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Evolution of Victimization in the Indian Judiciary System

ANIRUDH V.G.¹

ABSTRACT

For many years, the Indian Legal system has diverted its focus on the offender, and the offence, neglecting the individual who's rights have been grossly violated, and the trauma they are forced to face prior to the incident. In essence, such instances do not in fact entail a fair and democratic justice system, as such it is necessary to ensure that there are compensation Laws that ensure that the victim is not left out. The various shortcomings that the Indian Justice system harbors restrain it from diversely focusing on both parties simultaneously. Even the constitution of India and various other legislations ie. Code of Criminal Procedure, Indian Penal Code, have not provided proper laws which fully acknowledge the interests of the victims. During the 1900s most especially, victims were barely considered at all, however, this can be attributed to the fact that India had just achieved independence in 1949, intrinsically, the judiciary was still establishing concrete grounds for the Criminal Justice system and there were various judicial reforms that were underway at the time, it is also necessary to mention that Victimization is not only common in India, but in other countries around the world as well, ie. USA. The concept of Victimization therefore entails intentionally unfair treatment as well as the violation of a person's personal liberty, by excluding them, or making them feel excluded. This further breeds the concept of victimology which will be properly explored in the research paper. The Research paper mainly focuses on how Victimization has progressed in the Indian judiciary system. The research paper provides insight on the ancient, medieval, and modern legal systems, and how relevant laws that protect the interest and rights of the victims have been shaped to suit the modern legal system, proper addressal is also done with relevance to the prevalence of Victimization. The critical analysis of the concept of Victimization enables us to contribute to the formation of better and refined laws which are "all people" inclusive.

Keywords: Legal System, rights, Constitution, Victim, judiciary system.

I. INTRODUCTION

The concept of Victimization has a far- fetched historical background in the Indian judicial system. The idea of actually shedding real focus on the victim's psychological wounds and

¹ Author is a student at MIT WPU, India.

trauma they are left to face, after a certain incident, has never really been thoroughly considered in India, the real focus was always on the offender and of course the offence, consequently finding a suitable punishment, it is believed that punishment to the offender is enough justice to the victim, this is one of the complex struggles that the Judiciary system fails to properly address.

According to Ajmera and Patel (2020)² the term “Victimization” entails the suffering of an individual at the hands of the violation of the law by an individual, this means that, the person falls victim to either a crime or gross violation of any sort ie. Fundamental rights, accruing to them vulnerability and trauma. The word victim is derived from the Greek word “victima” suggesting “a sacrificial offering” meaning that victimization is not a newly emergent prodigy in the society, but it has been an underlying factor that calls for proper articulation of the law, this research paper will do exactly that. It is necessary to mention that the retribution can vary in perspective when it comes to how the victim aims to take ownership of the fact that they have suffered some type of harm in some way.

The Indian legal system has made various efforts to ensure that the victim is not left out and they receive a sufficient amount of justice, however, even though this factually seems like it is enough, in reality it is really not. Additionally, the reformatory programs for criminals/offenders, should not go unnoticed, the state ensures that the criminal acquires legal aid, and their welfare is regarded as a top priority of the state throughout the legal proceedings, this in essence, serves more as a rehabilitation program than it is reformatory, so as to ensure that the offender doesn’t commit to a life of crime again, essentially this is regarded as the state having “gone out of its way” to ensure the victim gets justice.

There are various case Laws and Legislative amendments in India, which have taken place over the years with relevance to how the Indian Judiciary approaches victim compensation in, this will be delved into as the research paper progresses, furthermore, the evident loopholes in the various legislations to be brought forth in the research paper, are thoroughly evaluated and recommendations will be given, to relieve the burden left upon the victims and of course fill the loopholes the system bears.

II. ROLE OF THE INDIAN JUDICIAL SYSTEM WITH RELEVANCE TO VICTIM RIGHTS

The Indian Judiciary withholds the duty of care to the citizens of India, as such, it’s efforts

² M. Ajmera, M. Patel, 2020, Victimization and Administration of Criminal Justice in India, Vol. 1, No.1, INTERNATIONAL JOURNAL OF INTEGRATED LAW REVIEW - IJILR.ORG, <https://www.ijilr.org/wp-content/uploads/Victimization-and-Administration-of-Criminal-Justice-in-India.pdf> (last visited Dec 1, 2023)

should be exhaustive in ensuring that the victim has been compensated, and their rights have been protected, whether or not the offender has been charged guilty. ³Muralidhan (2004) contends that justice for victims is a universal right, in whatever circumstance, ie. War, crime, riots etc. He further provides that it is the responsibility of the relevant body, in this case the judiciary to guarantee that the needs of the victims are put in high regards and they have an access to justice. ⁴The Code of Criminal procedure s. 357, recognizes the victim's right to a sufficient amount of compensation depending on the depth of the circumstances to which they have had to be victims to, this is an initiative by the Judiciary to ensure that their procedures do not disregard the victim.

It is evident that the Judicial system lags behind with relevance to practicing the protection of the various individuals whom are victims to atrocities such as crime and riots. It is necessary to ensure that these individuals stop being considered as mere weapons to reaching a crack in the case or finally reaching a verdict. As articulated by Justice Reddi (2006) ⁵practical measures should be enforced to advance the present laws to be more "victim friendly" furthermore, he reiterated on the fact that most victims only become an accessory in a case in instances where they are requested to give their evidence or side of the story in court, which he contends should not be the proper procedure.

