

The Multiplicity of Victimization: A Vexing Vortex in The Indian Judicial Paradigm

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Introduction

The Criminal Justice system in India has surfaced with a positive buoyance in the recent times, almost making one believe in the farce, known as the “ease” of justice acquisition. The primary aim of the Criminal System in India is to provide a justiciable heuristic to the victims of a crime, almost akin to a compensatory measure with a reformative edge, so as to nullify the impact of injury, be it mental or physical. However, the unfortunate reality remains that the grind of the system takes along with it an already annihilated victim of crime within its vexing conundrum. The system and administration, despite legislative facilities, continue to remain infructuous. The justice delivery system remains host to a voluminous hoard of incomplete as well as fresh cases, which results in either delay or elongation of justice. In the case of *Rattan Singh v. State of Punjab*³ the Supreme Court acknowledged the inability of the victim to catch the attention of law and has reiterated that the fault is that of jurisprudence.

This is merely the tip of an iceberg that the Authors of this paper will bravely attempt to discover and ultimately conquer. To understand that quandary of victims in the Criminal Justice System, it is exceptionally important to be sensitive to the various shades that build that system.

Ordinarily, a victim is believed to be an individual who has -

- Suffered any loss or injury;
- Caused by reason of act or omission;
- For which the accused has been charged;
- It also includes his or her guardian or legal heir.⁴

In simpler terms, a victim is an individual who has been injured or harmed either directly or indirectly, collectively or individually leading to mental, physical, emotional, substantial or economic impairment of their assets (including their

³ (1979) 4 SCC 719 (India).

⁴ Section 2 (wa), Code of Criminal Procedure

rights). This may be done by way of crime or abuse of power and leads to a lot of suffering.⁵ In the case of *Mrs. Nalini Bhanot v. Commissioner of Police*⁶ the apex court awarded compensation to the mother considering the fact that the victim had died because of the beating in the police custody. This was believed to be a case of abuse of power and the court held that it is a compulsion on the part of the judiciary to restore and redress the injury and wrong done.

Victimization is derived from the grievance of the victim and is a noun that primarily entails two essential meanings; firstly, an adversity or a situation that results from being a victim and secondly, an act or action that leads to the exploitation of an individual that suffers the same.⁷

There are a certain phases and elements to victimization –

The first phase/element – Also known as primary victimization, it is the initial interaction between the victim and the offender. Usually it occurs during the commission of the offense itself.

The second phase/element – This is the reaction of the victim to the offense and the offender as well. It also includes a change in self-perception as well as self-esteem and plays as an important element to chalk out any legal recourse that the victim would wish to take through formal law enforcing agencies.

The third phase/element – The third phase mainly consists of any further interactions that may occur between the victim and the offender as well as the various agencies that the victim may contact as recourse. Due to the negative effects of the same on the victim, it is often referred to as secondary victimization.⁸

⁵ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, <http://www.un.org/documents/ga/res/40/a40r034.htm> (last accessed on 16th October 2017, 10:07am)

⁶ AIR 1990 SC 513 (India).

⁷ Seigel, L., J. (2006). *Criminology*, 10th Edition, University of Massachusetts, Lowell.

⁸ Chokalingam, Kumaravelu, Measures for Crime Victims in the Indian Criminal Justice System, http://www.unafei.or.jp/english/pdf/RS_No81/No81_11VE_Chokalingam.pdf (last accessed 16th October 2017, 12:34pm)

Victimology studies the following components in detail –

- Victim-Offender relationship
- Victimization
- Victim and Criminal Justice relationship
- Victims and the costs of crime
- Victim Compensation
- Victim-Media relationship
- Societal reactions towards the victims⁹

VICTIMS OF CRIME

An omnipresent blot on the present mechanism prescribed by criminal law sets the victim on to a path that goes to oblivion. The victims of offences are very rarely able to reap the benefits of the justice system. There are a plethora of reasons behind the present inadequacy of the existing legal provisions.

