

VICTIMIZATION IN INDIA

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Abstract

The Criminal Justice system in India is derived from the British model where control and prevention of crimes, punishment and rehabilitation of offenders and protection of individuals and their property are some of the accepted principles. Many countries of the world have realized the need to extend assistance and services To the victims of crime thereby changing their way of dealing with them. Nevertheless, the position of victims has not yet changed in India where they are treated as mere witnesses for prosecuting and punishing the offenders. As such they are deprived of their rights. This paper intends to analyze the plight of victims of crimes under the Indian Criminal Justice System. The present descriptive and analytical secondary data based study has been conducted with an objective to understand the legal provisions in the Indian Criminal law with respect to rights of victims vis-à-vis various rights their entitled to in other countries. This paper also suggests changes that could be brought in the Criminal Justice system to ensure victim's rights and to bring in the concept of victimology. Enacting laws for victim's welfare and ensuring them conducive environment are some of the suggestions of the Study.

Key Worlds: Criminal Justice system, Victims, Criminal law

Introduction

The numbers of pending cases in Indian courts are at alarming position because of the delay in justice. The crime rate is increasing so the numbers of victims are also increasing. As per the latest report of National Crime Records Bureau in 2019, Uttar Pradesh reported the highest number of cases. Assam reported the highest rate of crimes against women (per lakh population), while Rajasthan had the highest rate of crimes against Scheduled Castes. A total of 4,05,861 cases of crime against women under IPC were registered under 'cruelty by husband or his relatives' (30.9%), followed by 'assault on women with intent to outrage her modesty' (21.8%), 'kidnapping & abduction of women' (17.9%) and 'rape' (7.9%). The crime rate registered per lakh women population is 62.4 in 2019 in comparison with 58.8 in 2018," says the NCRB report.[1] Victims are victimized when offence is committed and also after the commission of offence. Victimization is of many types like primary victimization, secondary victimization, re-victimization, self victimization etc.

The criminal justice system is almost focused on the offender. Crime victims are the forgotten persons of the criminal justice system. They valued only for their capacity to report crimes and to appear in court as witness. The administration of criminal justice all over the world seems to be guided by one principle that is, the protection of rights of accused. In a criminal trial there are at least two active participants, the offender for whose sake the entire machinery of justice always remains vigilant, and the victim of crime. There is a need to take a fresh look at the position in which the victim of crime is placed in our criminal justice system.

Historical background

The laws in ancient time were not as diverse and victim friendly as today. Before Vedic time period the victims of crime get compensation for the injury and offender has to pay fine to the king. The main principle was compensation and not the punishment. In Vedic period punishment was introduced and followed. Muslim law involved victim and accused in criminal justice system. The issue of victim protection was there for centuries but, no one paid attention towards this issue and even today this problem is more relevant in the criminal justice system.

The concept of victim logy emerged in the 20th century during the closing of World War II. In 1970s, studies on crime victims were started only in cases of dacoity, motor vehicle and homicide. The first seminar on victim logy was organized in the University of Madras in India and subsequent

¹ ncrb.gov.in: National crime records bureau report 2020

developments regarding this issue took place. In 1992, Indian society of victimology was founded with a motive of spreading awareness relating to this issue.

