

Victims Of Crimes And Legal Response Towards Their Protection

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Introduction

In order to wipe out the tears and miseries of those who have suffered from the infliction of crimes and the thought to provide them protection from criminal acts, redress from pain, loss and agony inflicted by crime, fair deal from police, law courts and the other authorities is, in fact, the need of the hour. The issue deserves a deep and thorough study so as to protect the interest of the victims.

Thus, the paper is basically structured to study as to what crime-victims actually mean and how far law actually recognizes the miseries of such victims; how the victims of the crime, victim-witnesses can get assistance and what is the present scenario with regard to the right of protection from criminals. The matter of legal aid to the victims and the compensation aspect and remedial reach to suggestions of this problem is the task of this study.

The genesis of the issue has its due recognition in Article 21 of the Constitution of India which embodies that "no person shall be deprived of his life or personal liberty except according to the procedure established by law". It is a certain guarantee to have the right to live with human dignity. It reflects that the infliction of injury by way of crime encroaches upon the path of dignified life of the victim. Not only this, the Constitution of India further postulates by way of Article 38 that, "the State shall secure a social order for the welfare of the people".

Victims Of Crime

Meaning And Dimensions-

It is quite strange and ironic that the entire administration of criminal justice seems to be guided by one cherished principle, i.e. the protection of the rights of the accused to be secured at all cost. The entire machinery of justice always remains vigilant for the sake of the offender, while the victims of crime are left unnoticed as the 'forgotten men' of the criminal justice system. A crime victim is a natural person, a living human being who is either subjected to immense sufferings even leading to his death or is

subjected to massive tortures/ill-treatments at the hands of the violators of law.

As per *Mac Millan's English Dictionary*: Victim means someone who has been harmed, injured or killed as the result of the crime; someone who has been affected by a bad situation such as an accident or illness, someone who has suffered as a result of the actions or negative attitudes of someone else or of people in general. While a Crime is an illegal activity or action, illegal activities in general, something that is wrong or mistake.

According to *Merriam Webster's Dictionary*, the term 'victim' implies- one that is acted on and usually adversely affected by a force or agent: the schools are victims of the social system as one that is injured, destroyed, or sacrificed under any of the various conditions- a victim of the auto crash or a murder victim; one that is subjected to oppression, hardship or mistreatment; a frequent victim of political attacks, one that is tricked or duped.

According to *paragraph 18 of the United Declaration of Basic Principles*: 'Victim' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights. As per Sir John Austin, a crime may be defined as an act (or omission or a state of affairs), which contravenes the law and which may be followed by prosecution in criminal proceedings with the attendant consequences, following conviction, or punishment.

Diverse Facets of Crime Victims in India

Trafficking-

In its literal sense, the term 'Trafficking' refers to the transport, sale and purchase of women and girls for profit, gain and any other consideration for the purposes of prostitution, bonded labour etc. It has assumed a serious global problem especially in South East Asia including India, Bangladesh, Nepal, Thailand, Philippines, Indonesia and other Countries. In the broad term sexual exploitation covers the following things- sexual abuse & torture, genital mutilation, pornography, prostitution, sex-trafficking, sex tourism, rape, incest, sexual harassment, dowry and bride price, marriage of convenience for the purpose of sexual exploitation and domestic violence. Forced prostitution which involves the sale of human body for sex is

the most severe practice of sexual exploitation.

These practices or slave trade bring easy money with very little investment as well as less labour-intensive as it expands into new markets and sell out new and much demanded young girls. Cases of sexual abuse of children often come to light in economically handicapped countries, where criminals with perverted sexual urge, throng and exploit the helpless and innocent children for their sexual satisfaction and money. Every child has a right to be protected from abduction, sale or traffic.