Legal fallacies in the involvement of criminal case victims

The right of the victim to participate in the prosecution of cases on the basis of police report is not recognised by the Code of Criminal Procedure. The victim is reduced to the role of a witness in a state case and is denied the right to an appeal against an order of acquittal by the trial court in a criminal case. The discretion of going to prefer an appeal and to withdraw from prosecution rests with the state alone. The sufferer in this case therefore, has to bear victimisation at two levels; the other level being facing the apathy of or lack of interest of investigation and prosecution agencies. There is an increasing need for an amendment in procedural law so as to allow victims to participate in the different stages of the criminal justice mechanism.

⁹ Introduction to Victimology, <https://www.britannica.com/science/victimology> (last accessed, 16th October 2017, 1:14pm)

Rape victims

A victim of rape is subjected to victimisation at multiple levels. Right from the beginning of the interrogation process; the victim is made to go through an environment where she feels uneasy because the incidence of the crime is brought repetitively to the mind of the victim, which is accompanied by harassment, delay in investigation and adjournment of court appearances, insult at the hands of defence lawyer, economic expenditures which ultimately lead to the cruel realisations of the fact that the existing process does not live up to the expectations of the masses. The trauma of rape is exacerbated by the trauma of further medical examination and public court room examination.

Dearth of legal assistance

The victims of crime and sexual offences do not get any legal assistance from the part of the state. The Legal Services Authorities Act 1987 is not invoked in order to provide free legal assistance to victims of rape at each stage of delivery of justice; be it from reporting the crime to the police station to Court trial.

Privacy of victims of rape

In the case of *Raja Gopal v. State of Tamil Nadu*¹⁰, the Supreme Court observed that a citizen has a right to protect his privacy along with the privacy of his family and marriage. It is implicitly agreed upon that the right to privacy is inculcated in the right to life and liberty guaranteed to the citizens of this country by Article 21¹¹. It is a "right to be let alone". A citizen has the right to safeguard the privacy of his procreation, motherhood, child-bearing and education among other matters. It is greatly unfortunate that the privacy of the victim in instances of rape is completely violated in the course of a trial despite the existence of provisions in the Code of Criminal Procedure to conduct trial in-camera of rape victims. A pertinent example of this situation is visible in the case of *State of Punjab v. Gurmeet Singh*¹² in which a

¹⁰ (1994) 6 SCC 632 (India).

¹¹ *Kharak Singh v. State of U.P* (1964) 1 SCR 332 (India).

¹² *State of Punjab v. Gurmeet Singh*, (1996) 2 SCC 384 (India).

young girl below 16 was abducted and raped in an unknown destination. The incident was reported to the police and a case was initiated under Section 376 of the Indian Penal Code. The trial court, however, disbelieved the version regarding abduction and rape, because the victim was unable to disclose the identity of the perpetrators of the crime. The matter went to the Supreme Court on appeal wherein the Court not only convicted the accused but also reiterated Section 327 of the CrPC.

Scope of change through legal reforms

A study of both the procedural and substantive aspects of law gives a clear indication that the entire foundation of the law relates to the character and consent of the victim. To get a prosecution successfully in the instance of a rape case, it is to be proved that the victim did not consent in any manner, be it explicit or implied to sexual intercourse. It is therefore, an obvious fact that for a prosecution, there needs to be certain solid evidence of resistance on the part of the victim, which may be in the form of a struggle mark. The difficulty to produce evidence of resistance becomes exceedingly difficult when the victim is a married woman who is habituated to sexual intercourse. To make matters worse, an all too common defense on the part of the accused is to start questioning and discrediting the character of the victim herself. In even more convoluted cases, wherein consent has been obtained through coercion or fraud is not a valid consent on the part of the victim, but it becomes a humongous task to establish beyond reasonable doubt in front of the court that the consent of the victim was vitiated by fraud, inducement or fear of grievous injury or death. The principle of corroborating evidence and the statement of the victim is not a hard and fast rule of judicial credibility in every case of rape.

