

Victimology in the Penal Justice System with Special Reference to Women and Children

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Abstract: *The term victim in general parlance refers to all those who experience injury, loss or hardship due to any cause and one of such causes maybe crime. Therefore, victimology may be defined as a study of people who experience injury or hardship due to any cause. It involves study of victim characteristics and maybe called victim profiling'. Victimology recognises two types of victims: first type consists of direct victims i.e. those who are alive and suffering on account of the harm inflicted by the accused while committing the crime and second type comprises of indirect victims who are dependants of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner. A victim of crime cannot be a forgotten person 'in a criminal justice system. It is he who has suffered the most. Victimology is the science of study of victimization and relation of victim and offender and the interaction between victim and criminal justice system. The present research paper will deal with the most vulnerable class of the society, i.e. children and women.*

Keywords: Grant of compensation, victim participation, restorative justice

1. Introduction

Crime is a product of society, social conditions and a product of situations. No one is born criminal. "Every saint has a past and every sinner has a future," goes a popular saying. Hindu Jurisprudence contemplates penance and meditation for criminal to have both prayaschita and reformation. Every individual including criminal has got a divine spark and what is required on our part is to kindle and rekindle it to enable the society to redeem and, to reclaim him and to restore and rehabilitate him in society as a useful and productive human being. Purpose of punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing offence is made to realize his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. [1] Modern trend of punishment leans more in favour of a humanizing treatment and rehabilitation of the convict. Thus the whole emphasis in criminal justice system has been concerned with the criminal and social reaction to crime. Victim, the most important agent of criminal justice has by and large been ignored by the system. It is only in the middle of twentieth century that criminal justice has started responding to victims of crime and concept of victimology gained rightful place in the working of penal system. Even now much is to be done in this respect but a beginning has been made and hopefully victim of crime will get must deserved justice in the future.

In this context the focus of this study was on restoration of the victims of crime and not only of the offenders. Victimology may be defined as the scientific study of victimization, including the relationships between victims and offenders, the interactions between the victims and the criminal justice system, that is, the police and courts, and correctional officials.

In a narrow sense, victimology is empirical, factual study of victims of crime and as such is closely related to criminology and thus maybe regarded as a part of the general problem of crime. IN broader sense, victimology is the entire body of knowledge regarding victims, victimization and the efforts of society to perverse the rights

of the victim. Hence, it is composed of knowledge drawn from such fields as criminology, law, medicine, psychology, social work, politics, education and public administration. [2]

As restorative justice is a process through which remorseful offenders accept responsibility for their misconduct to those injured and to the community that in response allows the reintegration of the offender into the community. The emphasis is on restoration: restoration of the offender in terms of his or her self-respect, restoration of the relationship between offender and victims, as well as restoration of both offenders and victims, with in the community. Through its various techniques like victim-offender mediation, community participation, family group conferencing, victim assistance programmes etc., and most importantly the restitution which includes monetary compensation for the victims of crime, the movement of restorative justice is getting popular day by day. Our judiciary has also realized that the need of hour is to listen to the victims and provide restorative justice to them, as rightly pointed out by honourable Apex Court in State of Gujarat v. Hon'ble High Court of Gujarat [3] "One area which is totally overlooked is the plight of the victims. It is a recent trend in sentencing policy to listen to the wailing victims. Rehabilitation of the prisoner need not be by closing eyes towards the suffering victims of offence". It was further stated that a glimpse at the field of victimology reveals two types of victims viz direct and indirect. Direct are those who are alive and suffering as a result of the harm inflicted by the offender and second type comprises of indirect victims who are dependants of direct victims who undergo suffering due to deprivation of their bread winner or valuables. Restorative and reparative theories have developed from aforesaid thinking.

Restorative and reparative theories are not theories of punishment. Sentences should move from punishment of offender towards restitution and reparation aimed at restoring the harm done. Restorative theories are victim centred. In some versions they encompass the notion of reparation to the community for effects of crime, which include less resort to custody, community based sanctions requiring offenders to work in order to compensate victims, support and counselling for offenders to reintegrate them

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into community. Such theories therefore tend to act on a behavioural premise is that compensation for victims should be recognized as more important than notions of just punishment on behalf of the state. Court recognized that legal systems based on restorative rationale are rare. It further stated that there is increasing tendency to insert victim oriented measures such as compensation orders into sentencing systems structured to impose punishment’.

