

Victims, Victimization & Victimology: A Socio-Legal Study

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Abstract: For many decades, the victim was the forgotten party in the criminal justice system as the main focus was that the perpetrator of a crime should be punished. But the victims of crimes stand poised equally in the scales of justice as the victim is not a passive object but an active component of the whole judicial process. The victim deserves similar level of protection and attention from the court like that of an accused i.e. a victim's interests need to be balanced vis-à-vis that of accused. Victims of crime go through mental and physical trauma and suffer throughout their lives, as their place in the society changes. A victim is certainly entitled to reparation, restitution and safeguards of his rights and criminal justice would look hollow if justice is not done to the victim of the crime. In recent years, the Legislature and the judiciary have taken gradual steps to develop the necessary principles by which appropriate compensation could be paid to the victims of crimes. The gradual shift in the approach of the Supreme Court is a positive sign but other organs i.e. the government and the legislature have to make conscious efforts to consider the rights of the victims.

Key Words: victims, victimology, criminal justice system, victim compensation, supreme court on victimization.

1. INTRODUCTION:

“When we consider the instant case of the victims, the very sight of the victim is traumatizing for us. If we could be traumatized by the mere sight of injuries caused to the victim.....what would be the situation of the victim be, perhaps, we cannot judge. Nonetheless we cannot be oblivious of the fact of her trauma.

-Supreme Court of India in Parivartan Kendra v. Union of India¹

The study of victims or victimology is a relatively new field of academic research. Until few years ago it would have been difficult to have found any institution or agency or research group working in the field of victims of crime, or which considered crime victims as having any central relevance to the subject apart from being a sad product of the activity under study, i.e., criminality. But in recent years, the Legislature and the judiciary have taken gradual steps to develop the necessary principles by which appropriate compensation could be paid to the victims of crimes. The legislature has done it by enacting the different kinds of laws and schemes and the Judiciary through the cases which have been decided by it propounded a set of principles to provide the remedy of compensation where the law is not adequate to provide a remedy to the victim of crime. In broader sense, '**Victimology**' is the entire body of knowledge regarding victims, victimization and the efforts of society to perverse the rights of the victim. Hence, it is composed of knowledge drawn from such fields as criminology, law, medicine, psychology, social work, politics, education and public administration. In short, victimology may be termed as empirical, factual study of victims of crime and as such is closely related to criminology and thus maybe regarded as a part of the general problem of crime. Whereas the term '**Victims**' means natural persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering or economic loss or violations of fundamental rights in relation to victimizations identified under 'scope'. The term 'victim' in

¹ (2016) 3 SCC 571.

general parlance refers to all those who experience injury, loss or hardship due to any cause and one of such causes maybe crime. For many decades, the victim was the forgotten party in the criminal justice system. From the victims' standpoint, the perpetrator of a crime should be punished but at the same time, the victims stand poised equally in the scales of justice. The lack of victim-oriented jurisprudence is the main cause of deterioration of the conditions of victims and their family members. Ideally, all victims of all crimes should be entitled to get adequate compensation.

2. LITERATURE REVIEW:

Selected literature has been referred to have a deep idea about the work that has been done by learned researchers, academicians, authors and subject experts.

Williams, Katherine, S.(2001) have highlighted that until few years ago whole of the focus of criminal justice system was on accused only and the victim has to satisfy his grivence with the conviction of accused only.

Randhawa, Gurpreet Singh (2011) are of partucular view that 'Victimology' is the entire body of knowledge composed of knowledge drawn from various fields such as criminology, law, medicine, psychology, social work, politics, education and public administration.

Paranjape, Dr. N.V (2011) has focused on the aspect that the term 'victim' refers to all those who experience injury, loss or hardship due to any cause and one of such causes maybe crime and hence the aspect of victim must be understood in broader horigine.

G. S. Bajpai and Shriya Gauba (2016) has discussed at length the provisions relating to compensation under the Code of Criminal Procedure and recent amendments and their impact.

Whereas BB Pande (2011) has deeply analyzed growing concerns of victims of offences.

Though, these materials are informative and descriptive but these really do not reveal what is the reality of the victims is on the ground. There is a need of systematic study of legislative provisions and judicial trend. So in this study, the researcher has analyzed the legislative provisions and recent judicial trend and overall developments relating to victim's rights.

3. MATERIALS AND METHODS:

Methodology of present research related to socio-legal problem of victimization has covered the rights of victims and their protection on the one hand and their proper implementation and promotion on the other. Thus, the present research subject has covered the persons, society and the law and it has an interdisciplinary approach to be studied. The Researcher has carried out this research work by adopting inductive and deductive methods to analyze legislative provisions and socio-legal study of important cases dealt by the Supreme Court of India. While doing that consideration has been taken of genesis of victimology in India and the way its genesis has cast constant shadow over situation of victims in criminal justice system. The methodology adopted for the present research work is based on doctrinaire as well as empirical analysis.