It is therefore, clearly visible that to protect the victims of sexual offences and rape victims in particular; there is ample room for further improvement. Special courts which are presided over by women judges may be constituted. The Evidence Act can be amended to check the cross-examination of the victim and to exclude any fact regarding the past sexual activity of the victim. As also suggested by the Apex Court, the rule of corroboration may be given less weight as it is merely a rule of prudence and not strictly the rule of law.

Criminal Justice System transforming witnesses into victims

There is always a pre-existing reluctance in the witnesses including the victims of crime themselves, to participate actively in court proceedings. Moreover, the witnesses summoned to police stations are more often than not treated with indignity and apathy. They are not paid any kind of allowance through reimbursement, which is a blatant ignorance of the *dictum* laid down in Section 160(2) of CrPC¹³. Female witnesses are called to the police station which is a gross violation of the provisions of Section 160(1) of CrPC. The adjournment of cases in the court leads to a lot of inconvenience to the witnesses. A cross-examination of the victim after long periods of time can lead to the witness being heckled by an aggressive defence or maybe even declared to be a hostile witness for not conforming to the exact statement recorded by the IO.

Victim Compensation

Objective of victim compensation

The objective of compensation is to render the beneficiary to a level equivalent to the stage before the incident. The objective of awarding compensation is not to award punishment for the wrong committed. The purpose of the process of awarding compensation is not to reward nor punish. The reason behind this is to make good the loss sustained by the victim in a monetary manner. Compensation may be either (i) pecuniary or (ii) non-pecuniary, i.e. the loss which cannot be calculated objectively regarding money. E.g., loss of amenities, pain and suffering, loss of expectation of life, etc.

¹³ 160. Police officer's power to require attendance of witnesses.

(1) Any police officer, making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required: Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

Lack of statutory provisions

The criminal court, under Section 357(1) of CrPC can pass the sentence and fine and the court may give a portion of this fine to the victim as compensation. However, under section 357(3) of CrPC, the criminal court has the discretion to award unlimited amount of compensation to the victim. In the case of *Hari Kishan v. Sukhbir Singh*¹⁴, the apex court laid down a precedent for all the subordinate criminal courts in such a liberal way, that they do not have to go after the civil courts for compensation.

Awarding interim compensation

In the case of *Bodhi Satta Goutam v. Subhra Chakraborty*¹⁵, the Supreme Court set forth a novel method of providing compensation to victims in the instances of grave violation of human dignity by awarding compensation during the pendency of the prosecution against the accused.

Victims of Law Enforcement Agencies

Compensation payment by state

The aim of the existence of a welfare state is to protect the fundamental rights, which are granted to every citizen. In the principles enshrined in the Law of Torts, the master is liable for the acts of his servant as long as the servant acts in the discharge of the duty assigned to him by the master, which is known as vicarious liability. Also, in the doctrine of English law, "King can do no wrong", the state is immune from liability to pay compensation for any act or omission on the part of the representative who is discharging sovereign functions of the state. In the case of *Kasturilal Raliaram Jain v. State of U.P*¹⁶, the apex court held the ratio that the state and its officers are immune from the liability to pay compensation if the acts done by them are committed to discharge of sovereign functions of the state.

¹⁴ Hari Kishan v. Sukhbir Singh, AIR 1988 SC 2127 (India).

¹⁵ Bodhi Satta Goutam v. Subhra Chakraborty, 1996 SCC (Cr) 133 (India).

¹⁶ Kasturilal Raliaram Jain v. State of U.P, AIR 1965 SC 1039 (India).