Thus Supreme Court as the custodian of rights of citizens very well recognized the plight of victims of crime in plethora of cases like *Khatra v. State of Bihar*, [4] *Rudal Shah v. State of Bihar*, [5] *Nilabati Bahera v. State of Orissa*[6], *Smt. Dhanno v. U.O.I.* [7] *Parminder Kaur v. State of Punjab and others*, [8] *Delhi Domestic Working Women’s Forum v. U.O.I.* [9] *Bodhisathwa Gautam v. Subhra Chakroborty*, [10] *Bodhisathwa Gautam v. Subhra Chakroborty*, [11] *Vishaka v. State of Rajasthan*, [12] and awarded remedy by way of monetary compensation under Article 14, 21, 32 of the Constitution and under sections 357,358,359,237,250 of Criminal Procedure Code in cases like *Sarwan Singh v. State of Punjab* [13] *Hari Kishan and State of Haryana v. Sukhbir Singh* [14] *State of Gujarat v. Hon’ble High Court of Gujarat*, [15] *Kanwar Pal Singh Gill v. State (Admn. Of U.T. Chd.) through Secretary*. [16]

Supreme Court urged that subordinate judiciary should also use the existing provisions under procedural laws specially section 357 of Criminal Procedure Code liberally. Of late now subordinate judiciary has also been awakened and now even High Courts are following the directions of Supreme Court in this regard. This is really an appreciable change in the approach of subordinate judiciary in this regard which has been discussed in detail in the previous chapters. Section 357-A of Criminal Procedure Code speaks for Victim Compensation Scheme. [17] *In Re: Justice to Victims of Crime Court on its Own Motion v. Union of India, State of Punjab, Haryana and U.T. Chandigarh*, [18] *Punjab and Haryana High Court* has observed that no State has framed Victim Compensation Policy till date and gives directions to the State of Punjab, Haryana and U.T. Chandigarh to formulate Victim Compensation Policy. Court further observed that it is appropriate to draw the attention of all concerned to the need to remedy a serious flaw in the administration of criminal justice, namely failure of justice to victims, particularly when crime goes unpunished. Law has to keep pace with the changing needs of the society in the light of national and international developments. Article 21 of the Constitution guarantees ‘right to life’, which includes protection of life and liberty of all members of the society. Vigilantism as a phenomenon is on a rise in our society. This is dangerous and can pose serious threat to the rule of law and peace in society. However, the desire for retribution leading to the victims taking ‘law in their own hands’ can be effectively checked only where the victims perceive that the criminal justice system will assure them justice and protection. Referring to the need to check ‘vigilantism’ by the victims of crime, frustrated by the feeling that they will not get justice in the system, it was observed by this court that this cannot be allowed in a civilized society government by ‘Rule of Law’, whatever be the notion of the accused. If this is allowed, no person accused of a crime may have an opportunity to prove his

innocence before the Court and the system of punishment on proof of guilt, in a fair trial, will become meaningless and will lead to anarchy. It is only the ‘Rule of law’ that can strike the right balance between the degree of retribution and the harm caused or crime committed. Where individuals take the retribution decision in their own hands, it could trigger a desire for further retribution in all those sanctioned excessively or wrongfully, which could lead to a vicious circle that can easily spiral out of control. The result would be dangerous blood feuds. Such vigilantism’ is also a reflection of legitimacy of the State as a whole. Only when individuals respect the criminal justice system and its legitimacy, will they continue to obey the law themselves.

The courts cannot withhold benefit reasonable doubt on the ground that acquittal will have adverse reaction in society or amongst members of the society who believe the accused to be guilty. Requirement of proof beyond reasonable doubt is a requirement of human right to ensure that an innocent person is not punished. [19]

However, the courts cannot remain oblivious to the dangers of unmerited acquittals either, which may result in a breakdown of justice system and lead to cynical disregard of law. [20] Thus there may be cases where the crime goes unpunished. How a victim is to be given justice in such situations is the question for consideration. However unfortunately, our criminal justice delivery system bears a big question mark. There are several lacunae in the investigation process, which seriously hamper the prosecution process, leading to insufficiency of material to prosecute effectively. Only 30 to 35 per cent of all criminal cases end in conviction, while 90 to 95 per cent of matters involving heinous offences end in acquittal.²⁰ And then there are the other serious handicaps such as long delay in disposal of criminal trial which contribute to the frustration in mind of the victims.

This is bound to create a feeling of insecurity in the mind of sufferers of crime as well as kith and kin of those whose life itself is lost in the crime. The kith and kin of the deceased are also victims of the crime. They have no means of solace if the criminal is not apprehended or punished.

