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POSITION OF VICTIMS UNDER THE CRIMINAL JUSTICE SYSTEM OF INDIA

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ABSTRACT

The world may be changing but most of the perceptions of the society are not. This paper attempts to discuss one such issue that requires a renewed perception and attitude towards it, calling for the introduction of revised and new legislations. The position and Protection of the victim under the Criminal Justice system of India are standing on a vulnerable footing in comparison to the position and rights of the accused. This paper highlights the position of the victims in regards to the crime and Indian Legislature with an overview of the Victim's rights. This paper goes in-depth to the existing problems and potential problems in regards to the implementation of legislation and suggest appropriate measures for the same. The entire research work revolves around the conviction of the accused of the crime committed in accordance with the restoration and rehabilitation of the victim.

Keywords: Victim, Protection, Criminal Justice System

INTRODUCTION

We live in a dynamic society that is evolving constantly. With each passing day the necessity of addressing various social and legal issues arises. One such issue which often gets ignored and considered as a matter of less importance is the position and protection of victims under the Criminal Justice System of India. The Indian laws may have developed significantly but Indian society still lacks behind with their traditional belief and behavior. In respect to the crime, the victims experience more consequences than the accused ever experience from the punishment. The ultimate motive of the Indian Criminal Justice system is to punish the accused for the crime and not the restoration of the victim. Very few protection provisions are in existence at present and lack of proper implementation. For the very reason, the position and protection of the victim require attention and need to be addressed. Taking in view the penal philosophy in India that has accepted the concept of prevention of crime and treatment and rehabilitation of criminals, ignoring the treatment and rehabilitation of the victims and their rights. Unlike the accused, the victims have no specific rights. Recognizing that the rights of the victims had not been adequately addressed, the United Nations adopted the 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power'. Although it is not a legally binding treaty but it sets out the minimum standard for the treatment of crime victims,

known as the Magna Carta of international victim's movement and acts as the guideline of this research work leading to the present stance towards the victim India.

POSITION IN INDIA

The Criminal Justice System in India has been derived from the British model, which clearly demarcates the roles, powers, and functions of the legislature, Executive and Judiciary. But the Indian Criminal Justice System seems to be more accused oriented and not victim-oriented. Under the watershed of Procedural Criminal Law, the accused has been safeguarded with various rights and benefits of doubt. In comparison to the accused, the significance of the victim is very minimal and is not addressed adequately. The victims in India have no proper rights and the full responsibility to prosecute is undertaken by the state. The victims are presented as a mere witness. But there have been few efforts to uplift the position of victims in India over the past two decades.

In the year 1985, on November 29, the General Assembly of the United Nations adopted the declaration of 'Basic Principles of Justice for Victims of Crime and Abuse of Power' for establishing standard norms and regulations for the protection of victims of crime.¹ Apart from focusing on the need to treat victims with "compassion and respect for their dignity", one of the progressive and efficient features of this declaration is that it considers an individual to be a 'victim', regardless of whether the state identifies, apprehends, prosecutes or convicts the perpetrator. Various recommendations were made by the 154 Law Commission of India on the aspects of compulsory justice by means of a Victim Compensation Scheme². A series of recommendations were also made by the Justice Malimath Committee 2003 in regards to victims of crime and all other ancillary issues³. However, more than two decades have passed but still, the Indian Criminal Justice System failed to enact proper legislation that is victim-oriented. Due to this scenario, a large ratio of victims choose not to report the crime, and especially in rural areas the victims often tend to live in misery and some even take the law in their hands in order to seek revenge and ensure justice.

¹Handbook on Justice for Victims – On the use and application of the Declaration of 'Basic Principles of Justice for Victims of Crime and Abuse of Power'

² Report of 154 Law Commission of India

³ Report of Malimath Committee, 270

POSITION OF VICTIMS IN REGARDS TO THE CRIME

According to the National Institute of Justice, millions of people are victims of crime each year⁴. The effect of a crime on the victim can be divided into three categories: Physical, Psychological/Emotional, and Financial. The victim may be physically injured or the trauma may cause psychological problems. On the other hand, the victim may lose property or money or any other valuable belonging causing huge monetary loss. Regardless of the nature of the injury, the victims are tend to experience trauma due to the occurrence of the criminal act, the degree of which may vary for each individual; the responses to the victims and their injuries are paramount. The police personnel plays a major role in assisting the victims as it is the first resort the victims seeks after being victimized by the crime. Unfortunately, in India the police personnel are mostly ignorant and instead of getting assistance the victims are rather harassed, especially in rural areas.

