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Rights Of Victims And Role Of The Judiciary In India: A critical Analysis

MayankPratap Singh, Dr.Jayendra Rana
Research Scholar, Professor
Institute Of Legal Studies And Research,
Mangalayatan University, Aligarh

Abstract

The Problem Is Selected With Great Interest Keeping The Significance And Impending Needs In The Societal Conditions On The Role And Protection Of Victim In The Present Criminal Justice System. The Topic Selected By Researcher To Study In Systematic Way And Which Is Relevant Under Social, Political And Economical In General And Legal In Particular. The Nature Of The Study Is Being Socio-Legal It Is Not Possible To Do Empirical Way.

The Focus Of The Rights Of The Victims Of The Crime On Victims Of Domestic Crimes, While That Of The Latter Is On Victims Of Crimes; More Particularly, Gross Violations Of Human Rights Law And Serious Violations Of Humanitarian Law. This Paper Describes The Rights Of The Victims Of Crime In India By Describing The Law Of Justice. This Paper Has Given Stress On Implementation Of Predominant Rights Facilitated By The Indian Criminal Justice With Fairer Treatment To The Victims Of Crime.

This Paper Address The Reorienting Of The Criminal Justice System To Address The Needs Of A Victims Of Crime Need Not And Perhaps Should Not Be Exclusive Of The Need To Enforce And Protect The Rights Of Suspects As Well As The Rights Of The Accused.

KeyWords

Human Rights, Malimath Committee, Rights Of Victims Of Crime, Indian Constitution, Criminal Justice System

INTRODUCTION:

The Concept Of Victim Dates Back To Ancient Cultures And Civilization. Its Original Meaning Was Rooted In The Exercise Of Sacrifice- The Taking Of The Life Of A Person Or Animal To Satisfy A Deity. Over The Centuries The Word Victim Comes To Have Additional Meanings So As To Include Any Person Who Experiences Injury, Loss Or Hardship Due To Any Cause. The Ancient Societies Recognized The Natural Right Of Victim To Inflict Punishment On The Wrongdoer By Way Of Revenge. In The Hindu Scriptures Of Manusmriti A Harsh Punishment Is Prescribed For The Violators Of Law. With The Passage Of Time It Was Realized That The Victim Should Not Be Allowed To Take Law Into His Own Hands For This Purpose. Instead Of That, The State Or The Society Should Consider It To Be Its Collective Duty To Ensure That The Criminal Or The Wrongdoer Gets Suitably Punished. The Deterrent Punishment Was Considered Important To Control Crime During Old Days. Subsequently With The Emergence Of Industrial Revolution Especially After French Revolution A Sea Change Was Noticed In Every Walk Of Life And In Every Corner Of Planet. It Was Realized That The Deterrent Punishment Was Ineffective To Control Crime And Deter The Criminals From Committing The Crime. A Result Of Study Of Crime From The Stand Point Of Criminals, It Was Felt That Criminals Are Created By The Society. Accordingly Anxiety Was Shown From National And Int

ernationalForumFor The TreatmentAndRestitutionOfTheCriminalsSo ThatThey CanComeBackToTheMainStreamOfSociety.ThusWithThePassageOfTimeAndIncreasingInteractionWithT heWesternCivilizationTheFocusOfThePenologist,Jurists,CriminologistAndGovernmentWasShiftedToTheR ightsOfTheUnderTrialsAndReformationOfTheConvicts And Hence The Victims Became The Forgotten Men Of Our Criminal Justice System.TheHistoryOfCrimeIsAsOldAsOfMankindItselfButInThePrimitivePeriod“AToothForATooth”,“An EyeForEye”And“ALifeForALife”WasTheEssenceOfCriminalJusticeInThose Olden Days. But When We Talk About Development Of Law, The Code Of Hammurabi IsConsideredOneOfTheFirstKnownAttemptsToEstablishAWrittenCodeOfConduct.TheNoteworthyImporta nceInTheCodeWasItsConcernForTheRightOfVictims.¹InRealityThisCodeMayHaveBeenTheFirst“VictimR ightsStatute”InTheHistoryOfCriminalJustice System. As The Civilization Developed New Ideas Regarding Individuals Rights And HisCorresponding Duty To His Fellow Human Beings Took Shape. The Crime Was No LongerConsidered An Offence Against The Individual Only, But A Revolt Against The Norms Of AnOrganized Society And An Attack On The Civilization Of The Day. Soon The State Took UponItselfTheRightToIdentifyAndPunishTheOffenders.