The situation being unsatisfactory in this regard, various steps have been suggested by experts, which include improvement in quality and integrity of the personnel dealing with investigation and prosecution, making use of advances in technology and providing adequate infrastructure.

May be, in spite of best efforts, the State fails in apprehending and punishing the guilty but that does not prevent the state from taking such steps as may reassure and protect the victims of crime. Should justice to the victims have to wait to get justice till such time that the handicaps in the system which result in large scale acquittals of guilty, are removed? It can be a long and seemingly endless wait. The need to address cry of victims of crime, for whom the Constitution in its Preamble holds out a guarantee for justice is paramount [21]t. How can the tear of the victim be wiped off when the system itself is helpless to punish the guilty for want of collection of evidence or for want of creating an

environment in which witnesses can fearless present the truth before the Court? Justice to the victim has to be ensured irrespective of whether or not the criminal is punished.

The victims have right to get justice to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the state in a society governed by Rule of law. But if the State fails in discharging this responsibility, the State must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated.

Right of access to justice under Article 39-A and principle of fair trial mandate right to legal aid to the victim of the crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family and in appropriate cases, rehabilitation measures including monetary compensation. It is a paradox that victim of a road accident gets compensation under no fault theory, but the victim of crime does not get any compensation, expert in some cases where the accused is held guilty, which does not happen in a large percentage of cases.

Though a provision has been made for compensation to victims under section 357 Criminal Procedure Code, there are several inherent limitations. The said provision can be invoked only upon conviction, that too at the discretion of the judge and subject to financial capacity to pay by the accused. The long-time taken in disposal of the criminal case is another handicap for bringing justice to the victims who need immediate relief, and cannot wait for conviction, which could take decades. The grant of compensation under the said provision depends upon financial capacity of the accused to compensate, for which the evidence is rarely collected. Further, victims are often unable to make a representation before the Court for want of legal aid or otherwise. This is perhaps why even on conviction this provision is rarely pressed into service by the Courts. Rate of conviction being quite low, inter-alia, for competence of investigation, apathy of witnesses or strict standard of proof required to ensure that innocent is not punished, the said provision is hardly adequate to address to need of victims.

Further, our procedural criminal laws have been significantly amended. In Criminal Procedure Code a new Chapter XXIA [22] has been added which deals with plea-bargaining and talks about mutually satisfactory disposition, payment of compensation to the victim. Hence it brings victim and accused on the same negotiating table for the first time in the history of Indian Criminal law. It is certainly a welcome step. Section 320 of the Criminal Procedure Code which deals with compounding of offences was recently amended [23] which gives more bargaining powers to the victims to compound the offence and get compensation. [24] Recently the Supreme Court of India compounded the offence of rape and awarded compensation of Rs.50,000 to the victim because the offence was committed 29 years ago [25]. The Motor Vehicle Act, 1988 which is a social welfare legislation under which the compensation is provided by way of award to the people who sustain bodily injuries or get killed in the vehicular accident. Those who sustain

injuries or whose kith and kin are killed, necessarily to be provided such relief in short span of time and the procedural technicalities can't be allowed to defeat the just purpose of the Act, under which such compensation is to be paid to such claimants [26].

Under this Act victims of accidents are those who sustain bodily injuries causing either permanent or temporarily disability and the legal representatives of the deceased who dies as a result of it. Section 140, 161 and 166 of the Motor Vehicle Act, 1988 entitle a victim of motor accident to prefer a claim for compensation before a duly constituted Motor Accident Claims Tribunal. This Act also incorporated the principle of 'no fault liability' which is a laudable piece of social legislation.

Similarly, the Protection of Women from Domestic Violence Act, 2005 has been passed which talks about monetary relief, compensation order, protection order, and residence order for the women. National Human Rights Commission, National Commission for Women are leaving no stone unturned to provide compensation to the victims of crime along with making provisions for restoration and rehabilitation of the victims. Recently 'Revised Scheme for Relief and Rehabilitation of Victims of Rape, 2005' has been enacted by National Commission for Women. Law Commission of India is also playing a significant role in examining the existing laws and suggesting the needed amendments especially in case of victims of crime. Mali math Committee has suggested reforms in criminal justice system favouring victims of crime namely victim participation and recognition of rights of victims.