In the present situation, laws are evolving rapidly for vulnerable sections of society such as children, women, mentally ill, and elders. The protection of Women from Domestic Violence Act, 2005, Prevention of Children from Sexual Offences Act, 2012, The Criminal Procedure (Amendment) Act, 2008, the Juvenile Protection and Rehabilitation Act, 2015 are made to reduce victimization and providing timely justice. The legal term ‘the complainant’ is used in the Criminal Procedure Code before the Code of Criminal Procedure (Amendment) Act, 2008, the word ‘victim’ was not defined in the Criminal Procedure Code. By this amendment a new section has been inserted in the Code and under this section the term “victim”^[2] has been defined. This section says that “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has charged and the expression “victim” includes his or her guardian or legal heirs. Compensation can be given to the victims even the offender is not traced or identified. Immediate first aid facility or medical benefits are also available free of cost.^[3] The provisions relating to in camera trials is very helpful, suppressing the identity of a victim helps to protect the security, the recording of evidence through video conferencing has also been encouraged.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by the United Nations is considered as the Magna Carta of the victims’ rights. It declares some basic norms for the protection of victims of crime and requires member nations to adopt measures that secure universal recognition and respect for their rights. The Malimath Committee suggests reforms to the criminal justice system regarding victims. The fifth law commission of India in the 42nd report dealt with the compensation to victims of crime in India. Many countries such as the US, Canada, Australia, South Africa and Thailand have enacted suitable legislation for witness protection.

Various efforts are made by Supreme Court of India in improving justice to the victims of crime and gave a new direction to the article 21 of the Indian constitution. In *Bodhisattwa Gautam vs. Subhra Chakraborty*,^[4] The Supreme Court held that the court trying an offence of rape has jurisdiction to award compensation at the final stage, it has also the right to award interim compensation if satisfied that the prima facie culpability of the accused is there, ordered the offender to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. It is a landmark case in which the Supreme Court issued a set of guidelines to help rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985. The Supreme Court in response to 2018 Public Interest Litigation of Mehender Chawla and others versus Union of India and others,^[5] which sought protection for witness in the rape cases, exhorted the government to come up with a scheme to protect witnesses. In consonance, the home ministry formulated the witness protection scheme, 2018.

SC took suo moto cognizance for assessment of criminal justice system. The court sought response and status report by 7th February, 2020 from all the states and high courts on several aspects in such cases including probe, collection of evidence, forensic and medical evidence, recording of statement of victim and time frame for trial. It is necessary to call for information with regard to status of affairs at ground level from various duty holders like investigation agencies, prosecution, medico-forensic agencies, rehabilitation, legal aid agencies and also Courts to get a holistic view to make criminal justice system responsive in the cases of this nature.^[6] *State of Kerala v. Rasheed* ^[7] It is decided that a detailed case calendar must be prepared after framing of charges to avoid delay in criminal cases. Sec 231(2) of criminal procedure code should be exercised only in exceptional circumstances or when very strong case has been made out.

Victims have few legal rights like the right to attend criminal justice proceedings, apply for compensation, to be heard and participate in criminal justice proceedings, to be informed of proceedings and events in the criminal justice process, to protection from intimidation and harassment, restitution

² Section 2(wa) Criminal Procedure Code, 1973

³ Section 357A Criminal Procedure Code, 1973

⁴ (AIR 1996 SC 922)

⁵ 2019 (14) SCC 615

⁶ In Re: Assessment of criminal justice system in response to sexual offences, 2019 AIR 2019 SC 721

⁷ AIR 2019 SC 721

from the offender, a speedy trial, the right to enforcement of these rights. Despite these rights certain group of crime victims should have some special rights; these include victims of sexual assault, domestic violence, stalking etc.

Conclusion

As we know that the issue of victimology is gaining importance, we need to give our due share of attention. Though many rules and provision have been made by many governments still there is not much improvement in the plight of the victims. It is the States duty to counter balance the sufferings of various victims all over the country. It would be the first step in the reduction in crime and hence will lead to a certain amount of control over the crimes. In order to make victim compensation laws more realistic and meaningful in doing justice to the victims, some measures should be taken like, informing victims of their role and the scope, timing and progress of the proceeding and of their cases specially where serious crimes are involved and where they have requested such information, providing proper assistance to the victims throughout the legal process. Providing assistance to victims of crime is the need of hour because victims suffer irreparable damages and harm as a result of crime. When person is suffering from such mental trauma it is very difficult to work with them so the study of science behind it is very essential and by using the scientific method results can be got and some good for the victim can be done.