Rape Victims-

'Victim Blaming' has become a style of today in many painful situations of the victim, under trauma. Rape is not a crime against the person of a woman (victim); it is a crime against entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will power that she rehabilitates herself in the society which on the knowledge of rape committed looks down upon her in derision and contempt. Rape is therefore, the most hatred crime. Even the relatives of the victim of rape lay blame on the victims. In many situations the public from different strata of society often says *"Victim should have been much careful. Had the victim been much careful, such type of incident could not have been happened."* Nobody is there, particularly in India for giving consolation to the victim. No victim assistance centre is there for removing the fear of crime, prevalent in the victim.

The Supreme Court in *The Chairman, Railway Board v. Chandrima Das* (AIR 2000 SC 988) held that the offence of rape violates the right to life and the right to live with human dignity of the victim of the crime of rape. Rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. Regarding the agony of rape, Dr. Arijit Pasayat J. remarked in *State of Karnataka v. Raju* (AIR 2007 SC 3225) as under: *"It needs no emphasis that the physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame."*

In *Vishaka v. State of Rajasthan* ((1997) 6 SCC 241), the Apex Court held that working women have the right against the sexual harassment in workplaces. They have the right to gender equality, to work with dignity and to a working environment safe and protected from sexual harassment and abuse. In absence of the suitable legislation in this sphere, international conventions and norms, so far as they are consistent with the constitutional spirit, can be relied on.

Domestic Violence-

Against women is again a global phenomenon today where women have been subjected to all types of violence. Women have been victimized in the traditional Indian society dependent on men, they have been humiliated, tortured and exploited, routinely defined and assessed on the basis of sex. They have never been equated with men. Women have been the victim of violence and exploitation in traditional society where women have been socially, physically, psychologically and sexually exploited from time immemorial. Domestic violence is one such instance of exploitation and torturous activity which on an average Indian woman has to pass through. The root cause behind any kind of class discrimination and victimization is its low literacy rate.

They do not have control over the resources for lack of access to decision making structures in the country. The classification of domestic violence is fairly crude and there are endless violations, which may include slapping, punching, kicking, clocking, butting, beating, burning, pulling hair, pushing downstairs and the frequent use of weapon of one sort or another.

The phenomenon of female foeticide in India is not new where female embryos or foetuses are selectively eliminated after pre-natal sex determination, thus eliminating girl child even before they are born.

The traditional method of getting rid of the unwanted girl child was female infanticide, where the female baby was done away with after birth in various ways- either by poisoning the baby or letting her choke on husk or simply by crushing her skull under a charpoy. With the advancement of medical technology sophisticated techniques can now be used or rather misused, to get rid of her before birth. Through ultrasonic scans and amniocentesis, the sex of the foetus can be determined during the pregnancy of the woman and then the foetus is rampantly aborted if found to be female. There is a serious decline in the number of women in India.

Custodial Victims-

In recent years, third degree torture and custodial deaths have become an intrinsic part of police investigations and the injury inflicted on the people in custody is sometimes unbearable.

Imprisonment itself is poisoning, when clubbed with torture it actually poisons the life of the individual. The duty of the police is to make peace, not to make pieces. In all custodial crimes the real concern is not only bodily pain but also the mental agony and hardship that the person has to suffer within the four walls of the police lockups. There are numerous cases where the officers, acting under the disguise of discharge of their lawful authority, having inflicted various harassments on the people and toyed with their lives. Sometimes, they arrest the person without warrant for an offence and the arrested persons are subjected to torture in order to extract confessions, so much so that it results in their death. In order

to prevent the prosecution every attempt is made by the police to create evidence to support the view that the arrested person died after he was released from the custody. The constitutional right of a victim of custodial crime to receive compensation was reiterated by the Supreme Court in *Nilabati Behera v. State of Orissa* (1993) 2 SCC 746. "Hon'ble Mr. Justice Anand observed: *"There is a great responsibility on the police or the prison authorities to ensure that the citizen in its custody is not deprived of his right to life."*

The right to get relief of compensation in public law from courts exercising their writ jurisdiction was explicitly recognized in *D.K. Basu v. State of West Bengal* ((1997) 1 SCC 416), is an example of judicial legislation in the field of human rights of those taken in police custody. Commenting on the custodial violence Hon'ble Supreme Court observed that custodial torture is a blatant and naked violation of the human dignity and degradation. Any torture, inhuman treatment or violence or custodial death takes place then the courts can not only take appropriate action against the responsible police officer but can also provide compensation to the dependents of the deceased or the victim the illegal torture or violence.