“Treatment with compassion and respect for their dignity” as emphasized by the UN Declaration, is nowhere in practice. Also, the Handbook says that “Victims have a valid interest in the prosecution of the case and should be involved at all stages of proceedings”⁵ but in reality, the rights and interests of the accused are safeguarded throughout the proceedings neglecting the interests of the victim. Even though for the purpose of tendering evidence in court the victims are summoned, there is absence assistance and services for the victims by the courts in India. However, despite the absence of proper legislation to provide justice to the victims in India, over the decade there is a rise in awareness on the part of the higher judiciary. The Supreme Court of India delivered various judgments, addressing the position of the victims by adapting the concept of restorative justice, or enhancing the amount of compensation to victims.

In one of the landmark case, *Bodhisattwa Gautam vs. Subhra Chakroborty*⁶, the Supreme Court provided a set of guidelines to assist the rape victims who cannot afford to have any sort of assistance, legal or medical in accordance with the principles of the UN Declaration of Justice for Victims of Crimes and Abuse of Power, 1985. The following are:

⁴ Reports of Office of Justice Programs, National Institute of Justice

⁵ Handbook on Justice for Victims – On the use and application of the Declaration of ‘Basic Principles of Justice for Victims of Crime and Abuse of Power’

⁶ AIR 1996 Sc 922

1. The complainant of sexual assault cases should be provided with victim's Advocate who is well acquainted with CJS to explain to the victim in proceedings, and to assist her in the police station and court and to guide her as to how to avail of psychological counseling or medical assistance from other agencies;
2. Legal assistance at the police station while she is being questioned;
3. The police should be under a duty to inform the victim of her right to representation before any question being asked of her and the police report should state that the victim was so informed;
4. A list of Advocates willing to act in these cases should be kept at the police station for victims who need a lawyer;
5. The Advocate shall be appointed by the Court, in order to ensure that the victims are questioned without undue delay;
6. In all rape trials, the anonymity of the victims must be maintained;
7. It is necessary, having regard to the Directive Principles contained under Article. 38(1) of the Constitution of India, to set up a Criminal Injuries Compensation Board. Rape victims frequently incur a substantial financial loss. Some, for example, is too traumatized to continue in employment;
8. Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering, and shock as well as the loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of rape.

In another case, *Rudul Sah vs. State of Bihar*⁷, the supreme court ordered the government of Bihar to pay Rudul Sah a further sum of Rs 30,000 as compensation which in the eye of the court was of 'palliative nature', in addition to the sum of Rs 5,000 in a case of illegal incarceration of the victim for long years.

Similarly in the case of Saheli, a Women's Resources Centre through *Mrs. Nalini Bhanot vs. Commissioner of Police, Delhi Police*⁸, the court awarded a sum of Rs. 75,000 as state

⁷ AIR 1983 SC 1086

⁸ AIR 1990 SC 513)

compensation to the victim's mother, holding that the victim dies due to the beating by the police.

In another landmark case of *D.K.Basu vs. State of West Bengal*⁹, the Supreme Court held that state compensation is mandatory in cases of abuse of power and said that “to repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.”

OVERVIEW OF VICTIMS'S RIGHT IN INDIA

The state is under an obligation to protect and help the victims for violation of Human Rights, which is evident from Article 14 and Article 21 of the Constitution of India, that provides fundamental rights to be implemented in accordance with the Directive Principles of State Policy provided in Article 39-A, Article 41 and Article 51(c) of the Constitution of India.

In the present administration of the Criminal Justice System, the state bears the responsibility to prosecute the offenders and provide retribution to the victims. Every victim has the right to seek help and protection from the state as a fundamental right contained in Article 21, which guarantees protection of life and personal liberty. In theory, though the position of victim and their interest gained significance, in practice the existing system failed due to overemphasis in court proceedings on the right of the defence of the accused.

Resultantly, the Criminal Justice System acquires a ‘vertical dimension’ and becomes “a means of formal social control” by the state which takes over the prosecution of the offender to the exclusion of the victim¹⁰. The present vertical criminal justice system should be replaced by the ‘horizontal line of justice’, where the punishment system is substituted by a mediation system that lays a central focus on the victim.