Limiting the Doctrine of Sovereignty

In the case of *Nilabati Behera v. State of Orissa*¹⁷, the court observed the dictum that the law, which granted immunity to the state from providing compensation to certain acts or omissions of its officers in the discharge of official duty, was modified. The court held that the doctrine of sovereign immunity is not applicable in the instances of violation of the fundamental rights of the individual and is only limited to only tortious acts committed by the officers of the state. The state is therefore bound to pay compensation to the victim who has suffered harm to his fundamental rights at the hands of the state irrespective of whether this violation occurred during the discharge of sovereign function. Some instances of breach of fundamental rights wherein the state was directed to pay compensation to the victim are addressed hereinafter;

(a) Unlawful detention

The right to life and liberty guaranteed under Article 21 will be breached if person is kept unlawfully in jail without a validation of the grounds on which he has been kept in custody. In the case of *Rudul Sah v. State of Bihar*¹⁸ the victim was jailed on the grounds of insanity for a period of 14 years. His release was ordered by the Supreme Court in addition to a compensation of 35,000 rupees.

(b) Unlawful police custody and confinement

In the landmark case of *Bhim Singh v. State of Bihar*¹⁹, Bhim Singh, an MLA from Jammu and Kashmir was prevented from attending the session of the Legislative Assembly. The Supreme Court, in this case awarded exemplary compensation of Rs 50,000 to Bhim Singh and observed that that the police authorities violated the fundamental rights enshrined in Articles 21 and 22(2) of the Constitution.

(c) Unjustified use of handcuffs

¹⁷ *Nilabati Behera v. State of Orissa*, AIR 1993 SC 1960 (India).

¹⁸ *Rudul Sah v. State of Bihar*, AIR 1983 SC 1086 (India).

¹⁹ *Bhim Singh v. State of J&K*, 1986 ACJ 867 (SC) (India).

Putting handcuffs on a person without justification was held to be in violation of the Fundamental Right of the accused person under Article 21 of the Constitution.²⁰ Right to life also encapsulates the right to live a life of dignity and a liberty also means a freedom from humiliation and insult at the hands of the authority to whom the custody of a person may pass. In *Ravikant Patil v. D.G Police, State of Maharashtra*²¹, the accused was arrested and handcuffed and roped, and made to parade on the streets of the city and squares of Solapur city. There was nothing on official record to prove that the accused was a person with a dangerous inclination and could try to escape from custody. The Bombay High Court, therefore, directed the police officer who committed the arrest to pay a compensation of Rs 10,000 to the arrested person within two months. The Supreme Court directed this payment to the State of Maharashtra as the Inspector of Police could not be held to be personally liable for violating the fundamental right of the accused.

(d) Torture and Death in Police Custody

The Bombay High Court has held that in the instances of police brutality and torture or atrocities in police custody or while in lock ups; the plea of sovereign immunity will not be a defence.²² The Court has held that the State and its officers would be held to be violating the Fundamental Right guaranteed under Article 21 of the Constitution.

Principle Guiding Compensation to the Victims -

The primary aim and object of compensation is to redeem the rights of an individual that may have been violated through the commission of an offense. There are certain sacrilegious norms to fulfill and suffice for the existence of any society. The violation of such norms threatens the existence of an individual in the society. Compensation

²⁰ Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535 (India).

²¹ Ravikant Patil v. D.G Police. State of Maharashtra, 1990 ACJ 1060 (India).

²² Mrs. Cardino v. Union of India, 1990 ACJ 804 (India).

primarily provides for the replenishment in case of such violations.²³ Something akin to this was held in the case of *Hari Krishnan and State of Haryana v. Sukhbir Singh and Others*²⁴ where the Supreme Court stated that compensation and the provisions under Section 357 of the Criminal Procedure Code is a way of creating an atmosphere of reconciliation between the victim and the offender. The compensation however must be reasonable, depending on the circumstances of each case.

Two schools of thought persist in the society in relation to victimology; traditional as well as modern. Traditional victimologists believe that a victims suffering lies compensated on the conviction of the offender, however this opinion is believed to be unjust and unfair by many critics.

The government is thus making efforts in order to make the fundamental rights matter in the due processes of crime. The Supreme Court has assisted the initiative by devising a method for the same. In *Gudalure M.J. Cherian*²⁵, Rs. 2,50,000/- was provided as compensation to the rape victim by the Supreme Court, and the two victims of rape were hence provided with a lakh each. The perfunctory charge sheet filing and investigation by the UP Police lead to problems within the case and the police officers were suspended due to inordinate delay and framing the four individuals who due to the turn of events, were found to be innocent.

