



THE INTRICATE JUDICIAL PURSUIT OF SAFEGUARDING RIGHTS OF VICTIMS

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Abstract:

The judicial landscape in India is undergoing a significant transformation with regards to the protection and enforcement of the rights of victims. This article delves into the intricate judicial pursuit aimed at safeguarding the rights of victims within the Indian legal framework. Through an analysis of landmark cases, legislative developments, and judicial pronouncements, this study offers insights into the evolving nature of victim rights protection. Key areas of focus include access to justice, compensation, rehabilitation, and participation in legal proceedings. The article highlights the challenges faced by victims in navigating the legal system and the efforts made by the judiciary to address these challenges. Moreover, it explores the role of judicial activism and public interest litigation in advancing the cause of victim rights. By examining the principles of restorative justice and victim-centric approaches, this article underscores the need for a holistic and rights-based approach towards victim protection. Ultimately, it contributes to the ongoing discourse on enhancing the efficacy of legal mechanisms in promoting the rights and dignity of victims in India's evolving socio-legal landscape.

Keywords

Victim rights, judicial pursuit, India, access to justice, compensation, rehabilitation, legal proceedings.

Introduction

There is a lot of tragedy, violence, and criminal activity in the world. Crime is an issue in society. No civilization, no matter how advanced or how underdeveloped, and no nation, no matter how sophisticated, are immune to its hold. It is clear that in these conditions, the victim—a byproduct of the crime—will inevitably surface. But there is no attention paid to victims—rather, the focus is and has always been on criminals and crime. As a result, the victim in the criminal justice system is essentially a "forgotten man."

One deeply held belief that appears to underpin the administration of criminal justice everywhere in the world is that the accused's rights must always be protected while a criminal court assesses his culpabilities¹. The goal of the criminal justice system as a whole is to protect accused people's rights rather than impose punishment. The situation of the criminal victim, who suffers the most throughout the entire procedure, remains invisible.

Under the pretence of criminal reform, so-called civil and human rights activists have always focused on the rights of the accused while utterly ignoring the victim. Even then, victims of crime have not received equitable treatment. The system treated the victim with institutionalized disinterest at some point along the road, serving the interests of judges, attorneys, and the accused². The accused has been given certain rights and advantages to defend himself and establish his innocence before he is found guilty in order to prevent innocent people from suffering harm.

¹ A.H.Mondal, "Crime Victims and Their Treatment", Central India Law Quarterly, Vol. XIV, (2001)

² Statement by Lois Haight Herrington, Chairman, President's Task Force on Victims of Crimes Final Report (1982), p, iv

It is in this sense that the enshrinement of fundamental rights raises this goal to the status of constitutional guarantee. Numerous cases determined by the higher judiciary have examined the many facets of these protections and examined how these clauses are considered. Even if his imprisonment is a punitive measure, it will be done so with the intention of changing the accused and making sure he receives the right rehabilitation after he is released from custody. The State has occasionally been ordered by the courts to supply all amenities and guarantee that the inmates' human rights are upheld³.

The origins of the term "victim" can be found in prehistoric cultures. It usually refers to those who, for whatever cause, experience challenges, losses, or injuries. Illegal activities cause harm to victims of crime. Many forms of victimization have led to the prohibition of particular repressive and exploitative behaviors over the ages, such as rape, robbery, and scamming. Criminal law reflects the norms and social practices of the particular society. Its goal is to not only punish offenders but also assist them in becoming better people.

At least two people will be actively involved in a criminal trial: the victim of the crime, sometimes known as "the forgotten man" of the criminal justice system, and the offender or perpetrator, for whom the whole legal system becomes vigilant throughout⁴. It is contradictory that the criminal would receive all the facilities, including entertainment, and food and clothing at the expense of the State coffers from taxes paid by all citizens, including the low-income victim. It is stated that the criminal justice system's greatest flaw is that it fails to provide the victims of crime with the attention they deserve.