However, by taking a look at the progress done and milestones achieved by European countries in the field of restorative justice, India lags behind. Looking from that angle it can be concluded that in India concept of restorative justice is still at its initial stage. We have a long way to go. A lot of work is needed to be done to come near to them. Countries like U.S.A., U.K., France, Netherlands, Hungary, Canada, Australia, Switzerland etc. have made compensation schemes. France has a system of 'partie civile'. U.S.A. has established International Institute of Restorative Justice Practices wholly devoted to this cause. For the last decade International Institute of Restorative Justice Practices which grew out of Real Justice Paradigm has been developing a comprehensive framework for practice and theory that expands the restorative paradigm beyond criminal justice means it is involving academician and other professions also. International Institute of Restorative Justice Practices is working very successfully through its seminars, conferences, training, teaching thereby it is serving the victims of crime and ultimately humanity. India has yet to reach firstly to restorative justice and then to restorative justice practices.

India is not even implementing UN Declaration, 1985 properly which talks about constructive compensation claims in expeditious manner. Various UN Congresses particularly 11th UN Congress talked about the concept of restorative justice and member states recognized the importance of giving special attention to the need to protect witnesses and victims of crime. International Criminal Court has also incorporated the provisions regarding participation

of victims in trial, their protection and rehabilitation. Council of Europe and European Union also has called for state compensation for victims of violent crimes, but barring one or two exceptions nothing substantial has been done in this regard by our country.

2. Conclusion and Suggestion

A lot of work is needed to be done to give crime victim its well-deserved place in society and to ensure his effective restoration and rehabilitation. For this purpose, there are following suggestions: -

1) Amendment in Section 357 of Criminal Procedure Code: - Section 357 should be amended. An explanation should be inserted in it for the purpose of recording reasons for not awarding compensation, as it was suggested by Law Commission in its 42nd Report. At the time of sentencing the accused gives compensation i.e. rupees 25,000/- in case of bodily injury not resulting in death, rupees, 1 lakh in case of death should be awarded, as suggested by Law Commission in its 152nd Report. Parliament has not given effect to these recommendations of the Law Commission. Periodically the amount of compensation should be revised.

2) Grant of Compensation by Lower Courts: - Lower courts should also use the power to grant compensation under Section 357 of Criminal Procedure Code. Supreme Court has urged again and again that power to grant compensation is not ancillary but in addition to the other sentence [27]. As the Law Commission of India in its 42nd Report admitted that our courts not particularly liberal in utilizing the provisions such as section 357. They do not exercise their statutory powers under this section as freely and liberally as could be desired. Apex Court also failed to see any reasons for the courts in not awarding compensation even when the accused is in a position to pay it to the entitled persons. It also asserted that social justice demands that heavy fine be imposed in lieu of reduction of sentence to compensate a victim of crime. It is evident that fragmented legal framework providing for compensation by an offender to his victims for loss suffered or injury caused by commission of offence is inadequate but it is very sad that no heed has been paid to these suggestions by our Parliament. During my personal meetings with the judicial officers at the level of Magistracy, it was disclosed that liberal use of section 357 of Criminal Procedure Code and award of compensation under this section is talked with suspicion by the higher courts including Sessions Judges. So it is their sense of insecurity and fear which prevents them from using section 357 liberally. To prevent this fear psychosis in the Magistracy there is need for close interaction with the higher judiciary especially with regard to section 357 and section 357A so that Magistracy uses these sections as desired by the legislature and the Supreme Court.

3) Amendment in Section 360 Criminal Procedure Code: - Section 360 of Criminal Procedure Code which deals with order to release the accused on probation of good conduct or after admonition is silent on the issue of compensation. Like Section 5 of Probation of Offenders Act, 1958. Here also there should be provision that the court can require offenders to pay compensation and costs. Special reasons be recorded

for not awarding compensation in cases where the person is released on probation either under section 360 of Criminal Procedure Code or under section 5 of Probation of Offenders Act, 1958.

4) Amendment in Section 361 Criminal Procedure Code: - In Section 361 of Criminal Procedure Code, there can be a provision that special reasons are to be recorded in case compensation is not awarded under Section 357, along with clause.(a),(b) [28] i.e. a clause (c) can be inserted for the benefit of victims of crime.

5) Amount of Compensation: - Amount of compensation under Section 358 i.e. for persons groundlessly arrested is very less. Earlier it was just rupees hundred though now it has been increased to rupees thousand by Criminal Procedure Code(Amendment) Act, 2005 but still the amount is very less from the point of view of the suffering of the innocent victim. The limit of compensation of Rs. 1000 should be removed. Amount of compensation should be increased in Section.237 which deals with cases instituted under Section 199 (2) i.e. of prosecution of high dignitaries [29]. Under Section 237 (4) there is a provision of providing compensation if accusation is without reasonable cause. The court subject to its satisfaction and after recording reasons may order the compensation of the amount not exceeding 1000 rupees. It is suggested here that the limit of compensation should be removed. Let the Court decide itself depending upon the facts and circumstances of the case. So that there can be deterrent effect on the persons making frivolous complaints. Exemplary fine should be imposed keeping in view interest of society.

