



THE PROTECTION OF VICTIM'S RIGHTS: A VERY FINE BUT COMPLEX JUDICIAL ENDEAVOUR

Shivendra Nath Pandey (Research Scholar)

Dr. Pradeep kumar (Supervisor),

Assistant professor, IIMT University, Meerut

Abstract:

Democracy and Development and human rights successful only if the government is able to provide justice. The main objective of criminal rules is to prevent and control crime protect the right of victims against criminal activity. This is also an important obligation of a state by constitution of India. In this world crime is a huge problem. The criminal action also affects the social order. If a person does an act which is prohibited by state or welfare society, is called culprit and the aggrieved party is known as victim. So, **victim is one who do nothing but suffer a lot by other wrong job.**

The term "VICTIMOLOGY" was coined way back in 1947 by a French lawyer, Benjamin Mendelsohn by combining a Latin word "VICTIMA" with the Greek word "LOGOS". To give a general understanding victimology is a, "study of crime from the perspective of the victim, who constitute persons suffering from injury or destruction by an act of another person/group of persons." The new dictionary of Hebrew Language cites the meaning of victim as a 'self-sacrificing individual', 'a person dead in an accident or in a public mishap', 'a victim of war', 'a victim of the liberation movements', 'the victim of an attack', 'a sufferer', 'the victim of a swindle', 'the victim of a daring and hazardous deed, performed voluntarily without thought of reward'. In broader sense a victim is 'a person who suffers by the fault of another or by his own fault'. The court is always considered to be the temple of justice. The court vindicates the rights of victims against any oppression. The term "court" is wider sense. The court protect the dignity of accused, witness, victims in the court proceedings. All the persons in judicial system play important role in the proceeding. Many people do not know what their rights are. That is why it is said that:

"Give every other human being every right that you claim for yourself."

- Robert Ingersoll

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Introduction:

As the court is an impartial entity. Judges should consider and protect the rights of all major parties involved in the judicial matter. Judges should provide necessary protection to victims. In those cases which involve children, some special arrangement such as allowing the victim to testify through closed-circuit system television. They can make the courtroom less intimidating to a child. The judge should expedite the trial to avoid additional delay during already difficult process. While addressing the weakness of judicial system the Justice **Krishan Iyer** said that; "**We should improve criminal judicial system.**"

In the case of **Rattan Singh v/s State of Punjab 1997**: The victims of the crime and other dependents of victims are not able attract the attention of law, is the major weakness of our jurisdiction and jurisprudence. While addressing any punishment OR compensation the judges should take consideration about the harm, loss that the victim dependents have suffered. The Apex Court and High Courts give due case and attention to ensure that people's faith in judicial process should not be shattered and victims' rights are not denied to them.

The Compensation relief to victim by court in various cases:

There are some Landmark cases with respect to the compensation some of them are given below:

(a) **In the leading case of Hari Kishan & State of Haryana v/s Sukhbir Singh & others AIR 1988¹ :**

The court upheld that they by way to compensation is paid should reasonable. The Reasonability depends upon the various facts and various circumstances of each case. The amount of compensation should be decided by taking into account the gravity of crime and justness should be lie in the ability to pay by the accused. If the accused are many then they can be asked in equal terms unless and until their capacity to pay varies considerably. The court give reasonable period of time for payment of compensation if necessary it can be done in installments.

- In the case of **Baalraj Singh v/s State of U.P. 1995²** the court said that compensation is addition to the sentence.
- In the case of **Rudhal Shah v/s State of Bihar 1983³** the High court directed the state to pay amount of Rs. 35000 to Rudal Shah who was kept in jail for 14years even after his acquittal. It was upheld that it was the violation of art. 21.
- In the case of **Bheem Singh v/s State of J & K 1988⁴** the Bheem Singh an MLA was arrested by the police only to prevent him to attend to legislative assembly. The Apex court directed the state to give amount of Rs. 50000 to Bheem Singh.
- In case of **Meeja Singh v/s SHO Police Station of Zila 1991⁵** the compensation of 25000 was paid by the state because the police illegally defended the son of petitioner.

¹ AIR 1997 CrLJ 2138

² AIR 1995 CrLJ 179

³ AIR 1983 CrLJ 275

⁴ AIR 1986 SCC 2196

⁵ AIR 1991 CrLJ 289/136

- In case of **Ravikant Patil v/s DG Police, State of Maharashtra 1991⁶** the compensation was given to the victim because he was taken with handcuffed to the court which was a clear violation of judgement of Supreme Court.

- In the leading case of **Prem Shanker Shukla v/s Delhi Administration 1980** the handcuffed accused demanded compensation.

