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Victimization and Administration of Criminal Justice in India

MITESH AJMERA¹ AND MANISH PATEL²

ABSTRACT

“Just as medicine treats all patients and all diseases, just as criminology concern itself with all the criminals and all forms of crime, so victimology must concern itself with all the victims and all aspect of victim city in which society takes an interest.”

- Nelson Mandela

The whole planet's criminal justice system is at the forefront of state and state power. The duty of the state is Law and Order. With this primary obligation, the state promotes stability, wealth, preserves order and government, and provides all with access to justice. It is anticipated that every person of today's welfare state will have basic human rights. The judicial process provides a method for redressing these offences if these rights are violated. Any time a person is wounded, injured, killed as a result of a crime, he or she is called a "victim." Crime affects the individual victims, their families and also causes the sufferers to incur monetary losses. Such crimes inflict serious and psychological harm to the families of victims of crime. By providing the sufferers with easy accessibility to justice, this sort of act must be adequately and well remedied by the judges. It is only in the last few decades that the effects of victimisation on crime have affected the individual and attracted their attention to the current criminal justice system and called for treatment with dignity and compassion to ensure that their fundamental rights must be safeguarded and preserved.

Keywords: *Crime, Victim, Rights, Criminal Justice, Victimization.*

¹ Author is a student at Manipal University, Jaipur, India

² Author is a student at Manipal University, Jaipur, India

I. INTRODUCTION

“The criminal law in India is not victim oriented and the suffering of the victim, often immeasurable is entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-product of crime i.e. the victims”³

– **Justice Krishna Iyer**

Crime analysis all around this earth reflects the fact that there cannot be a society without crime and criminals, violence and tragedy. Crime has been referred among the social phenomenas that have been confronted by the contemporary society. No society whether it's modern or primitive, no nation when it's developed or at the growing stage is absolutely free from the clutches of Crime. Crime destroys and damages the social fabric.

“The history of the crime and punishment in the whole civilized world reveals a steadily increasing concern with the treatment of criminals and the virtual blackout of victim’s attention towards crime. For more than thousand years, prior to the mid-twentieth century the victim of crime in our society and the administration of Justice has been, ignored.”⁴

Criminal justice has completely ignored the victim of the crime and forgotten him. This lack of understanding of the sufferers is shocking, provided that if their cooperation were not forthcoming, the criminal justice system that prevails today would fall.

Tears shed for the accused are traditional and ‘trendy’ but has the law none for the victims of crime, the unknown martyr?⁵

The lacuna and ignorance of Criminal Justice System towards “Victims” is clear through the remarks of Hon’ble Justice Krishna Iyer in a piece he has written in Indian Journal of Criminality. Legislature, Police, Courts and the correctional services are the agencies working in the sector of Criminal Justice system, whereas the Legislature, through its legislation provides for the framework and limitations under which these agencies are formed and work.

The objective that criminal law persists with is the protection of rights against the unlawful invasion by any others, but when a guilty man is taken care of by the hard-earned taxpayer’s money while the victim is left to die without any help and care, this may destroy the society

³ V. R. Krishna Iyer: Access to Justice- A case of Basic change (1991) p.14

⁴ Michael Fooner, an eminent criminologist in his article, "Victim Induced Criminality" published in "Science" Vol. 153 (1966).

⁵ Justice Krishna Iyer, Hon'ble Judge, Supreme Court of India in his writing "The Criminal Process and Legal Aid", Published in Indian Journal of Criminality. P.10

and the objective of this system, as a whole.

II. ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN INDIA

“Indeed, history is nothing more than a tableau of Crimes and misfortunes”

– Voltaire

The advent of Manu marks the beginning of Criminal Justice System in India. According to Manu, King is the supreme and everyone is bound to follow the rules and regulations made by him. He believed in the divine theory and was of the view that king is the messenger of God but with time, the thought process of the society changed and people started denying the King's rule and started making their own law as per their convenience. This was the beginning of “Might is Right” era and lacked any codified law, which proceeded to the modern times and now we have the codified laws. These codified laws aim to create the threat of punishments to the prospective law breakers and in furtherance to protect the society from unwanted criminal objects. For better clarity, these laws are separated into Substantive Laws like IPC and procedural laws like CrPC, which together provided every person with a fair trial and justice.