6) Reforms in Police Machinery: - It has been found that most of the problems which the victims faced are because of efficiency, incompetency and wide spread corruption in the police organization. Half the problems of victims will be solved if this organization is efficient and competent. Another important suggestion is the reforms in the Police machinery; old Police Act of 1861 has become redundant in the present scenario. Misuse and abuse of police has reduced it to the status of a mere tool in the hands of unscrupulous masters and in the process it has caused serious violations of the rights of the people as rightly observed by Hon'ble Apex Court in Parkash Singh and others v. Union of India and others [30]. Police training should be re-oriented, to bring in a change in the mind-set and attitude of people personnel in regard to investigations, so that they will recognize and respect human rights, and adopt thorough and scientific investigation methods.

Hence there is an immediate need to redefine the scope and functions of police, to sensitize police towards victims and provide its accountability to the law of the land, and implement the core recommendations of the National Police Commission to protect the victims of crime from police atrocities. Investigators often do not know how to gather the facts so they can be used in court, including in cases of crimes of sexual violence and on dealing with traumatized persons. Investigating police should be separated from the law and order police. The recruitment standard of investigating police should be different. Minimum law graduate should be made eligible for investigating police

officer. Training of these officers should have the emphasis to sensitize them to the social problems and values of individual life and liberty. These officers should be specially trained to handle the cases in which victims are women or children. Periodical in service training be provided to update them in this respect. The number of female personnel for investigation of offences against women and children should be increased.

7) Victim Participation: - Criminal Procedure Code assigns a limited role to a victim of crime to participate in the criminal justice system. A crime victim by virtue of section 190 of the Code may directly approach the magistrate concerned with his complaint without going to the police for redress. Thereafter a crime victim does not have any significant role to play in the criminal process. [31] Unless investigating officer considers it necessary the crime victim has no significant role to play in investigation. The Criminal Procedure Code in no way requires magistrate to hear the victim/complainant/ informant. Even during prosecution, a crime victim does not have much say in the proceedings. Existing law pre-supposes that the prosecutor appointed by the State is a proper authority to plead on behalf of the accused on bail. The Code allows public prosecutor to withdraw the case from prosecution at any time before judgment is pronounced. [32] A victim has no role to play here too. Where the case is withdrawn, the victim should be adequately compensated as a mandatory requirement from withdrawal from prosecution. It is suggested that this drawback should be taken into account by the legislature. Even International Criminal Court provides for victim participation, reparation, rehabilitation, protection to victims and witnesses. [33] Guidance can be taken from ICC statute for making necessary reforms.

8) Restorative Justice: - In India Restorative Justice Practices are in initial stages at present. In order to implement the concept of Restorative Justice in its real sense following steps may be considered; -

- a) Awareness: - There is need of awareness regarding Restorative Justice. For this purpose, print and electronic media can help, seminars, interactions can be held to educate the people about restorative justice and plight of victims of crime. Research projects can be conducted at university level so that more and more people can join this movement. Social workers, NGO's can play a vital role in this regard. Restorative Justice can be included as a subject in curriculum. The concept should be reproduced in local language so that common people can understand the same.
- b) Special Training to Judicial Officers, Law Teachers: - Specialized training should be provided to Judicial officers, lawyers, prosecutors and law teachers to sensitize them towards the need of victims of crime.
- c) Participation at International Level: -India's presence is strongly missing at International Conferences, seminars regarding restorative justice which is unfortunate. Government should look into this matter. Firstly, if there is participation at International level then only we can think of this movement of restorative justice gaining ground at National level. Western countries are far ahead but still we can make a humble beginning. It is better to be late than never.

9) Compensation at the Earliest: - Of the present system of courts, order of payment of compensation to the victim by accused requires order of conviction and sentence as a precondition. The victim is needed to be compensated at the earliest, since it is the obligation of the state to protect the individual interests, State should be made to pay immediate compensation to the victim without the burden of any additional civil suit to be filed by the victim. Later on if the accused is convicted the compensation awarded to the victim may be recovered fully or partly from the convict as per his/her capacity.