- In the leading case of **Mrs. Cardeno v/s Union of India** the accused was arrested with the charge of misappropriation of some plastic ware and utensils worth Rs. 1500. But tortured like hard core criminal and so the Hon'ble court of the High Court gave compensation of Rs. 200000 to the Mrs. Cardino by the State.

- In leading case of **Nilaabali Behra v/s State of Orissa 1993⁷** where the son of the lady was arrested and next morning the body of the son was found lying down with several injuries on the railway track, the Apex Court awarded compensation of Rs. 150000 that to be paid by the State.

- On the matter of brutal use of force and misuse of authority by the police outside the police station the case of **Saheli v/s Commissioner of Police, Delhi 1990⁸** is landmark where the son of Kamlesh Kumari died because of the ill treatment of a SI of Delhi Police. The Hon'ble Apex Court directed the Delhi Administration to pay Rs. 75000.

- In the case of **Gudalure Cherian v/s Union of India⁹** Hon'ble Supreme Court first directed the whole matter to be investigated by the CBI afresh and after the completion of the investigation directed the government of U.P. to suspend the police official and medical officer who tried to save the accused but also they directed the state to pay Rs. 250000 to the victim of rape and Rs. 100000 to victims for other crimes.

- In the case of **Bodhisatva Gautam v/s Subhra Chkraborty AIR 1996¹⁰** the Apex Court invented the concept of interim compensation.

Held: When compensation schemes of various States and Union Territories were taken into account it became evidently clear that no uniformity is provided for the compensation to the victims of crime of rape. The practice of granting varying amounts ranging from Rs. 20,000/- to Rs. 10,00,000/- as compensation to the victims of rape requires introspection by all states and UT's. The Court suggested that the model followed in Goa in rape cases of granting a compensation up to Rs. 10,00,000/ can be considered as a model while formulating a uniform policy by the states and UT's. Undeniably, no sum of money can restore the women's dignity and confidence snatched away from her by committing the offence of rape or ease her trauma and grief, howsoever, it can be crucial in the aftermath of the crime.

⁶ AIR 1991 SCC 284

⁷ AIR 1993 CrLJ 3186

⁸ AIR 1990 CrLJ 1385

⁹ AIR 2015 SCC 335

¹⁰ AIR 1996 SCC 283

In the case of **Tekan Alias Tekram V/s State of MP 2016¹¹** the victim was physically disadvantaged and she was in a social disadvantaged stage. The accused exploited her maliciously with the garb of promised marriage. After waiting for many years the victim approached on the **National Commission for Women** and asked for relief amount and rehabilitation amount. It was considered that the victim needs special rehabilitation scheme. The court held that the woman will live in Nari Niketan, where important food, various clothes and a shelter and a monthly pension of Rs. 300/- throughout her life will be provided, for the rehabilitation program the state will incur Rs. 8000 to 10000 per month.

The court further said indisputably that No amount of money can restore the dignity and confidence that culprit took away from the victim. No amount of money can vanish the trauma and grief the victim has suffered. The woman had no support and no family member. She was all alone economically and emotionally. The state will make a fixed deposit of Rs. 1000000 and will give her 8000 per month till her life. The court also suggested that, All the state and union territories should make all endeavour to formulize uniform scheme with respect to rape/sexual exploitation and for the physically handicapped women they will make special arrangements.

- In the leading case of **State of Maharashtra v/s Christian Community Welfare Council of India¹²** in this case the court decided that the compensation can be recovered from guilty officer, if he had exceeded his lawful authority. They cannot escape the liability to compensate the heirs of the deceased victims.

- In the case of **Laxmi v/s Union of India 2014¹³** the Supreme court bench of Justice Mt. Iqbal and C. Nagappan stated that the state shall take the full responsibility of the treatment cost and rehabilitation amount of the victims of acid attack.

¹¹ AIR 2016 CrLJ 147

¹² Ibid., AIR 2004.

¹³ AIR 2014

In a case with respect to acid attack in Bihar, the two acid attack victim sisters was compensated with Rs. 13 Lakh. The compensation in acid attack has to main objectives.

- It can help the victim in Rehabilitation period.
- The state will give care about the medical came and will make somefuture arrangements to avoid these kind of attack in future.
- All private hospitals. of country will provide face treatment to acid attack victor The will include medicines and expensive Reconstruction Surgeries.

The Right to be listened in criminal proceedings:-

In the landmark case of **Vijay Walia v/s State of Maharashtra 1986¹⁴** the court upheld that the victim can partake is the criminal prosecution. The right to be heard implies a sight to be effectively respect day represented at the heaving of respective case.