III. MODERN CRIMINAL JUSTICE SYSTEM

The victim of a crime has been on the backseat of the car of Criminal Justice System but with the transformation of society, the victim has acquired a person worthy of attention across the world in 19th Century. Many International Symposium were held to attract attention on this issue and even Justice Benjamin N. Cardozo of the United States Supreme Court said that "Justice, although due to the accused, is also due to the accuser." Until it is narrowed to a filament, the idea of fairness must not be strained. The United Nations Organisation has also pioneered a campaign to strengthen crime scenarios for victims. Through this declaration, standards for access to justice and fair treatment, restitution from the perpetrator, compensation, state compensation and recovery assistance were established, with the responsibility of the states to take all necessary steps to give effect and reduce victimisation.⁶

The declaration provided not only a few provisions, but also guided the way through which better support and care and a fair judicial and administrative process could be given to these victims.

The declaration stated that, with compassion and respect for their dignity, the victim must be treated and entitled to prompt redress. Victims should be informed regarding their rights to

⁶ Para 4 of the Preamble of UNO.

seek redress through expeditious, fair, inexpensive and accessible formal and informal procedures.⁷ In order to serve the victims' needs, the responsiveness of judicial and administrative processes should be targeted. Victims should be informed of their role and scope, the timing and progress of the case's proceedings and disposal. Offenders and third parties responsible for the crime should provide victims, their families and dependents with fair restitution. The payment of the damage or loss suffered or the reimbursement of expenses incurred as a result of victimisation should be included in such restitution. The government should also assist in adopting practises and regulations to consider restitution in criminal cases as an available sentencing option.⁸

Who is "Victim"?

"Much about the moral fibre of a society can be learned from the way it deals with crime. It is not enough to treat criminals with as much compassion as we can, especially when this liberal spirit is carried to the excess of interfering with crime prevention as the courts have done. It is about time society showed a little moral strength by acknowledging that victims, real people, are hurt by crime and that it is to them that criminals owe their debt."

Analysis of crime around this world reflects the fact that without crime and criminals, violence and tragedy, there can not be a society. Crime has been referred to as one of the social phenomena facing contemporary society. No society is completely free from the clutches of crime, whether it is modern or primitive, no nation when it is developed or at a growing stage. Crime destroys the social fabric and damages it. The bi-product of the crime are victims, who has always been ignored and as stated, the victims can be focussed if we lack the knowledge of who can be termed as a victim.

As a simple definition, one can surely say that anyone who is experiencing injury, loss and hardships due to any crime, can be termed as victim but this would be a very vague definition. Thus the UN General Assembly and the legislature has itself defined the term victim.

United Nation General Assembly defined "Victim" as a ***"person who, individually or collectively, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violations of criminal laws operative within member states, including***

⁷ Para A-5 of Declaration for Basic Principle for Victims of Crime and Abuse of Power

⁸ Extract from Declaration for Basic Principle for Victims of Crime and Abuse of Power.

*those laws proscribing criminal abuse of power”.*⁹

Section 2(wa) of the Code of Criminal Procedure *defines ‘victim’ as ‘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 ‘victim’ includes his or her guardian or legal heir.*¹⁰

If anything that can abuse, mistreat, injure or pulverise other property or belongings is done by any organisation or an individual human being, it results in victimisation. The word 'Victimisation' is taken from the word "Victima" in Latin, meaning "Sacrificial Creature." 'Victimology' can therefore be defined as the scientific study of victimisation, the interaction between the Criminal Justice System and victims, including relationships between victims and offenders.

Juvenile Victims

Over time, the notion of juvenile victims has become more debatable. Children and teenagers are more vulnerable to crimes such as abuse, physical and mental abuse, sexual harassment, rape and other crimes that affect not only the child's current condition, but also the victim's entire life. According to the National Crime Victimization Survey, the average annual rate of violent crime among young people aged 16 to 19 years who have been victimised is still the highest, at a rate of 55.6 per 1000 people.¹¹ However, in order to reduce sexual abuse, it is also well established that the best tool to protect juveniles from victimisation is to properly educate them and also provide sex education. Article 21- A was adopted by the Supreme Court to make education a fundamental right for children.¹²

Victimization of women

However, it is always argued that the Society has evolved and now it does not discriminate women on any basis, there has been a huge increase in the victimization of women over the last decade. The reason of such increase can not be anything other than the low mentality of people and lack of proper education. Rape, Sexual harassment, Physical Abuse, torture, Domestic Violence, Honour Killing, Killing for Dowry etc. are a few mentioned offences of victimization of women. According to National Centre for Injury Prevention and Control,

⁹ Articles 1 and 2, United Nations General Assembly Declaration of Basic Principles of Justice for Victim and abuse of Power adopted in November 1985.