MeaningOfVictim

TheTermVictimIsLackingDescriptivePrecisionItImpliesMoreThanTheMereExistenceOf An Injured Party, In That Innocence Or Blamelessness Is Suggested As Well As A MoralClaimToACompassionateResponseFromOthers.

ObjectivesOfResearch:

1. To Make An Enquiry In Regards To Basic Violations Of Human Rights Of VictimAndItsConcernInPresentCriminalJusticeSystem.
2. To Scrutinize The Issue From Various Social, Legal And Psychological Dimension SoAsToProvideJusticeToTheVictims.

ResearchMethodology

The Problem Is Selected With Great Interest Keeping The Significance And Impending NeedsIn The Societal Conditions On The Role And Protection Of Victim In The Present CriminalJustice System. The Topic Selected By Researcher To Study In Systematic Way And Which IsRelevant Under Social, Political And Economical In General And Legal In Particular. TheNatureOfTheStudyIsBeingSocio-LegalItIsNotPossibleToDoEmpiricalWay.

In Accordance With The Objectives Of The Present Study, The Methodology Adopted For This Research Is Doctrinal. In This Pursuit, An Endeavor Would Be Made By The Researcher To Undertake The Content Analysis Of Statutory Provisions, Judicial Precedents, Articles And Other Literature Available. In Course Of Analysis Original Sources Such As Law Commission Reports, High Power Commission Reports Both At National And International Level, Decisions Of Supreme Court And Other Courts In India Will Be Examined To Understand The Present Policies Of The Government. For Critical Appraisal, The Pertinent Secondary Sources Such As Juristic Works Will Be Consulted. However Doctrinal Research Methodology Used In Order To Critically Analyses The IndianLegislative Framework Including The Laws, Policies And The Role Of Indian Judiciary WithReferenceToProtectionOfVictimsOfCrime.

Justification

The Criminal Justice System Of India Should Be Improved To Ensure And Strengthen The Rights Of Victims. It Is Also Advised That The Courts May Seek Victim Approval For Imposing The Sentence With The Goal Of Improving The Satisfaction Of Victim With Their Involvement In The Justice Process. The Court Of Justice Should Not Feel Inferior While Seeking The Victim Approval Before Imposing The Sentence To The Offender. The System Should Feel That The Involvement Of Victim In The Criminal Justice System. The Authorities Of Criminal Justice System Especially The Police Should Be Given Training And Continuous Impingement Of Knowledge On Rights Of Victims Of Crime And Insist Them To Safeguard The Rights By Giving Respect And Enjoy The Dignity.

Conclusion

The Brief Review Of The Existing Legal Framework In Relation To Rights Of Victims Of Crime Reveals That Expect In The Area Of Providing Compensation, Very Little Has Been Done Either Statutorily Or Through Schemes To Address The Entire Range Of Problems Faced By Victims Of Crime. There Is Need To Take A Fresh Look At The Position In Which The Victim Of A Crime Is Placed In Our Criminal Justice System.

The Role Of The Victim Of A Crime In Our Criminal Justice System, Which Follows The Common Law Colonial Tradition, Is Restricted To That Of A Witness In The Prosecution Of An Offence. This Stems From A Negative Perception Of The Victim Of A Crime As A Person Who Has “Suffered Harm, Including Physical Or Mental Injury, Emotional Suffering, Economic Loss Or Substantial Impairment Of Their Fundamental Rights.

The Reorienting Of The Criminal Justice System To Address The Needs Of A Victims Of Crime Need Not And Perhaps Should Not Be Exclusive Of The Need To Enforce And Protect The Rights Of Suspects As Well As The Rights Of The Accused.

Although The Malimath Committee Has Recommended That “The Victim Has A Right To Be Represent By An Advocate Of His Choice; Provided That An Advocate Shall Be Provided At The Cost Of The State If The Victim Is Not In A Position To Afford A Lawyer”, This Fails To Acknowledge That The Present State Of Implementation Of The Statutory Provisions Concerning Free Legal Aid In The Criminal Justice System Leaves Much To Be Desired.⁸¹ The Reform Of The Criminal Justice System As A Whole Will Have To Be Simultaneous With The Reform Of The Legal Aid System Before A Victim Of Crime Can Be Guaranteed An Effective Right Of Representation In A Criminal Trial.

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