

An Analysis of Crime Victims in India

Dr. Kanchal Gupta

Associate Professor, UPES Dehradun, Uttarakhand, India

Abstract: *This article delves into the evolving field of victimology, emphasizing its transition towards recognizing victims as independent entities with distinct voices and rights. It explores the multifaceted impact of victimization, encompassing physical, psychological, and financial dimensions. The paper highlights the categorization of victims into primary, secondary, and tertiary groups, illustrating the varying degrees of trauma and loss experienced. Furthermore, the article examines the shift in penological approaches, particularly the growing emphasis on restorative justice and compensation for victims. By dissecting the Indian legal framework, the article underscores recent legislative advancements in victim rights and compensation. It also reflects on the historical context of victimology, drawing parallels to ancient principles of retribution and restitution. The paper concludes with a critical analysis of the role of the judiciary and policymakers in shaping a victim-centric justice system, advocating for comprehensive legal and emotional support for victims to restore their dignity and place in society.*

Keywords: Victimology, Restorative Justice, Victim Compensation, Indian Legal Framework, Psychological Impact of Crime

1. Introduction

Victimology

Victimology can be said to be the new science in which the victim is seen as an independent entity who has his own voice, opinions, needs and hope. It is neutral in its conduct and principles. Scientific research on abuse, relationships with perpetrators, several interactions between victim (s) and the criminal justice system such as the courts and the police are studied under victimization. The study is not restricted to justice systems, with the change in societal awareness the study also encompasses the connection that the victim develops with the members of the society of which he/she is the part, connection with the media and various other social movements which may extend to the violations of human rights of the victim. The concept of victimization is as old as civilization. An illustration of it can be found in the Bible, in the form of Cain and Abel story. The story in which the voice of the victim was silenced and this act is still found to be in practice, where the voices of individual (s) or groups at large often gets disappear or remain as “forgotten person” due to the rampant abuse of power.

Concept of Victim

All those who suffer any loss, injury or adversity due to the occurrence of any act prohibited by law, are termed as ‘victim (s)’. Thus, victimology is the study of these sufferings and the means to compensate and render assistance.

The term ‘victim (s) of crime’ contains any entity or any person who has suffered any harm, injury or hardship due to the acts which the law prohibits. The harm inflicted can be physical, psychological or financial. Such a person is termed as a ‘primary victim (s) of crime’. Whereas ‘secondary victim (s)’ refers to those who suffer loss or injury due to the damage caused to the ‘primary victims’. For instance, the family members of acid attack victim or honour killings, children of a raped women. Yet another category of victims may be referred as ‘tertiary victims.’ It refers to another person other than the main victim and the close relatives of the main victim. Rape of a married women is one of the examples of ‘tertiary victims’, where apart from the main victim and the husband, children or the family members, the

general disgrace to the entire family members is termed as ‘tertiary victims’.

The categorization of victims as ‘primary, secondary and tertiary victims’ proposes that a level of hierarchy lies on the basis of sufferings that one undergoes. All the three types of victims undergo physical, mental and psychological trauma. One of the nuclei for the victimologist study is the reason as to why some individuals are more vulnerable to crimes than others. Thus, a ‘victim’ includes the any person who has suffered damage or injury, spouse of such victim, children, parent siblings and grandparents.¹

Impact of Victimization

The effect of crime on the victim may vary from physical, financial or psychological impact. Whenever the crime takes place, the victim has to make a choice whether ‘to fight back’ or ‘to escape’. Victim has to undergo a lot of mental trauma and determination to fight back leading to shock, sadness, grief. Another important physical impact are the scars, impairment or injury whether permanent or temporary which further aggravates the sufferings of the victim.

The financial impact mainly includes the medical expenses that are incurred on the physical injuries caused, the damage to property, litigation expenses incurred to get justice or to pursue the case against the wrongdoer, loss of earnings due to employment loss. Apart from these loses, the victim might have to shift from one place to another which involves shifting and resettling expenditure. In the cases sexual offences or where rape has been committed on a married woman, it also affects the settled family life of the victim. There are certain offences against property or human such as robbery, theft, assault, rape etc which not only severely affects the victims but also the society at large which is victimized as a result of crime that has been committed.

The psychological impact on the victim is evident from the behavioural responses of the victim. There is a sense of fear or abhorrence which can be seen when the victim is confronted in the identification parade before the culprits and police officials. He gets so much distressed, that sometimes he tends to lose his confidence to fight for justice

¹ Section 2(m) of Crimes Victim’s Rights Act, 1985

or may even get into depression whereby by he sees no meaning in leading a purposeful life. All this depends upon the mental capacity of the victim to cope with such conditions and situations.

Apart from the primary victimization, the victim is also subjected to tiresome court proceeding, police investigation and the wearying trial proceedings. He has to face frivolous questions at the time of cross examination, which sometimes tend to hurt or recapulate as to how he has been victimized. It is the institutionalised victimization which is found to be more stressful and aching. When an evidence is refused by the courts or the legal rights are refused due to the concocted evidence, he suffers from secondary victimization. Until hell freezes the other agencies, such as the hospitals add on to the miseries by not providing immediate medical treatment until the matter is first reported to the police. This act not only delays the first - aid to the victim but also intensifies the woes of the victim.