Realizing the gravity of the problem the United Nations General Assembly in 1985 adopted a 'Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power'.⁵ The Declaration outlines the fundamental standards that must be met in order to acknowledge victims' rights to information, care, reparations, and compensation. In order to guarantee that victims are not overlooked by society, the Declaration provides a thorough definition of victim. In accordance with the Declaration, a "victim" is any individual or group of individuals who, as a result of acts or omissions that violate criminal laws in effect in Member States, including those that forbid the criminal abuse of power, have suffered harm, including physical or mental harm, emotional suffering, economic loss, or a substantial impairment of their fundamental rights. All people are subject to the provisions, regardless of their nationality, religion, age, race, or other characteristics. The Declaration recognized the four major components of rights of crime victims-

1. Access to Justice and Fair Treatment⁶
2. Restitution⁷
3. Compensation⁸
4. Assistance⁹

Besides, it suggested to adopt effective programs on Right based Victim Movement.

Rights of Victims in Indian Scenario

India has inherited and has continued to use a substantial body of criminal law enacted and codified by the British. Rights of victims barely have any significance under the existing criminal laws. They are made to be silent partners in the legal process and their role is nothing more than that of a prosecution witness. The victims are perceived as complication, inconvenience and a phenomenon that is marginal and avoidable. It was only in the post Best Bakery's case¹⁰ that a discussion has ensued on how the rights and interests of victims can be

³ D.K. Basu v. State of W.B, AIR 1997 SC 614

⁴ Joanna Shapland, Jon Willmore, Peter Duff ed., Victims in Criminal Justice System, (ed).1985, p 1

⁵ UN General Assembly Resolutions 40/34 on 29th November, 1985

⁶ Clauses 4 & 5 of UN Declaration

⁷ Clause 8 of UN Declaration

⁸ Clause 12 of UN Declaration

⁹ Clause 14 Part B of UN Declaration

¹⁰ (2004)4SCC158

incorporated and institutionalized in Indian Legal System. The provisions of law concerning the wellbeing of victims of crime are scanty.

For example, the Indian Evidence Act, 1872 protects victims from being asked indecent, scandalous, offensive questions intending to annoy or insult them¹¹. Under Code of Criminal Procedure, 1973 the courts are empowered to provide compensation for the economic loss suffered by them as a consequence of crime committed against them¹². Besides, the courts have sometimes exhibited some concern towards victim as part of the judicial activism and have provided for protection of the victims during trial. However, there is an absence of specific legal provisions for the protection of victims' rights during the trial. Even the Committee on Reforms in Criminal Justice System of which Justice V.S.Malimath was the chairperson, in its recommendation has vouched that 'Justice to Victims' is one of the inseparable imperatives of the criminal justice system. It argues for the holistic justice to victim by allowing them a right to seek compensation for the loss or injury in the same criminal proceeding.

In this background the study also attempts to evaluate the contribution of judiciary in ameliorating the plight of crime victim.

The protection of victim's rights through judicial Endeavour

The Compensation relief to the victim by the court in various cases are given below:

- In the leading case of **Hari Kishaan & State of Haryana v/s Sukhbir Singh & others AIR 1988¹³**: The court upheld that the compensation to be paid should be reasonable. The Reasonability depends upon the various facts and 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 instalments.
- In the case of **Baalraj Singh v/s State of U.P. 1995¹⁴** the court said that compensation is addition to the sentence.
- In the case of **Rudhal Shah v/s State of Bihar 1983¹⁵** the High court directed the state to pay amount of Rs. 35000 to Rudal Shah who was kept in jail for 14 years 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 1986¹⁶** 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 1991¹⁷** the compensation of 25000 was paid by the state because the police illegally defended the son of petitioner.
- In case of **Ravikant Patil v/s DG Police, State of Maharashtra 1991¹⁸** 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 1980¹⁹** the handcuffed accused demanded compensation.
- In the leading case of **Mrs. Cardeno v/s Union of India²⁰** 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.