The Right to Appeal by victim in various decisions:-

In the case of **PSR Sadhanatham v/s Arunach Alam¹⁵** it was stated that even a near relative of the victim can file special leave to appeal to the Apex court against the acquittal order of the accused and it was also held that if any party victim of the state has filed on appeal against the case then the later one will not court be entertained. But the final view with the superiority of victim of OR the state to appeal are not interdependent. The filing of an appeal by one cannot rob the other's right to appeal. A full Bench held the rights of victims and the right of the state apply in completely different spheres. they should not be placed in any hierarchy order. Even The High Court of Allahabad in case of **Ajay Misrav/s Rajiv Gupta AIR 2011¹⁶** stated that right to appeal given to a victim is more comprehensive and superior to that of the state. So, the victim should be given preference in filing of an appeal against acquitted.

The protection and safety of the victim in various cases:-

The Apex Court in the case of **Satyapal Anand v/s State of MP 2013¹⁷** highlighted the importance of Sect. 288A and stated that is me take of victim's protection and safety These should not be any disclosure about the identity of victim in sexual offenses like 376, 376A, 376B, 376D, 376E.

Sec. 228(3): This section states that there is not any statutory prohibition on courts themselves using victim's names in their judgements although the Apex Court consider this as a loopholes because of this the name of norm will come. in public domain.

¹⁴ AIR 1986 CrLJ

¹⁵ AIR 1980 SCC 856

¹⁶ AIR 2011

¹⁷ AIR 2013

In the landmark case of **Suresh v/s State of Haryana 2014¹⁸** many criminologists, penalogists reformers of criminal justice system has been stated that the crime does a significant harm to the social order so the needs and sights of victims of crime should get major attention in the total response to the crime. There should be a organized method to protect the victim. Because the need of victim and the dependents varies in different cases.

The Medical care and protection of victim in several cases:-

While taking concern for the rights of rape victims the Apex court in the case of **Lallu Alias Rajesh v/s State of Haryana 2013¹⁹** stated that the two finger test for the determination of virginity of victim of rape woman violates the right to privacy physical and mental integrity and dignity in the landmark case of **R. V/S State of Haryana AIR 2016²⁰** the court stated that there should be an immediate medical care should be given to the victim.

The other Relief by court and state to victims:-

In the case of **Jogindra Navian v/s Ganga Prasad AIR 1984²¹** the session court and High courts got the power to cancel the bail under Section 439(2). Where the aggrieved party or the complainant may apply for cancellation bail.

In the leading case of **Prem Singh v/s State of HP 2009²²** the Apex Court held that the delay in FIR in case of sexual assault is not a statement because in society particularly rural a good India it would be not safe neglect prosecution merely on the base of delay in FIR.

In **Uphaar fire case of 1997**, one Apex Court ruled Ansal brothers to pay 30 crore for causing 59 death. The victims present in the court cried out in despair The highest court has let us down. No amount can be a substitute for lost lives. The Neelam Krishnamoorthy was fighting against The Pam Jethmalani. When the verdict came out she said that it is once again proved that the judicial system stands for the rich and powerful.

The Split verdict earlier in this case of Uphaar fire 1997:

The case which is called Uphaar fire 1997. The **Justice Thakur retained** 1 year jail term. While **Justice Mishra** reduced the Jail period while considering the age of Sushil Ansal. But the imposed "**100 crore**" fine to construct a trauma centre for the Delhi government. The trauma centre was to be treated as the extension of Safdarjung Hospital. Several rights have been enacted to empower victims. However, the victims have to go through many struggles and hardships including long and cumbersome proceedings and the fear of victimization by the people as a result, the Indian criminal justice system has become a channel of social control by the state by taking over the right to prosecute the accused without the victim. Hence, there should be a replacement of the vertical criminal justice system with a horizontal justice system in which the punishment system is sought to be replaced by a negotiation system hence, giving the central role to the victim.

¹⁸ Sureshv/s State of Haryana

¹⁹ AIR 2014 CrLJ 233

²⁰ AIR 2016

²¹ AIR 1984 CrLJ 357

²² AIR 2009 CrLJ 854

Moreover, medical, psychological, and social assistance should be provided to victims in a manner that is governmental, voluntary, community-based, and indigenous. Victims should also be informed of the availability of health and social services and have easy access to them. Moreover, victims should be treated with compassion and respect for their dignity. Furthermore, an unnecessary delay should be avoided in the disposition of cases and the execution of orders or decrees granting awards to victims. Continuing the progress, citizens should use informal dispute resolution methods, such as arbitration, customary justice, or indigenous practices, to facilitate conciliation and redress for victims. Sadly, our criminal justice system has neglected to adequately assist the victims of crime for far too long. It's time to ensure that victims are given their rights. Since suffering confers no rights on its victims, we who witness are the ones responsible for restoring these rights.

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