The society surrounding the victim makes him liable for the wrong that has been committed rather than expressing sympathy and assistance, the victim is often looked down upon, whereas the wrongdoer is aided and abetted. The victims of joint violence carry the unpleasant ordeal till the end of their lives. The instances of crime haunt them like phantoms of the past. Thus, affecting the lives of family members and their progenies.

Curative justice system

In the recent times, penology approaches have undergone a change. Concept of restorative system, has become the epicentre for the dispensation of criminal justice system. This system aims to strike a balance between the punishment awarded and the restoration of the victim's rights. The key feature of this new system is 'Reparation or the Compensatory relief' to the crime victim (s). The main purpose of restorative systems is to bring back the peace amongst the members of the society and to co - exist in synchronization with the conflicting interests that exist in the society.

The concept of restorative system is well - knitted around the four major notions, namely: 'Restoration' which implies that the victim is reinstated in the society by communities' efforts. It lays equal importance on the rehabilitation of both the offender and the victim; 'Accountability' further brings a comforting effect on the victim when the accused admits his guilt; 'Community Protection and Skill development' adds colours into the life of the victim by helping him to forget the past and re - live his life by engaging into productive activities such as vocational training which tends to polish the skills and provide financial support so that the victim can engage into rehabilitate and earn a living.

Indian position with respect to Crime victims

The word 'victim' has been added in the Code of Criminal procedure by way of 2009 amendment which clearly indicates that the justice system prior to this mainly focussed on punishing the wrongdoer without much consideration to the rights of the victims. It has been observed in the statute books, that the rights of the accused person/ prisoners were very well defined and adhered to but very minimal was done to take charge of the rights of the victim (s). It is only after

public interest litigation filed by the public - spirited persons for compensatory reliefs to the victims, that the attention of the court (s) was drawn towards the rights of the victims and necessary reliefs to restorative justice.

Justice V. R. Krishna Iyer stated on 'double trouble of victim (s) of crime', that, "the criminal justice system in India is not victim oriented, one cannot measure their sufferings, which are most often neglected or unnoticed. Although the justice system aims to penalise the accused but the by - product that is the victim is unkempt."

Time and again, the Apex court has recapped the need to treat the person accused of crime as human being whether he is a undertrial prisoner or a detenu. Imprisonment in no circumstance can curtail his fundamental right to live life as guaranteed by the Constitution of India. This implies that he cannot be stripped off his right to freedom (s), whereas in contra to the plight of the victims, no such concern is shown and they are left at the mercy of the monetary relief, if any, awarded.

Concept of compensation and related provisions

One of the basic principles under the Law of Torts is '*Ubi jus, ibi remedium*' which means where there is a right, there is a remedy. Thus the duty lies onto the courts to provide redressal mechanisms to the victims of crime. 'Compensation' is one of the significant remedial measure which amends all the loss or injury that is caused. The term 'compensation' means a financial help which is provided to the victim to make good of losses that the victim has incurred. These losses include any injury or any financial loss in terms of property etc. This implies that the whole objective is to help the victim or their legal representatives of the deceased, so that they can restore the loss that they have incurred person have incurred. Manu has said that 'he who causes damage to another, shall be responsible to replace or repair the damage that has been so caused'. Further, it can be said that it is an explanation to the retributive theory of criminal system. Compensation is not a means to penalize the delinquent rather it is also a way by which the society reinstates the determination and self - confidence on the victim (s) which has been lost due to the crime that has been committed against the victim.

Rights of the victims has been recognised and has been made explicitly available by way of various legislative framework. The Apex court has by way of judicial pronouncements provided compensatory reliefs in the light of rights which are fundamental in nature and the state owes a duty to provide such relief (s). The compensatory reliefs can be traced back to the Code of Criminal Procedure, Motor Vehicle's Act, 1988 which encompasses compensation provisions related to the victim.

The 42nd Report of the 5th Law Commission, has dealt with the victims of crime. The report highlighted the three basic pattern to compensate the wrong done, *firstly* state should provide compensation, *secondly* compensation to be paid by the offender and *lastly* duty should be imposed to reinstate the damage or injury caused to the victim.

The Hon'ble Supreme Court has rightly observed in the case of *Hari Krishan and Anr. v. Sukhbir Singh*,² that 'the power of the courts to award compensation is not a subtraction to the other punishments rather it is an accession to it. By way of awarding compensation, the courts not only take cognizance of the offence and punish the offender but also make good of all the loss that the victim has incurred'.

By virtue of Section 357 sub - clause (1) and (3) of the Code of Criminal Procedure, the trial court has been empowered to award compensation for the damage or loss caused due to death or loss of any property etc. The court can appropriate the whole or any part of the fine imposed in the form of compensation to be paid by the offender to the victim. The other courts such as the Appellate and the revisional courts have been vested with the similar power to award compensation.