¹⁰ Added by The Code of Criminal Procedure (Amendment) Act, 2008

¹¹ www.ncjrs.gov

¹² Unni Krishnan, J.P. And Etc. vs. State of Andhra Pradesh And Ors. AIR 1993 SCR(1)594

women experiences about 4.8 million intimate partner related assaults and rape every year.¹³

Victimization of Disabled Person

Human being is a selfish creature and never leaves away any chance to fulfil their motive. Since disabled persons are more vulnerable than the normal human being, these selfish creatures tend to take advantage of their situation, their disability and commit the crime. Cognitive disabilities, sensory disabilities and psychiatric disabilities are included. For both men and women, the violent crime rate was greater for those with disabilities than the rate for those without disabilities, according to the National Crime Victimization Survey 2017. The rate for men with disabilities was 59 per 1000, compared with 25.1 per 1000 for men without disabilities, while the rate for women without disabilities was 61.8 per 1000.

IV. VICTIMS IN CRIMINAL JUSTICE SYSTEM- COMPENSATORY JURISPRUDENCE FOR VICTIMS

Virtually, no rights are provided to the victims of the crime and the Criminal Law is centered on the accused. The case is also presented by the State, and the victim is neither compensated, nor provided much of the rights in trials. Due to this lacuna, victims are either forced to suffer injustice or to take retribution by breaking law and becoming a criminal. Justice Krishna Iyer once stated that in India, criminal law is not victim-oriented, rather it is offender-oriented, and victims' suffering is often immeasurable, completely ignored in misplaced sympathy for the criminal. The denial of the victim's role is not only a denial of justice to the victims, but also a negation of the rule of law, the fundamental principle of democracy and constitutionalism.

The Indian law provides all the rights to the accused and works on the base that no innocent should be punished, even if hundreds of criminal go unpunished. Thus, the accused is provided with all the legal help at the cost of state, he is provided with food, clothers, warmers and is taken care of very well. The reformative and rehabilitative programs are at rise for the accused and we talk about better conditions of prisons. This punishment is more of a treatment and rehabilitation of victim and we, as the legal fraternity fail to provide Justice to the victim as we are so much focused on the accused. Even, Ajmal Kasab was taken care for year when he killed so many people of our country in a terrorist act. For normal criminals, Paroles are also provided, and this criminal justice system completely overlooks the need and justice of the victims. The lack of victim-oriented jurisprudence is the

¹³ The National Commission for Women (NCW) 2017.

primary cause of the victim's and her family members' deteriorating circumstances. The victim puts in motion the criminal, but then goes into oblivion.

The adoption of the four major components of the rights of victims of crime, Access to Justice and Fair Treatment, Restitution, Compensation and Assistance, was recognised by the United Nations General Assembly at its 96th Plenary on November 29, 1985. The Compensatory Jurisprudence Indian Legal Framework is read under two heads, i.e., Judicial Response and Under the Constitutional Scheme.¹⁴

The legal Framework regarding the compensation to victims of crime can be traced in three major provisions i.e., *Section 357*¹⁵, *Section 357-A*¹⁶ and *Section 5(1)*¹⁷.

V. CONSTITUTIONAL LAW OF INDIA AND VICTIMS OF CRIME

Principle of Victim Compensation is endorsed by many provisions of the Indian Constitution. The constellation of those exemptions laid the foundation for a new arrangement in which social, economic and political justice would emerge from the nation's domestic life (Article 38). Similarly, Article 41 of the Victimology Regulation requires the State to provide an effective source of public assistance in the event of disability. Article 51-A makes it a fundamental duty of every citizen of India *to protect and improve the natural environment... and to have compassion for living creatures and to develop humanism.*

Justice Krishna Iyer took the view that the constitutional beginnings of victimology can be found here if empathically interpreted and imaginatively expanded. Article 21 ensures that personal liberty and life are protected and obliges the State to compensate victims of criminal violence.¹⁸

However, it is quite evident that every accused has the right to fair trial, as per the constitution and if found convicted, the accused is punished and even treated in the correctional homes, so that he can be easily reinstated in the society without much harm, the victims of the crime has always taken a back seat and ignored. It is time to realise the

¹⁴ Clauses 4 and 5 of the U.N. Declaration read thus:

“4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.”