4. DISCUSSION:

A. Legislative Aspect

For many decades, the victim was the forgotten party in the criminal justice system. Ideally, all victims of all crimes should be entitled to get compensation. Under different laws and court verdicts persons have been declared entitle to get compensation for their suffering. Broadly speaking, the general law concerning payment of compensation to the victims of crime is mainly in the Code of Criminal Procedure, 1973.² Section 357 (1) of the Code of Criminal Procedure deals with situation when a Court imposes fine or

² Under sections 357, 357A, 357 B, 357 C, 358, 359 and 250 of the Cr.P.C.

sentence (including sentence of death) of which fine also forms a part. It confers a discretion on the Court to order as to how the whole or any part of the fine recovered is to be applied. For bringing in application of s.357 (1), it is a statutory requirement fine is imposed and thereupon makes further orders as to the disbursement of the said fine in the manner envisaged therein. If no fine is imposed s. 357 (1) has no application. Sub- s. (3) of s.357 on the other hand deals with the situation where fine does not form part of the sentence imposed by a Court. In such a case the Court while passing a judgement can order the accused persons to pay by way of compensation such amount as may be specified in the order to the person who has suffered a loss or injury by reason of the act of which the accused person has been so convicted and sentenced the basic difference between subss. (1) and (3) of s.357 is that in the former case, the imposition of the fine is the basic and essential requirement, while in the latter even in the absence thereof empowers the Court to direct payment of compensation.³ However, this section does not empower a court to award compensation for alleged offences other than those which form the subject matter of inquiry in the case which the order is made, still less for offences of which the accused has been acquitted nor where the accused is discharged and no fine is imposed.⁴ In short, compensation cannot be awarded under this section on acquittal or discharge. Further, The statutory liability to pay compensation to the complainant is on the accused. The State cannot be directed to pay compensation under s.357 was the general trend.⁵

B. Judicial Trend

In **Rudal Sah v. State of Bihar**⁶, the Supreme Court for the first time made it categorically clear that the higher judiciary has the power to award compensation for violation of fundamental rights through the exercise of writ jurisdiction and evolved the principle of compensatory justice in the annals of human rights jurisprudence. This is the most celebrated case where the Supreme Court directed the State of Bihar to pay compensation of Rs.35,000/- to Rudal Sah 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 the land mark case of **Sarwan Singh v. State of Punjab**⁷, the Supreme Court held that in 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 observed: “power to award compensation to victims should be liberally exercised by courts to meet the ends of justice... in addition to conviction 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.

The **Vienna Declaration on Crime and Justice in 2000** declared that we establish 2000 as a target date for states to review their relevant practices, to develop further victim support services and awareness campaigns on the rights of victims and to consider establishment of funds for the victims, in addition to developing and implementing witness protection policies. Hence, it can be seen that nationally as well as internationally, it is well established that the victims interests need to be balanced vis-à-vis that of accused.

5. FINDINGS AND ANALYSIS:

Thus, from the victims' standpoint, the perpetrator of a crime should be punished. They stand poised equally in the scales of justice. Views to this effect echoed in **The National Human Rights Commission v**

³ Mangi Lal v. State of Madhya Pradesh, 2004 CrLJ 880 SC.

⁴ Re Bastoo Dumaji, 1898 ILR 22 Bom. 717.

⁵ State of M.P. v. Mangu, 1995 Cri.LJ 3852.

⁶ AIR 1983 SC 1086.

⁷ AIR 1978 SC 1575.

State of Gujarat⁸ and in **Vikas Kumar Roorkewal v. State of Uttarakhand**⁹ wherein the Court specifically observed that broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution.

In the matter of **State of Punjab v Gurmit Singh**¹⁰, the Supreme Court highlighted that an in camera trial would aid in making the victim of the crime more comfortable, with the not too familiar and possibly overbearing (for the victim) court room ambience. The victim could then answer the questions with ease. Such a procedure would be 'in tune with the need for safeguarding the victim's dignity and self-respect' and also 'likely to help elicit improved quality of evidence from the survivor'. The 2008 Amendment has made it obligatory for such trials to be conducted, as far as practicable, by a women judge or Magistrate. As per the changes introduced by the Amendment Act of 2013, the recording of the statement (on oath) of a woman who suffers as victim the specified sexual offences by a magistrate, during investigation, has also been made mandatory.

6. RESULT:

It is pertinent to note that the victim is not a passive object but an active component of the whole judicial process. The victim deserves similar level of protection and attention from the court like that of an accused. To strike a balance between the human rights of the accused and that of a victim by plethora of decisions the Honorable Supreme Court of India attempted to restore the dignity of the victim and to heal up the wounds sustained by the victim. Post Code of Criminal procedure (Amendment) Act, 2008 and Criminal Law Amendment Act 2013, a radical and shift is noticed in the Indian criminal justice system that introduces and redefines the rights of victim to a significant extent. For example Section 24(8) of the Code of criminal procedure provides for engaging of an advocate of his/her choice to assist the public prosecutor, Trial of offense under section 376 and 376 (A) to 376 (D) of the Indian Penal Code as far as practicable by a court presided over by a woman is also given under Section 26 (A). Further provisions as to recording of statement of the rape victim at her residence or in a place of her choice or as far as practicable by the woman police officer in the presence of her parent or guardian or near relative or a social worker of the nearby locality are given under Section 157 of CrPC. Also Section 173(1-A) of the Code of criminal procedure mandates a specific time of three months for the investigating agency to complete the investigation if the allegation relates to the offence of rape of a child.