¹¹ Sec. 151 & Sec.152 of Indian Evidence Act, 1872

¹² Sec 357(1) of Code of Criminal Procedure, 1973

¹³ AIR 1988 SCC 289

¹⁴ AIR 1995 CrLJ 179

¹⁵ AIR 1983 CrLJ 275

¹⁶ AIR 1986 SCC 2196

¹⁷ AIR 1991 CrLJ 289/136

¹⁸ AIR 1991 SCC 284

¹⁹ AIR 1980 SCC 185

²⁰ AIR 2010 SCC 1289

- In leading case of **Nilaabali Behra v/s State of Orissa 1993**²¹ 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 1990**²² 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 India**²³ 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 1996**²⁴ 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 upto 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.

The Right to be listened in criminal proceedings: -

- In the landmark case of **Vijay Walia v/s State of Maharashtra 1986**²⁵ the court upheld that the victim can partake in the criminal prosecution. The right to be heard implies a right to be effectively respect day represented at the hearing of respective case.

The Right to Appeal by victim in various decisions:-

- In the case of **PSR Sadhanatham v/s Arunach Alam**²⁶ 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 an appeal against the case then the later one will not be entertained. But the final view with the superiority of victim 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 Misra v/s Rajiv Gupta AIR 2011**²⁷ 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 **Satya pal Anand v/s State of MP 2013**²⁸ highlighted the importance of Sect. 288A and stated that in the case 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 loophole because of this the name of norm will come in public domain.

²¹ AIR 1993 CrLJ 3186

²² AIR 1990 CrLJ 1385

²³ AIR 2015 SCC 335

²⁴ AIR 1996 SCC 283

²⁵ AIR 1986 CrLJ 352

²⁶ AIR 1980 SCC 856

²⁷ AIR 2011

²⁸ AIR 2013

In the landmark case of **Suresh v/s State of Haryana 2014**²⁹ 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 2013**³⁰ stated that the two finger test for the determination of virginity of victim of rape woman violates he sight to privacy physical and mental integrity and dignity.

In the landmark case of **R. V/S State of Haryana AIR 2016**³¹ 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 1984**³² the session court and d 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 2009**³³ 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 count cried out in despair The highest count 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.

Conclusion:

"Victim" is term which has a legal status. **The United Nations General declaration on Basic principles of justice for various victims and Abuse of power adopted** in November 1985.

The crime victims have major place in study of criminal law. The perspective within the criminal justice system is appropriate to the victims. The separate study of victim's rights is terms as the "Victimology". In this have examined various ways to protect victims and built an deep understanding of victims and offender relationship.

²⁹ AIR 2014 CrLJ 233

³⁰ AIR 2013

³¹ AIR 2016

³² AIR 1984 CrLJ 357

³³ AIR 2009 CrLJ 854

The criminal justice system deals with two systems namely:

1. Inquisitorial
2. Adversarial

The scholars and researchers find that the inquisitorial system is more practical and more favourable than adversarial criminal trial proceedings. The investigative nature of proceedings in the inquisitorial system also lends itself to the victim playing a more active role in trial proceedings. The victim's first contact is with the police. And the police remain the nearest agency with the victims throughout an investigation of a case. The victim requires an immediate response and aid and assistance. The most common problem suffered by the most of the victims while reporting an offence is the absence of appropriate attitude on the part of the police toward the victim who has come to the police in a state of trauma and tension. In addition to this the harassment of victims by many police officers is not an uncommon feature in any country.

The complaints of victims are many. Victims are often ill treated and harassed. The police do not truthfully record the proper information during investigation. Researchers find that in the adversarial system there is very little role of victims in the criminal justice system. The victim's rights movements have influenced the system to establish a greater balance between the interest of the state and of victims. The victim needs a new role in criminal justice proceedings and steps needed to be taken to allow this shift to occur. The victim assistance programs were virtually nonexistent until the **Declaration of Basic Principle of Justice** for victims of crime and abuse of power came into action. This was considered as the Magna Carta of the victims' right. This provided a framework that should accept the view regarding the rights of victims.