An important precedent was set in *Manu Ram v. Union of India*;²⁶ the apex court held that it is assumed to be the responsibility of the offender/criminal to restore the loss or injury that has been caused to the victim. The apex court believed that victimology should be satiated not through barbaric acts but through a positive and compulsory reconciliation from the offender or wrongdoer. However, this is subjective with regards to the facts of the case.

²³ KD Gaur, *Justice to Victims of Crime: A human rights approach*, in *Criminal justice: A Human rights perspective of the criminal justice process in India*

²⁴ AIR 1988 SC 2127 (India).

²⁵ *Gudalure M.J. Cherian v. Union of India*, 1995 SCC (Cr) 925 (India).

²⁶ (1981) 1 SCC 107 (India).

While we talk about important precedents, one cannot exclude the fact that the Supreme Court has recognized that a criminal trial is supposed to provide for justice for all individuals; the one who is accused, the society and the victim.²⁷

An important derivative set by the Supreme Court was in the case of *State of Gujrat v. Hon'ble High Court of Gujrat*,²⁸ a landmark judgment where it was held by the apex court that the state should make laws, which allow for a portion of the wages earned by the prisoners to be given to the deserving victims as compensation. This could be either directly or indirectly through the creation of a unified, common fund or through any other means that the state may find feasible.

Institutions and Legislations -

India currently does not have a specific, generalized legislation. The only prevalent legislations available are the ones, which remain specific to the rights of victims in particular areas of employment. The following are the legislations available for specific categories of victims

The Protection of Women from Domestic Violence Act, 2005 -

Women continue to remain the primary victims of injustice within India. Up until 2005, instances of domestic violence were on a rise without any recourse available to the victims of such offences. In order to uphold the provisions of the Constitution, the parliament passed the Protection of Women from Domestic Violence Act in 2005. The ambit of the definition of domestic violence includes all sorts of violence that may be possible, including physical, verbal, mental, emotional and sexual abuse. The most laudable feature of this Act is that it prohibits the disabling/denying the victim all the facilities that they have the right to access in a *shared household*. They also bind the police officer or the protection officer to whom the instance has been reported to make the victim aware about their rights with regards to monetary relief, compensation orders, residence orders, custody order etc. The violation of protection orders may result in imprisonment of a year or a fine of up to Rs. 20,000. The same

²⁷ Dayal Singh v. State of Uttaranchal, (2012) 8 SCC 263 (India).

²⁸ (1998) 7 SCC 392 (India).

are the punitive damages that a protection officer will have to pay in case of any violations.²⁹

Section 357A of the Code of Criminal Procedure -

- 1) Section 357A relates to the preparation of the various schemes so as to provide for funds for the compensation of victims and his/her dependents who may have also suffered the injury/loss as a result of the offence
- 2) The District Legal Authority or the State Legal Service may decide the quantum of the compensation; whatever the case may be when the Court makes a recommendation for the same.
- 3) Recommendations can be made by the trial court when;
 - The quantum or compensation that has been fixed by the Legal Services Authority is found to be inadequate
 - The cases end in discharge or acquittal and the victim is to be rehabilitated
- 4) Even in the lack of a trial or the offender the victims may apply to the State or District Legal Services Authority
- 5) Under Sub-section 4, after due enquiry, the State or District Legal Services Authority shall award adequate compensation within two months in order to ensure speedy justice
- 6) Immediate first aid or medical facilities may be provided by the District/State Legal Service Authority in order to alleviate or relieve the victim of any suffering without any costs. Interim relief may also be provided as the need of the hour.