¹⁵ Criminal Procedure Code, 1973

¹⁶ Added by The Code of Criminal Procedure (Amendment) Act 2008 (5 of 2009)

¹⁷ Probation of Offenders Act, 1958

¹⁸ D.D.Basu, *Constitutional Law of India*, Nagpur, Wadhwa & Co., 2003.

importance of providing help and support to the victim of the crime, as he is the one to suffer. It is time to understand that the criminal laws of our country, and all the statutory provisions are in favour of the accused and no matter how much the Indian Judiciary try to extend the scope of existing provisions, it will never be sufficient. Therefore, although the judiciary is actively involved in finding the remedy for the victims, the ultimate objective is to pass strong, creative and effective legislation to strengthen the hands of the judiciary.

The concept of the payment of compensation to the victim was developed by the Supreme Court on the ground that it is the duty of the welfare state to protect the fundamental rights of citizens not only against the actions of its agencies, but also responsible for the difficulties suffered by victims on the grounds of humanitarianism and social welfare obligations, the duty to protect their subjects, equitable justice, etc.

VI. JUDICIAL PRECEDENTS

There has been a lot of developments in this field through various judgements of Hon'ble Supreme Court and High Court. Since the statutory provisions are very much towards the accused, it was the need of the hour.

In *Rudal Sah v. State of Bihar*¹⁹ the Supreme Court took a unique and appreciable step to provide that *that the higher judiciary has the power to award compensation for violation of fundamental rights through the exercise of writ jurisdiction*. It evolved the principle of compensatory justice in the annals of human rights jurisprudence. In the present matter, the Hon'ble court directed the respondent to pay a compensation of 35,000 INR to Petitioner who was kept in jail for 14 years even after his acquittal on the ground of insanity and held that it is a violation of Article 21 by the State.

In another case of *D.K.Basu v. State of West Bengal*²⁰, the Supreme Court observed: *"It is now a well accepted proposition in most of the jurisdiction, that the monetary and pecuniary compensation in an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for the redressal of the established infringement of the Fundamental Right to life a citizen by the public servants. The State is vicariously liable to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified from the wrongdoer"*.

In the matter of *Sarwan Singh v. State of Punjab*²¹, the Supreme Court observed that, *in*

¹⁹ AIR 1983 SC 1086

²⁰ AIR 1997 SC 610

²¹ AIR 1978 SC 1575

awarding compensation, the court has to take into consideration various factors such as capacity of the accused to pay, the nature of the crime, the nature of the injury suffered and other relevant factors. The court further stated that “power to award compensation to victims should be liberally exercised by courts to meet the ends of justice... in addition to conviction. The court may order accused to pay some amount by way of compensation to the victim who has suffered by action of accused. It is not alternative to but in addition thereto. The payment of compensation must be reasonable. If there are more than one accused, quantum may be divided equally unless their capacity to pay varies considerably. Reasonable period for payment of compensation if necessary by, installment may be given”.

A new trend of using Constitutional Jurisdiction to do justice to the victims of crime can be seen further by the decisions in *Nilabati Behera v. State of Orissa*²² and in *Chariman, Railway Board v. Chandrima Das*²³ Substantial monetary compensations have been awarded against the instrumentalities of the State for the failure to protect the rights of the victims.

The fallout from the path-breaking *Vishaka judgment (Vishaka v. State of Rajasthan)*²⁴ helps to illustrate the situation of female victims. In this matter, the police and Medical Personal deliberately prevented a social worker from filing an FIR of gang rape, since the accused were of upper caste from a village of Rajasthan. Due to the prevention, Social Activists and NGO’s brought the writ petition to seek for legal redress against the sexual harassment of working women. The Supreme court outlined the guidelines to redress such complaints and this case turned out to be the landmark judgement to prevent the sexual harassment cases in workplace and is being consistently followed till now.

VII. CONCLUSION

"Too much mercy often resulted in further crimes which were fatal to innocent victims who need not have been victims if justice had been put first and mercy second."

-Dame Agatha Christie

The victims of crime are ignored and awaiting to be considered properly in the Criminal Justice System of our country. However, there are provisions in the constitution, based on which the Judiciary has taken steps in the last few decades but these steps can never be sufficient till proper statutory provisions are drafted. The bare need of the hour is a paradigm shift in the perspective of our Criminal Justice scheme. From criminal justice to victim

²² 1993 2 SCC 746

²³ 2000 CrLJ 1473 SC

²⁴ AIR 1997 SC. 3011

justice, there should be a shift in thought and focus, but Victim Justice is seen as complementary and not in contradiction to criminal justice. Criminal Justice and Victim Justice should go hand-in - hand and the rights in balance should also be provided to the accused and properly taken care of by the victims.

“Justice should not only be done, but also seems to be done”