In the existing legislation, there are no provisions to help and support the victim or allow him to participate in the inquiry or investigation of the crime so that as a matter of right the victims can ensure proper investigation and check if there is any tampering of the available evidence, which is very common in India. There is a lack of protection and safeguards for eyewitnesses which leads to situations where witnesses are refuse to give evidence due to fear and threats. The victims need protection during the period of intervening in the occurrence of the crime and

⁹ AIR 1997 SC 610

¹⁰Gerd Ferdinand Kirchhoff, “Victimology – History and Basic Concepts” in Kirchhoff *et al* (eds.) **International Debates of Victimology**, WSV Publishing (1994), 1 at 63

actual commencement of trial in the court. The present system lacks in forum or arrangement for financial and legal aid to both, secure conviction of the accused and restoration of the normal life of the victim.

CHALLENGES AND PROPOSAL FOR PROTECTION OF VICTIMS **IN INDIA**

From the commission of the crime, the victims come across various challenges; social and personal. And sometimes it continuous till the life of the victim. In respect to the current status of victims, the primary concern of the Indian Criminal Justice System should be the protection and redress for victims. The Best Bakery Case¹¹ illustrates the need for protection of victims and their interests in order to ensure that justice is served and this can be achieved by incorporating the UN Declaration of Justice for Victim of Crime and Abuse of Power thoroughly and by implementing appropriate legislation that allows the orders of the judges to research the victims and their families, allowing access to justice and secure their rights. The existing judicial and administrative mechanisms should allow victims “to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive, and accessible.”

Some of the challenges and countermeasures includes:

1. Lack Of Separate Laws For Victims

In the past decades, there has been a rise in awareness but in practice, the criminal justice system failed to provide separate and codified laws for victims. Even though the Constitution of India mentions certain rights and protection but it does not specifically safeguard the interest of the victims.

2. Corruption in Indian Machinery

The corruption ratio in India is not unknown to its citizens. Corruption by public officials disrupts the machinery of the Criminal Justice System and people from all sections of the population are victimized. The government undertook various initiatives to reduce the extent of corruption but there was no significant outcome. Therefore; more intrinsic and

¹¹2004 4 SCC 158

comprehensive measures should be adapted in order to check corruption in the administration and efficient working of the system.

3. Efforts to Prevent Victimization of Women

The situation of women in comparison to men in our country is a matter of concern. Therefore, keeping this in mind various government and non-governmental organizations are constantly working to change the traditional ideology by uplifting and empowering women. Significant efforts have been made by introducing employment opportunities for women through various governmental schemes. The Cradle Baby Scheme of the Tamil Nadu State Government is one significant step towards the protection of female infants and female infanticide.

4. Reparation

Attention must be given to reparation as well. Whose rights have been infringed or violated, reparation can act as the most comprehensive means of compensation for them. Reparation not only identifies the wrong that has been done but acknowledges the necessity for redress and remedy, that the injured person is entitled to. Reparation commonly deals with monetary compensation but the system must not act ignorant towards the non-monetary forms of reparation; which includes, rehabilitation, restitution, satisfaction, and guarantees non-repetition. Along with this, emphasis must be given on new legislation addressing various needs of the victim, including medical, psychological, and economic loss.

5. Challenge of Implementation

The transparency of the policymakers and the accountability of the government officials who are charged with the responsibility for implementation is a big challenge. In comparison to the situation of victims in India, developed countries like the United Kingdom is doing significantly well to render victim justice. But victim justice has not been achieved to its full extent even in the developing countries. Therefore, the said issue requires vigorous pursuance with the governments and civil society.

CONCLUSION

“It is a weakness of our jurisprudence that victims of crime and the dependents of the victims do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our law. This is the deficiency in the system, which must be rectified by the legislature.”¹²

The study reveals that except in the area of providing compensation, very little has been done to address the range of problems faced by the victims of crime. There is a necessity for a fresh look at the position of the victims in India based on current circumstances and instances. The role of victim in Criminal Justice System of India is restricted to that of witness in the prosecution of an offense, which advocates a negative perception of the victim who has “suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights.”¹³. But with a change in approach and introduction of appropriate legislation with The quality of the Criminal Justice System in India and the position of the victims will only advance when there is not just a theoretical victim-oriented Criminal Justice System but also the practical implementation of the same.

¹² Rattan Singh Vs. State of Punjab, AIR 1980 SC 84

¹³ Clause 1 of the UN Declaration