Section 372 of the Code of Criminal Procedure Code -

Under this section the victim gets a right to appeal under the following circumstances -

- i) Acquittal of the accused,
- ii) Conviction of the accused for an offence lesser than the one filed for,
- iii) When the compensation provided is inadequate

²⁹ The Protection of Women from Domestic Violence Act, 2015,

[http://mja.gov.in/Site/Upload/GR/Criminal%20Summary%20\(D.V.%20Act\).pdf](http://mja.gov.in/Site/Upload/GR/Criminal%20Summary%20(D.V.%20Act).pdf) (last accessed 17th October 2017, 11:08am)

Suggested Remedies to the Status Quo

The grievances of the victims in the criminal justice system can be summarized in the following context :

- i. A glaring inadequacy of the existing laws in allowing the victim to take actively involvement in the proceedings of the trial.
- ii. A communication gap between the police as well as the prosecutors on keeping the victims informed about the case progress.
- iii. Inconvenience of the victim during interrogation by the police, and lengthy court proceedings.
- iv. Need of prompt and available medical assistance to victim of physical and sexual offences and to the victims of accidents.
- v. Need of legal assistance to victims of sexual offences
- vi. Lack of sufficient means of protection and defences after the victims are threatened and vilified by the offenders who are released on bail during investigation or trial of the cases.
- vii. Protection of the privacy and indentity of rape victims when the case passes through the different stages in the criminal justice system.

Conclusion -

Just like a treatment is required after diagnosis of the disease, an innovative approach is necessary on the part of each method followed by the criminal justice system for the restitution and rehabilitation of the victim.

Victim Participation

The Criminal Procedure Code can be amended to make statutory provision for participation of the victim during the stages of investigation and trial of the criminal cases instituted on the basis of police report. The CrPC can be amended to make way for the right to be conferred upon the victim to engage a lawyer of his choice and the opinion of the victim shall prevail over the opinion of the public prosecutor in case of conflict and also to prefer an appeal against the order of acquittal of the accused in the cases instituted on the basis of the police report.

Information to victims

Owing to either the ignorance of the law, or a lack of sensitivity; many police officers at the police station do not inform the victim of the action taken by them relating to the commission of the offence reported to the police station as per provisions of section 173(2)(ii) of the CrPC 1973. There is no statutory provision to inform the victim of the progress of the case during trial by the prosecution. The Supreme Court has directed the judicial magistrates to give an opportunity to the victim(informant) to be acquainted with the result of police investigation and also to raise objection, if any, before discharging the accused on the basis of the final report submitted by the police under Section 173 of CrPC.

Treatment of victims as witnesses

Interrogation of the victims in general and victims of sexual offences in particular should be done by the police in a dignified manner and by following the procedure of law. There should be some provisions made to provide sufficient funds to the police and court administration for payment of travelling allowance, pocket allowance and professional loss to the victims appearing as witnesses whenever called to the police station or court.

Medical assistance

The victims of body offences and accidents need immediate medical assistance. In a Public Interest Litigation, a question arose whether every member of the medical profession has the obligation to extend his services with due expertise for protecting life. The Supreme Court has laid down that whenever a man of medical profession is approached for professional assistance, it is the obligation of each member of the profession to render all possible help and if the case needs better assistance, he must make all possible efforts to ensure that the injured reaches a proper medical expert as soon as possible.

Legal assistance to rape victims

- (i) The complainants of sexual assault cases should be provided legal representation. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but also to provide her with guidance as to how she might obtain help of a different nature from other agencies.
- (ii) Police should be under a duty to inform the victim of her right to get free legal assistance before any questions were asked of her and the police report should state that the victim was so informed.

Protection of Privacy of Rape Victims

The victims of rape should be interrogated in the presence of a female officer in their residence in the presence of friends and relatives. The medical examination of the victims of rape should be done in an atmosphere where the victim is made to relax and to actively participate and cooperate during the medical examination of the intimate areas of the body.

Protection of human rights by payment of compensation

Immediate legislation for awarding compensation to the victims of crime by constituting a Criminal Injuries Compensation Board, is required to fulfill the obligation of India to the International Covenant on Human Rights.