It requires that the witness and victims should be protected with physical and other protection. In 2004 the Apex Court upheld that it was seen that how a victim in the case forced to rescind from their previous statements and gave false statements under some threat. Now witnesses, faced hostility because of the heinous crime and high-profile involvements. Many cases were eye openers and should be defects to the judicial system.

Indian Evidence Act 1872 the section 151 and 152 protect victims and witnesses from being asked any scandalous and offensive questions. The term victim, generally means, "any person who has suffered any wrongful loss or injury at the hands of another, including the State or nature."

Conceptually, victims of crimes are no longer confined to mere victims of traditional penal offences but also comprehended within its wider fold, victims whose basic rights are tempered upon by a person in high authority under colour of power. The two important characteristics of the 'victim' are suffering and injustice. Suffering must be unjust but not necessarily illegal. Indeed the term 'victim' ought not to exclude the person who suffers in consequence of legal procedures. The law does not permit unjust actions. Under the current criminal justice administration system, the key guiding principle is that the state shall undertake the responsibility to prosecute the offender/s and provide retribution to the victims of the crime. Wherein the state has assumed the responsibility to guarantee and protect people's right to life, property and dignity by resorting to its police powers, it becomes imperative for the state to not only provide for prosecuting the offender/s but also use its resources at disposal to protect the interests of the victims of a crime. The entire focus of the criminal investigation and the judiciary is upon the offender. Meanwhile, as far as victims are concerned they are consulted only for the purposes of the detection of the crime and to validate or invalidate the version of the prosecution. Post-arrest of the suspect the role of the victim is to assist the prosecution as a witness of the crime during the trial.

Any sentence or acquittal is dependent upon the evidence. The broadening domain of criminal justice reforms has also primarily focused upon the interests of the offender, the concept of release on parole or probation and other reformatory measures can be cited as an illustration. While doing so little attention has been paid to serve the interests of the victim's. However, with the realization of the idea of preservation of the rights of victims of crime and abuse of power at the international level has resulted into adaptation of those ideals in the national legislations. As to the former major first step was the International Symposium on Victimology in 1973 resulting into establishment of the International Society of Victimology in 1979. This was the serious start to the general foundation laid down by the Universal Declaration on Human Rights, 1948, International Convention on Civil and Political Rights, 1966 and other similar international and regional conventions and treaties. The judicial response puts a promising picture, particularly the Supreme Court and several High Courts when they had stepped in to protect the rights of victims in a plethora of cases. However, the same enthusiasm is yet to be seen in the lower judiciary.

Notably, there are various cases where the higher judiciary has awarded more amount of compensation as prescribed by states and UT's in their respective schemes related to the victims of crime. If we look into the Malimath Committee on Reforms of Criminal Justice System mentioned that people by and large have lost confidence in the criminal justice system. Victims feel ignored and are crying for attention and justice which calls for a developing a cohesive system in which all parts work in coordination to achieve the common goal. The report has recognized two types of rights of the victims of crime. They are one, right to participate in criminal proceedings, including the right to be impleaded, to know, to be heard and as well a right to assist the court in its pursuit of truth, and two, the right to seek/receive compensation for the injuries so suffered from the court, including, appropriate interim relief in the course of proceedings. Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization. The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the Court. Law Commission of India in its 154th report focused its attention on victimology with a view to protect the rights of the victims of crime and for their restitution. It is the humanitarian obligation of the state to provide assistance to the victims of crime. That symbolize the collective social conscience of the citizens and as an act of compassion. Any failure on the part of the state and the machinery entrusted with the task therefore calls for responsibility of the state to provide for the victims. State compensation is alternately viewed as a matter of social justice to the victims of the crime as it's the failure of the state and its socio-economic-political institutions to prevent generation of crime owing to poverty, discrimination, unemployment and insecurity.

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