims bill of rights Act the federal department and other agencies to whom the complaint is filed is required to maintain a transparent mechanism where the complaints can be reviewed by the victims, recommendations can be made to make corrections to infringement, if any and keep the victims informed of the review and its results. Victims also have the right to file complaints regarding the services provided to them, against police and offenders. According to the provincial law, these complaints will be addressed. Victims are also funded through the Victims Fund of the federal government which has increased the level of the complaint mechanisms and as well is a remedy to victims. Victims also are provided with the right to involve themselves in the process of investigation of crime, prosecution, release of the offender which includes conditional release, etc⁹.

Access to justice and fair treatment, compensation, assistance and restitution are also recognized as major components of victim's rights by the UN Declaration.

Council of Europe in 1996 started implementing the victim's rights in the process of criminal justice. On June 14, 2006, the Council of Europe adopted the recommendation on assistance to crime victims.

VII. ROLE OF JUDICIARY IN ENSURING RIGHTS OF VICTIMS

"Justice is not only in the end result; it is also in the process". Traditionally, control and prevention of crimes, punishment and rehabilitation of offenders and protection of individuals and their property were the only accepted principles of the criminal justice system. Therefore, there is a need to expand the meaning of justice. Justice should not be confined only to conviction or acquittal of the accused but also must ensure to inspire the confidence of the witnesses for conviction of the guilty and particularly the victims of the crime. The victims by providing information regarding the crime set the criminal justice system in motion and the greatest relief available to them is access to justice. In cases of rape, the entire case becomes baseless due to the delay in the collection of samples and here the victims being women and children are deprived of the access to justice. The rape victims, sometimes, for the purpose of taking evidence are held in protective custody which lacks no legal basis as such. The victim is not entitled to engage an advocate of his/her choice even though the accused is. ¹⁰Under sec. 24(8) of Cr.P.C the victim, for the purpose of prosecution, can engage an advocate of his/her choice

⁸ ibid

⁹ ibid

¹⁰ *Role of Judiciary in Protecting Victims Rights*, Legal Services India (March 17, 2018, 03:38 AM),

to assist the former only if the court permits him for the same. The advocate so engaged is bound to act under the directions of the prosecutor and can submit written arguments after the taking of evidence only if permitted by the court [s. 301(2) of Cr.P.C].

Restitution of the victims though not a statutory right in India has to be made legislative because examining the plea of the victims for redressal or for the loss suffered is not sufficient. The Code of Criminal Procedure has recognized the compensation of victims as a right but making it available only if a substantive sentence of fine is imposed and limiting it to the amount of fine actually realized is reducing the scope for compensation. Though under sec. 357(3) of Cr.P.C. fine can be imposed by the Magistrate, where it has not been imposed, courts are inconsistent in invoking this section. The Law Commission in its 152nd Report had recommended that sec. 357A of Cr.P.C. has to be introduced which prescribes that in case of bodily injury which has not resulted in death, compensation amounting to Rs. 25,000/- should be awarded to the victims at the time of sentencing and in case of death Rs. 1,00,000/-. Under this section if the compensations awarded in accordance with sec. 357 of Cr.P.C. are not adequate for rehabilitation of the victim or if the case ends in an acquittal or discharge of the accused, the court is empowered to order the state to pay such compensations for the victim's rehabilitation. The victim is also entitled to request the State or District Legal Services Authority for rehabilitation even if the accused is not tried. Sec. 357A of Cr.P.C. was introduced/ incorporated only after it was mandated by the 154th Law Commission Report. The point to be noted here is that for a section to be implemented in practice it takes years together which is unhealthy to a state as it delays justice for the victim.

The statement of the victim can be obtained by a lady police officer at the residence of the victim in the presence of a guardian in case of the offence of rape under sec. 157 of Cr.P.C. Victims as well witnesses are entitled to give audio-video confession and their testimonies which may be recorded by an audio-visual electronic device under sec. 164(1) of Cr.P.C. These sections are only in paper but how effective they are in the present day is still questionable/ doubtful. In the case of *Rattan Singh v. State of Punjab*¹¹, the court pronounced that the distress of the victims of a crime and their dependants does not attract the attention of the law which is a weakness of our jurisprudence. Reparation of victims indeed is still the vanishing point of the Indian criminal law.

In the case of *Sakshi v. Union of India*¹², the "in-camera" trials were mandated by the Supreme Court to maintain the dignity of the victims particularly in case of offences like rape and when the victim is a child. In the case of *Nirmal Singh Kahilon v. State of Punjab*¹³, the Apex court held that victims of a crime are also entitled with the right to fair investigation, equally like the accused, as provided by our Constitution under Article 21. Supreme Court in the case of *Bodhisattwa Gautham v. Subhra Chakraborty*¹⁴ observed that the court also has the right to award interim compensation when trying offences of rape instead of

awarding compensation at the final stage. The accused can also be ordered to pay Rs. 1000/- as interim compensation to the victims along with the arrears of the compensation from the date of complaint. The right to get relief from the public law courts that exercise writ jurisdiction was laid down in case of *Nilabati Behra v. State of Orissa*¹⁵. The Supreme Court observed that ordinary remedy from civil suits is not enough to relegate the heirs of the victims of custodial deaths. The base for victim compensation in cases of custodial death is also established by the High Courts¹⁶.

From the above discussed cases it is clear that the legislations as well the purview of the criminal justice system has changed. Though the system along with the judges plays a significant role in the expansion of victims' rights in our country, yet due weightage has not been given to the victim's rights and they have not received their due concern. Victims have only very few legal rights in our country and they are not notified of the court proceedings or of the release or arrest of the accused. They also do not have the right to make statements regarding sentencing at the court as well in other hearings. Programs for assisting the victims are more or less non-existent.

VIII. SUGGESTIONS

The author of this paper would suggest a need for a Bill for the protection of the victims that ensures the victim's with their basic rights, encourages the judiciary to respond to their needs and facilitates the state to assist the victims. A victim not only includes the person who has suffered the loss or injury but also their dependents who have equally incurred the loss. Every state government can create an online complaint portal for their respective state which would include all details of the complaint, investigation and officers who are in-charge for the investigation. The Central Government can come up with a Toll-free Number to facilitate the lodging of complaints. It can be made mandatory that the investigation of a female victim could be conducted by a women police officer who is above the rank of constable. The Central Government can allocate victim's suffering fund for the immediate treatment of the victims. Fast track court system can be adopted so that the whole process of justice could be completed at the earliest.

IX. CONCLUSION

The entire criminal justice system in India is offender oriented. Many a times even the judiciary, the legislative and the executive is concerned about the rights of the accused or the criminal. The criminal justice system has to function thereby to provide justice to the victims for which the judicial system must be accessible to those who demand justice. If the system fails to ensure that the victims and witnesses voice out without fear, participate in court proceedings, have their interests and rights

<http://www.legalservicesindia.com/law/article/8/5/Role-of-Indian-Judiciary-in-Protecting-Victims-Rights>.

¹¹ 1980 SCR(1) 846.

¹² A.I.R. 2004 SC 3566.

¹³ 2009 1 SCC 441.

¹⁴ A.I.R. 1996 SC 922.

¹⁵ (1993) 2 SCC 746

¹⁶ Supra 10.

protected, then justice would remain only in letter and not in spirit. Needless to say, the system should also guarantee the protection of victim's families for their testimonies to be true and prosecution to be fair. Our society always blames the victim for the crime and not the actual offender. The situation would have been different had the rights of the victims been taken care by the state and the law been tough on the offenders. To empower the distressed victims and to assure them with their rights, the above said suggestions need a legislative frame work.

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