10) Speedy Disposal: - There should be speedy disposal of cases. In our system, justice is always just one hearing away. So it comes very late and for some it never comes because when it comes they are no more. The lack of judges is not the sole reason for delays. It is the antiquated procedures, inefficient processes and most significantly, the apathy and lack of accountability of those who make up the criminal justice system which rather multiplies the woes of the unfortunate who comes in contact with it.

11) Effective Implementation:- In fact the problem lies in implementation. There is no lack of proposals, Committees, Commissions, Judgments, Guidelines, Draft Bills, Suggestions, Examples. Bureaucratic indifference and lack of accountability, sincerity of those charged with operationalising these judgments has ensured that our jails continue to be filled up by prisoners whose cases have dragged on much beyond the permissible limits of a just system. Holistic reforms entails that the police, the prosecution, the prisons department and indeed the judiciary, introspect and review their own processes before sweeping changes from outside to rectify ills in the system, caused by their own malfunctioning. Additionally, those responsible for nourishing the system the executive and the legislature need to fulfil their part as justice delayed is justice denied.

12) Active Participation of All: - "It must be ensured that legal instruments maximize the benefits for our people and nation" [34] Active participation of all stakeholders such as political leaders, civil services, the judiciary, the media, societal transformers and citizens is required to implement the existing provisions in favour of victims of crime besides enacting new provisions.

13) e-Judiciary: - "We should assess the potential of e-judiciary. Computerization of the Supreme Court, High Courts and Subordinate Courts is essential for the development of e-judiciary system. From the time of registration to the judgment, the entire processing must take place electronically. This will enable easy research, retrieval, grouping, information, processing and disposal of cases in a transparent manner and enable quicker disposal of cases. At any time, the complainant should be able to find out the status of the case, which court, what subject will be dealt with by the court during a particular hearing so that the litigant is fully prepared for the case. The judges can also see the progress of the case. The number of adjournment sought, whether the grounds are trivial or serious and so on. In certain courts e-judiciary system has already started functioning; it has to be extended to all the courts in the country up to district level." [35] The Government has

approved connecting all the 15,000 courts from District Courts to the Supreme Court – through a wide area network. This is a very important step and it should be completed through a mission mode and time-based operation.

14) Two Work Shifts: - Judiciary needs to manage its current resources of men, money and material in a better way with less time and effort. Two work shifts should be introduced – morning and evening. To cope with the emergent situation of meeting the requirement of two shifts, the retired judicial officers and retired subordinate staff can be engaged as a temporary measure. Pro-tem presiding and prosecuting officers along with skilled staff should be recruited. “In U.S. over 90% cases are settled in the lawyers’ chambers by direct negotiation. Pro-tem judges, prosecutors, employees keep the door of justice open in case regular staff are on leave. The judiciary helps itself in mobilizing its own finances.” [36]

15) Witness Protection Laws: - It is therefore suggested that witness protection laws should be enacted so that no one can be pressurized to make false statements. Severe punishment and heavy fine should be imposed for hostile witnesses as Supreme Court has set an example in Best Bakery case. Modern state is welfare state and it is the duty of the State to remove poverty, illiteracy, unemployment so that citizens are not forced to do unlawful activities for the sake of money. Witness plays an important role in a trial. If there is no witness how we can think of conviction of the criminals and ultimately victims of crime won’t be able to get justice. In November 2002, the Nation Institute of Criminology and Forensic Science and the Central Bureau of Investigation organized a two-day seminar jointly. During the seminar there was a general consensus that many witnesses turn hostile and retract their statement as they are influenced, intimidated or pressurized, resulting in failure of many cases in the court. In his valedictory address, Mr. Justice Arjit, Pasayar, Judge, Supreme Court of India, remarked, “Unfortunately we do not have a witness protection system which results in failure of several cases in the courts. The participants of the seminar were of the view that there should be a proper law to protect the witnesses and the law in this regard should be structured on the pattern of similar laws that exist in many developed countries. Hence this aspect should be taken into account by the legislature.