In addition, sub - clause (3) empowers the court to order payment of compensation, even where no fine has been imposed by the court on the offender. While awarding compensation, it is the duty of the court to take note of any amount paid by way of compensation under the said section.³

It is noteworthy to mention that, by the Amendment Act of 2008 'Victim Compensation Scheme' has been introduced, which successfully came into force on December 31st, 2009. The 154th Law Commission Report has recommended, the addition of Section 357A. The main purpose behind this section was to empower the courts, to give directions to the state (s) to provide compensatory relief to the victim in the cases where the relief was inadequate under the section 357 or in the cases where wrongdoer is not been identified or could not be traced or where trial is yet to commence, and it is necessary to rehabilitate the victim. The state owes a duty towards its citizens to provide not only justice to the victim but also proper rehabilitation. By filling of FIR's, conducting investigation and beginning the trial process, the State does not fulfil its entire duty towards its citizens specially the victims of crime. The state should ensure monetary relief that is compensation and should take rehabilitative measures for the victims who hold genuine expectations from the State, to punish and compensate.⁴

In the case of *Sarwan Singh v. State of Punjab*⁵, the Hon'ble Supreme Court has laid down the various factors that the courts should take an audience to, while awarding compensatory relief to the victim (s). These necessary factors include the offender (s) capacity to pay, the nature of the injury or loss that has been caused, the consequence of the crime on the family of the victim or the employment or any other financial loss and the proximity relation between the victim and the offender. Further the court stated that every case should be adjudicated on the base of the facts and circumstances before it, emphasis should be laid on the balance of convenience and a reasonable compensation.

The Apex Court in the case of *Bhim Singh v. State of J&K*.⁶, the state was ordered to recompensate a sum of Rupees Fifty thousand to the victim, who's legal and constitutional right to attend assembly meeting was obstructed maliciously and intentionally. Similarly, in the case of *Bodhisatva Gautam v. Subhra Chakraborty*⁷, the court of law has observed that the award of interim compensation is justified even at the stage where the person is yet to be convicted.

In the case of *SAHELI, A Women's Resources v. Commissioner of Police, Delhi*⁸, the Apex Court directed the Delhi Administration to pay Rupees seventy - five thousand as compensation to the mother of the deceased nine yr. old child, who had succumbed to injuries and had later died due to the bashing by the police officer who was interrogating the child for an offence. In the case of *D. K. Basu v. State of West Bengal*⁹, the Apex Court held that 'sometimes award of monetary compensation is the only effective and apt remedy for the rehabilitation or for the redressal of the rights violated'.

Section 357B and 357C, have been inserted by the Act of 13 of 2013, which provides for compulsory compensation in addition to fine only under certain sections that is section 326A or Section 376D of the Indian Penal Code whereas section 357C, casts duty on the hospitals whether private or government, to make available all the first - aid to the victims of offence under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, for free of cost.

Section 5 of the *Probation of Offenders Act*, also lays down the provision to provide compensatory reliefs to the victim (s) in cases where the court orders the release of the offender.

Recommendations of Malimath Committee on Victims of Crime

The committee by way of its report has recommended that the right to appeal should be available to both the parties that is victim and the accused. Right to appeal should not only be limited to the victim. It is important to highlight that by the Act 5 of 2009, section 372 of Chapter XXIX has now been amended. This amended provision enables victim to file an appeal without the consent of the prosecution in the cases where inadequate sentence has been passed or that compensation awarded, is inadequate. The amendment in 2008, has marked the beginning of recognition of the rights of crime victims. The criminal justice system has now adopted a victim centric approach where the system not only aims to punish the person found guilty but also to provide adequate compensation to the victim. In - contra to the ancient times every individual was expected to act as per the religious dictates or the Dharma. The main aim has been to punish the person found guilty of crime. Compensation, since those times have been paid to mitigate the damage caused. It has always been ordered to be paid not as an

² (1998) 4 SCC 551

³ Mangilal v. State of M.P., 2004 (1) Crimes 177

⁴ Abdul Rashid v. State of Odisha & Ors., (2014) 1 ILR-CUT-202

⁵ AIR 2000 SC 362

⁶ AIR 1986 SC 498

⁷ AIR 1996 SC 922

⁸ AIR 1990 SC 513

⁹ AIR 1997 SC 610

ancillary to the sentence but in addition to it which is not sufficient to meet the ends of justice.

The courts play a very important role in the administration of justice. It is important to take into consideration all the factors while awarding sentence. The victims of crime need help and support. It is very important to pull them out of the physical, mental and psychological trauma. It is the duty of the policy - makers to formulate laws which provide relief and speedy justice to the victims.

It has been rightly observed in the case of *Saraswate Parabhai v. Grid Corp. of Orissa*¹⁰, that 'Justice requires that compensation awarded should be equal in value, even though it is not alike in kind. The purpose of providing compensation is to reinstate the victim just as he was before the occurrence of crime'. Speaking more on quantum of punishment and compensation, the court held there is no straightjacket formula to calculate the damage caused or to measure the worth of human life. Balance of convenience should always be paid heed to'.

¹⁰ AIR 2000 Ori 13