Custodial Crime or violence may be committed in different forms. The most frequently used methods of inflicting torture are:

- 1) physical and mental torture inflicted on tortured persons in police custody during and following their arrest;
- 2) torture or sexual abuse on women in custody;
- 3) atrocities committed in prison by the prison staff on convicts or under-trial persons;
- 4) violence and atrocities committed by the members of military/paramilitary organizations in post war period or in course of suppression of activities of the extremist groups for maintenance of internal security;
- 5) torture, ill-treatment and sexual abuse on women victims in rescue homes.

Under Trial Victims-

Are subjected to cruel treatment by police, investigating officers, prosecutors as well as the Courts of law. The condition of women prisoners in police custody is far from expectations what the civilized people do not deserve. They are also subjected to the various inhuman treatments including molestation, assault and torture at the cost of motherhood in police lock-up. Besides, the practice of horrible 'third degree method' is the regular feature followed in the police lock-up."

Handcuffing is against the human dignity of an individual. As observed by the Apex Court, in *Prem Shankar Shukla v. Delhi Administration* (AIR 1980 SC 1535) observed: *"Handcuffing is prima facie*

inhuman

and therefore, unreasonable, is over harsh and at the first flush arbitrary. To bind a man hand and foot fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in the Courts is to torture him, defile his dignity, vulgarize the society and foul the soul of our constitutional culture."

In *Khedat Mazdoor Chetna Sangathan v. State of M.P.*, the Apex Court referred the oft-quoted statement of Joseph Addison- "*better to die ten thousand deaths than wound my honour.*" "*If dignity or honour vanishes what remains of life.*"

Legal Response Towards the Protection of the Victims of Crime

In *Guruswamy v. State of Tamil Nadu* (1979Cr.LJ 704), the accused was convicted on a charge of brother. While reducing the sentences, the Supreme Court held that the offence was committed during a family quarrel and though the victims are the father and brother of the appellant, in the circumstances of the case, the extreme penalty was not called for. The accused had also been under sentence of death for a period of six years. But in reducing the death sentence to imprisonment for life, it was held that the widow and her minor children should be compensated for the loss they have suffered by the death of the second deceased. The court imposed a fine of Rs.10,000 to the appellant and ordered the same to be paid as compensation to the dependents of the victim.

The case of *Hari Krishnan and the State of Haryana v. Sukhbir Singh* (AIR 1988 SC 2127) and others is worth mentioning after *Sarwan Singh* where the court reinstated its firm understanding once again in the following words: The power under Section 357 Criminal Procedure Code is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a reasonably affluent. Hence, the appellants were capable of paying Rs. 1,00,000 per head as compensation. Therefore, the order of the High Court is modified by reducing the compensation payable from Rs.2,00,000 each to Rs.1,00,000 at least each.

Award of Compensation to Crime- Victims in India: A Socio Legal Study

Provisions of Law Relating to Compensatory Jurisprudence—

The Natural Justice requires that a person who has suffered be compensated. Basically, the accused is responsible for reparation of any harm caused to the victim. We have five statutes, under which compensation

may be awarded to the victims of crime.

1. The Constitutional Remedies for Human Rights
2. Violation
3. The Criminal Procedure Code, 1973
4. The Probation of Offenders Act, 1958
5. The Motor vehicles Act, 1988
6. The Fatal Accidents Act, 1855

The Constitution Of India, 1950-

The Indian Constitution has several provisions which endorse the principle of victim compensation. The constellation of clauses dealing with Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) have laid the foundation for a new social order in which justice, social and economic, would flower in the national life of the country (Article 38, 41), which has relevance to victimology in a wider

' mandates, inter alia, that the state shall make provision for "securing public assistance in cases of disablement and in other cases of undeserved want". Further Article 51-A makes it a fundamental duty of citizen of India "to protect and improve the natural and to have compassion for living creatures" and develop humanism". If empathetically interpreted and imaginatively expanded, we find here the constitutional beginnings of victimology. Further, the guarantee against unjustified deprivation of life and liberty (Article 21) has in its elements obligating the state to compensate victims of criminal violence.