16) Compensation to Victims of Sexual Assault- As suggested by the Supreme Court in Delhi Domestic Working Women’s Forum, [37] Criminal Injuries Compensation Board be constituted for the award of compensation for victims of sexual assault, whether or not a conviction has taken place. A comprehensive scheme should be provided for the purpose in consultation with the All India National Women Commission and various All India Woman Organizations. The budget allocation for the welfare of rape victims has been slashed by nearly 85% from the previous financial year. A comparison of budget estimates over the year shows that the allocation for the relief and rehabilitation of rape victims has fallen from Rs.53.30crore in the 2009-10 Union Budget to Rs. 36.2 crore in 2010-11 to a mere Rs.7.5 crore in the 2011-12 budget outlays. [38]

17) Rape Crisis Centres: - Many survivors of rape feel that the criminal justice system does not meet their needs; the

woman often feels as victimized by the police and court processes as she does by the initial act of violence. Sometimes women are even blamed for their own attacks. In response to the plight of these women the first Rape Crisis Centre (RCC) was opened in 1976 in London, and there are now many such centres in Britain. Female survivors of rape or other assaults can attend rape crisis centres. These centres operate by means of telephone ‘hotline’ or drop-in centres. They allow woman to make their own decisions about, e.g., reporting to the police or visiting a psychiatrist or other health professional. The centres offer emotional support as well as legal and medical information. Such type of Rape Crisis Centres should be established by the Indian government to help the victims of rape. In number of cases Supreme Court directed to give protection and assistance to the victims of rape. In Landmark judgment of the apex court in this regard is Delhi Domestic Working Women’s Forum v. Union of India and Ors, [39] in which Supreme Court, highlighted the ordeals of victims of rape and defects in the present criminal law system vis-à-vis victims of rape and outlined a set of broad parameters to assist them. One of them is that the complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. 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 the court, but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, counselling through medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant’s interests in the police station, represents her till the end of the case. [40]

18) Assistance to Victims and Witnesses: -The system should provide for protection of victims and witnesses being harassed by perpetrators. In addition, prosecutors may establish “vertical prosecution units,” to maintain caseloads of one type of victimisation from the initial filing of charge sheets through disposition. This relatively new approach to administering justice would streamline the criminal justice system, for the victims.

19) Facilitating Victim Participation: Ordinarily the limited resources and overwhelming workload motivate the prosecutors to dispose of cases early through various methods. Such a tendency often comes into direct conflict with the needs and desires of the individual victims. The law should provide for consultation with victims at this stage for their psychological satisfaction.

20) Role of the Judiciary: Judges can provide essential protections to victims. e.g. when a case involves a child, to make the courtroom less intimidating to him the judge can pass appropriate orders like victim could testify through close circuit television or the defence counsel should lower himself to the child’s eye level and should keep his voice low. In case of child victim’s cross examination should be through questions handed over by the defence to the judge. Judge can also expedite trials so as not to further victimise the crime victim due to additional delays during an already difficult process specially in cases of sexual abuse of

children. Judge can deny such motion by the defence which is clearly aimed at offending the victims. It is important that while assessing appropriate sentences the judge should include information regarding the impact of the crime on the victim. Such information should be furnished through the prosecutor-based victim assistance programme, the probation officer, or another official source, and could be referred to as a Victim Impact Statement. It is often the only comprehensive assessment of the injuries caused by the offender available to the judge; it is crucial that this information be conveyed to the sentencing court.

21) Allied Professionals: - In addition to the core criminal justice system professionals discussed above, various allied professionals have a significant impact on the criminal justice system response to needs and expectations of the victims specially women and child victims. These include, but are not limited to:

- Medical personnel: Doctors, nurses and other hospital personnel provide tremendous assistance to victims of crime against women and children. In addition to police officers, medical personnel, are commonly the first ones to come into contact with crime victims who have experienced some form of injury. In their roles, they are uniquely suited to make careful documentation of the condition of the victim and objectively report these findings.
- The immediate and appropriate treatment of the victim is paramount however, appropriate documentation in the course of treatment, also provides useful information for prosecutors and victims in forwarding legal actions against the perpetrators. Of particular importance is the use of appropriate evidentiary collection kits to gather information in sexual assault cases for later evidentiary use at trial. This needs to be done sensitively, but competently, so that the trauma of the rape examination is minimised and evidence is accurately collected. Two finger test, in case of medical examination of rape victim is no longer admissible in court which is a welcome step.
- Mental Health Service Providers: Mental health professionals are often involved in providing testimony at trial regarding the impact of crime on victims. In addition to treating victims, mental health professionals are expert in the evaluation of the effect of trauma on victims. They are useful specially in cases of sexual abuse of women. The courts heavily rely upon these allied professionals to make determinations regarding the damages and injuries incurred by the victims. Thus their opinions and services have important ramifications for the investigation and referral by law enforcement, the handling of cases in prosecutor's office, and sentences handed down by judges.

Child Protection Professionals: Child protection officials have a significant role in cases involving child abuse and neglect. It is important that the child protection official cooperate in developing the best investigation report possible for presentation at trial. As almost all victims of crime may require some medical, mental health or other social services intervention, the coordination of these efforts within and complimentary to the criminal justice system is crucial to providing the most victim-centred, victim-oriented criminal justice system response possible.