The victim is certainly entitled to reparation, restitution and safeguards of his rights and criminal justice would look hollow if justice is not done to the victim of the crime. A victim of crime cannot be a 'forgotten person' in the criminal justice system. It is he who has suffered the most. The Malimath committee Report (2003) in Chapter 6 strongly espoused the idea of 'justice to victims'. The Report highlighted the plight of the victims of crime in every criminal justice process and recommended the constitution of a Victim Support Service Coordinator to safeguard the interest of the victim at the trial stage.

The supreme court of India also dynamically interpreted Article 21 so as to include compensation to the victims under scope of it. In the matter of **Delhi Domestic working women's Forum v. Union of India**¹¹, considering the plight of many rape victims in the country, the supreme court directed to draw up a scheme

⁸ (2009) 6 SCC 342, Para 40.

⁹ (2011) 2 SCC 178.

¹⁰ (1996) 2 SCC 384.

¹¹ (1995) 1 SCC 14.

for compulsory payment to victims of sexual violence. Besides many judgements of various high courts and the Supreme Court of India, the Law Commission of India has also recommended to provide the compensation to the victims of crime in its 142nd, 144th, 146th, 152nd, 154th and 156th report. Following the various reports and judicial decisions, the Government of India amended the Code of Criminal Procedure and section 157-A was inserted in year 2008 to incorporate an elaborate Victim Compensation Scheme that provides for every State- Government to set up a Victim Compensation Fund. But despite the sympathy expressed in several circles, victim compensation law somehow continued to be in an unsatisfactory acknowledge in criminal justice system till a new judicial trend emerged starting from the Laxmi's Case.

7. JUDICIAL DIRECTIONS AND RECOMMENDATIONS:

In the matter of **Laxmi v. Union of India**¹², the Supreme Court of India directed the states to take full responsibility for the treatment and rehabilitation of the victims of acid attack as per the Guidelines provided and direct to compensate the victim to a tune of ₹3 Lakhs. The concept of formation of district criminal injuries compensation board, with topmost district authorities¹³ as member of it, to determine adequate compensation to the victims of crime emerged from this landmark judgement.

Later on, in the matter of **Parivartan Kendra v. Union of India and others**¹⁴, after discussing the enormous cost involved in the treatment of acid attack victims, the Supreme Court clarified that it is pertinent to mention here that the mandate given by this Court in Laxmi's case nowhere restricts the Court from giving more compensation to the victim of acid attack, especially when the victim has suffered serious injuries on her body which is required to be taken into consideration by this court. In peculiar facts, this court can grant even more compensation to the victim than ₹ 3,00,000/-.....we direct the concerned Government to compensate the victim Chanchal to a tune of ₹10 Lakhs, and in light of the Judgment given in Laxmi's case we direct the concerned State Government of Bihar to compensate the main victim's sister, Sonam to a tune of ₹3 Lakhs.

As a result of various directions passed and positive follow up taken by the Supreme court of India in above two matters, the State Governments were mandated to frame state victim compensation schemes providing for compensation to the victims of various offences at uniform rates. Many states have progressively accepted the directions of the Supreme Court of India and implemented the same as per the need of hour which is a welcome step. For example, **the Gujarat Victim Compensation Scheme, 2016** which was earlier framed with Table of compensation with maximum limit, was later on, by amendment, replaced with a compensation table prescribing minimum compensation payable to victims of various offences and the actual amount of compensation is left to be decided by the District Legal Services Authority or the State Legal State Services Authority as the case may be without prescribing any maximum limit of compensation. Not only that, it is further provided that if the victim is less than 14 years of age, 50% more compensation will be payable to him/her.

8. CONCLUSION AND SUGGESTIONS:

The modern criminal law overlooks the byproduct of crime i.e., victim. The lack of victim-oriented jurisprudence is the main cause of deterioration of the conditions of victims and their family members. The victim sets the criminal into motion but then goes into oblivion. Victims of crime go through mental and physical trauma and suffer throughout their lives, as there place in the society changes. It is a fact that the victims of crime or complainants alleging serious offence have least say in the entire trial in which they alone have the biggest stake. The gradual shift in the approach of the Supreme Court is a positive sign but

¹² (2015) 5 SCALE 77.

¹³ Namely the Principal District Judge, the District Collector, Superintendent of Police and the Chief Medical Officer.

¹⁴ (2016) 3 SCC 571.

other organs i.e. the government and the legislature have to make conscious efforts to consider the rights of the victims. Hence, we need to give our due share of attention and help the study of victimology develop and be efficiently functioning.

Remember-

*“The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam in the whole volume of human nature, by the hand of divinity itself; and can never be erased or obscured by mortal power.”*¹⁵

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¹⁵ Alexander Hamilton in Preface of his book on Human Rights, 1st Edition 1775.