The Criminal Procedure Code, 1973-

Though the Indian Criminal Law recognizes the need for the payment of compensation to the victims of the criminal acts, yet there is neither any comprehensive legislation nor a statutory scheme for providing compensation by the State to the victims of crime. The State occasionally announces ex-gratia payments to the victims of violence and major accident, which is only an ad discretionary measure.

Section 320 of Cr.P.C. enumerates the offences in tabular form which can be compounded with, and without the consent of the court after launching of the proceedings. The first table of Section 320 Cr.P.C. consists of those offences essentially personal in nature and can be compounded by the parties concerned, while the offences listed in the second table are of more serious nature having wider ramifications on the society and can be compounded only with the permission of the court.

Section 250 of Cr.P.C. authorizes the Magistrate to direct complainants or informants to pay

compensation to the person accused by them without any reasonable cause.

Section 358 of Cr.P.C. empowers the Magistrate to order person to pay compensation, not exceeding one thousand rupees to another person for causing police officer to arrest such other person wrongfully.

Section 357 of Cr.P.C enables the court imposing a sentence in criminal proceedings to grant compensation to the victim and to order the payment of cost to the prosecution.

Conclusion

In India, there is an immediate and dire need of the protective legislations for emancipating the legal status of the victims of crime.

On the basis of the various aspects under discussion, it becomes incumbent on the Indian Judiciary, Parliament and the public at large to realize that the crime-victim problem is in fact the virgin area of our jurisprudence.. Several reform committees canvassed for improving the criminal justice system advocating that the judicial administration should be victim oriented i.e. proper respect and due consideration towards victims. The ideal position is that the distress and despair of the victim should be given due recognition and the legal system should have the worth cure the ailment. We are living in a Welfare State and hence the State undergoes the duty to ensure welfare of the crime victims, as well, which is imminent.

A progressive legislation alone cannot solve the social problems. The people must be aware of the progressive certain deterrent facts. Apart from the Govt. authorities, like women groups, NGOs, health groups, the academia, the media and medical professionals have to play their part.

SUGGESTIONS-

1. Victim assistance centres be established in all States and victim assistance fund be set up for the purpose.
2. Victims must be supported in a commendable way which shows an understanding of the whole range of their multifaceted problems.
3. Apart from awarding compensation, the victims should have the right to ask for their privacy, physical safety and their psychological well being to be protected. Specialist services be made available in order to provide support of every kind.
4. Besides enacting adequate law on the compensation to the crime victim, Victim Compensation

Board be established in each district. The amount of fine imposed and realized by the district courts be entrusted to such Board, besides the financial assistance provided by the concerned State to the Board directly.

Witness-shed be established along with sitting arranged, equipped with drinking waterfacilities etc. in the court premises.

5. The name and address of the witness should be kept secret.
6. The witness should not be removed from or demoted in work provided the employer is notified through a certificate issued by the Court.
7. If the witness is killed, then his/her heirs should be entitled to free education from primary to college level in any State or private school, college or university. Further the economic security packages should be provided to their heirs.
8. Even if the criminal case ends in acquittal and the Court recognizes the legal injury of the victim, as a result of or consequential to the crime, specific provisions be legislated upon exhaustively for compensating the victim of crime at the end of the State.
9. Victim should be protected from all types of humiliating and unjustifiable cross examinations in the courts.
10. The present system of criminal jurisprudence to be thoroughly revamped so that a victim is no more harassed and a free, fair and fearless environment of justice is ensured.
11. It may also be emphasized with great expectations that the Collective Bar which is a sacred partner in the administration of justice, has a professional obligation to invigilate the poignant cause of the victims of crime for providing them appropriate assistance.