Some of the suggestions given may involve financial liabilities on the part of the State and States may not be in a position to sponsor all programmes at one go. It is therefore further submitted that the suggestions can be implemented in phased manner and a liberal central assistance be provided to make these programmes successful.

References

- [1] Karamjit Singh V. State AIR 2000 SC 3457
- [2] Randhawa, Gurpreet Singh, Victimology and Compensatory Jurisprudence, 1st Ed., Central Law Publications, Allahabad, 2011, p. 42
- [3] AIR 1998 SC 3164
- [4] (1981) 2 SCC 493 at p.504
- [5] AIR 1983 SC 1086
- [6] AIR 1993 SC 1960
- [7] 2002 (2) Criminal Court Cases 141 (Delhi)
- [8] (2005) 3 Criminal Court Cases 522 (S.C.)
- [9] (1995) 1 SCC 14
- [10] (1996) 1 SCC 490
- [11] (1996) 1 SCC 490
- [12] AIR 1997 SC 3011
- [13] AIR 1978 SC 1525
- [14] AIR 1988 SC 2127
- [15] AIR 1988 SC 3164 Para 49
- [16] 2005 SCC (Cri) 1420
- [17] Inserted by the Criminal Procedure Code (Amendment) Act, 2008
- [18] CWP 6319 of 2008, still pending in Punjab and Haryana High Court, next date of hearing is 2nd May 2011
- [19] Kali Ram v. State of H.P., AIR 1973 SC 2773, Para 26 quoted in CWP 6319 of 2008, still pending in Punjab and Haryana High Court, next date of hearing is 2nd May 2011
- [20] Shivani Sahabaro Bobade v. State of Maharashtra, AIR 1973 SC 2622 quoted in CWP 6319 of 2008, still pending in Punjab and Haryana High Court, next date of hearing is 2nd May 2011
- [21] 'Judiciary and Training', (2004(7) SCC (J) 39, at page 43) quoted in CWP 6319 of 2008
- [22] Sections 265A-265L of the Criminal Procedure Code, 1973
- [23] By the Code of Criminal Procedure (Amendment) Act, 2008
- [24] Sections 335, 343, 344, 346, 379, 407, 411, 414, 417, 419, 421, 422, 423, 424, 428, 429, 430, 448, 451, 482, 483, 486 of the Indian Penal Code also becomes compoundable after the Code of Criminal Procedure (Amendment) Act, 2008
- [25] 24th Feb. 2011, The Indian Express News Paper
- [26] Oriental Insurance Co. v. Mrs. Zarifa, AIR 1995 J&K 81 at p.84
- [27] Balraj V. State of U.P. AIR 1995 SC 1935, Arjunan V. State of T.N. (1997) 2 Crimes 447 (Mad.)
- [28] S.361 (a) Where the court could have given benefits of probation to the accused under S.360 or S.5 of the Probation of Offenders Act, 1958 but has not done so or S.361 (b) A youthful offender has not been given benefits of Juvenile Justice (Care and Protection of Children) Act, 2000 or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

- [29] President, Vice President of India, Governor of the State or the Administrator of U.T.
- [30] (2006) 8 SCC 1, 2006 (9) SCALE 444
- [31] Vibhute, K.I.: Criminal Justice: A Human Rights Perspective of the Criminal Justice Process in India (Eastern Book Company) 2004, p.381
- [32] Section 321 of the Criminal Procedure Code, 1973. Proviso to Section 24 inserted by Criminal Procedure Code (Amendment) Act, 2008 gives victim a right to appoint counsel on his behalf. However even now counsel appointed by the victim is to assist the public prosecutor.
- [33] See Victim Protection under Statute of ICC Chapter III p.43
- [34] Dr.A.P.J. Abdul Kalam; The Hon'ble President of India 'Scope of Judiciary: Towards speedy dispensation of Justice.' Published in The Tribune 19 November, 2006 p.12
- [35] ibid
- [36] 'Quickening the pace of justice' Article by Santosh Singh Sahib published in The Tribune January 21, 2006
- [37] (1995) SCC 14; (1995) 1 SCJ 94
- [38] [http:// articles.timesofindia.indiatimes.com](http://articles.timesofindia.indiatimes.com)
- [39] (1995) 1 SCC 14
- [40] The Supreme Court also re-asserted these parameters in Bodhisattwa Gautam v. Miss Subhra Chakraborty AIR 1996 SC 922