III. ANCIENT JUDICIAL SYSTEM IN ADDRESSING VICTIMIZATION

Providing that different regions in India, have had their own distinctive outlook with relevance to victimization over the years, the common goal the whole times has always been to essentially, ensure that the victims don't perceive that their rights have been overlooked. The Ancient legal system was driven by the concept of "Dharma" which translates to the correct way of livelihood, or the path of righteousness. The concept encompasses the practice of good morals, thereby encouraging harmony in the larger society, if people were able to differentiate between right and wrong then they would be able to follow suit and live righteously. Moreover, many disputes were resolved locally, they did not receive much publicity as compared to modern times or the review of professionals, most especially with victimization which is still regarded as a minor issue even in modern day. Despite there not being many laws in ancient times, that provided proper redress to victims, there were still a number of codified laws that moderated the order in the society, to exemplify is the use of the Arthashastra in ancient times. The Arthashastra

³ S. Muralidhan, 2004, Rights of Victims in Indian Criminal Justice System, <https://www.ielrc.org/content/a0402.pdf> (last visited 30 November 2023)

⁴ Code of Criminal Procedure 1973, s. 357

⁵ Justice P. V Reddi, 2006, Role of Victim in the Criminal Justice Process, Vol. 19, No.1, <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1030&context=nlsir> (last visited 1 December 2023)

reinforced laws related to crime and personal assets, this ensured that the rights of the individuals that fall victims to such are upheld and fair practice and social justice, are put in high regards.

Various vulnerable groups have fallen victim to the “unimaginable” for many years, and this is simply for the mere fact that they are what they are, to elaborate, women in society have been undermined and abused, for historical reasons, that they are not designed to be literate individuals, educated individuals, part of the working class, and most important, to take up leadership positions, and this is one of the main reasons why the judicial system fails miserably in attending to women victims. Despite not being practiced in many parts of India today, castes are still underlying in the Indian society, people still base themselves of caste, especially privilege wise, there are still people whom are segregated from the affluent, also called the lower caste, they too, are disregarded in various social disorders to which they fall victim, for example riots.

IV. TYPES OF VICTIMIZATION

Meanwhile, the spectrum of victimization factually seems small, the damage to the victim is larger, as they are left to deal with the psychological trauma, that comes with having experienced the various atrocities. The trauma demolishes the individual’s personal liberty and dignity. Victimization branches into two forms, the first being Personal Victimization, which is usually levelled against an individual, in this instance, the person’s rights are violated or harm emanates from the violation of the rights, either at home, the workplace or in the general public. The second, is Property Victimization, in this case, the violation occurs to a person’s possessions.

(A) Personal Victimization

Victimization can range from sexual assault to both the male and female, rape, sodomy, sexual exploitation, harassment, stalking, crime, for example the murder of a family member, violence, and domestic violence, especially that levelled against women, child abuse and negligence, human trafficking, bullying and cyber- bullying.

The list is exhaustive, however the ones I have abovementioned are the most detrimental to one’s psychological wellbeing, and demand justice and adequate compensation, it is worth noting that the ones that are mentioned do not necessarily disregard all the other forms of victimization which are common in India.

(B) Property Victimization

⁶Mesch (1997) argues that the concept of property victimization entails the violation of an individual's personal belongings, this can vary from theft of mobile phone, burglary, and the embezzlement of funds, he explains that property victimization is as detrimental as personal victimization, owing to the fact that, individuals that have to start over in terms of acquiring those assets, which they have worked hard for, and the judicial system still considers some of these cases as minor offences which take years to adjudicate due lack of evidence and the supposed "unseriousness" of the offence.

(C) Concept of Victimology

The concept of victimology, examines the correlation between the victim and the offender. It adequately ensures that the repercussion of a crime on an individual/ victim are thoroughly explored. Victimology also ensures proper redressal and compensation to the individual that has fallen victim to an offence. Victimology is a relatively modern concept, and has started being utilized only recently in the Indian judicial system, the concept of victimology has mostly been centered on retribution, ⁷Article 21 of the Indian constitution provides for the compensation of victims. The compensation is necessary to achieve in two forms, from the state and from the offender, if so, he is found guilty of the violation of the individual. The judiciary has brought forth substantial efforts to ensure that the concept expands, and garners more attention, so as to encourage for reforms in the current legislations to suit modern times.

V. MODERN JUDICIAL SYSTEM IN ADDRESSING VICTIMIZATION

The modern Indian judicial system has grown to become more accommodating to victims compared to the ancient times. It has done substantial efforts to retribute victims and ensure that justice is afforded to the victim fully. The fast- pace of the justice system has enabled the concept of victimization to be highly considered and regarded in India, there have been various reforms, which have encouraged victimization to be looked upon in a different light, additionally, the various legislations that acknowledge the rights and the interests of the victims, have as well been upgraded, putting the victim's grievances and interests at the forefront, just like other aspects of the criminal proceedings, ie. Offender, relevant punishment.

The advent of the 21st century marked a notable turning point with regards to the victim's interrelation with the offender and the relevant compensatory measures to be utilized. The India

⁶ G. S Mesch, 1997, Victims and Property Victimization in Israel, *Journal of Quantitative Criminology*, Vol. 13, No. 1, <https://www.jstor.org/stable/23365808>, (last visited 2 December 2023)

⁷ Article 21, Indian Constitution.

judicial system realized that victims also required necessary government support and their presence in criminal justice proceeding should not be disregarded nor taken for granted, this was brought forth by the discovery of the Victimology concept, derived from victim nomenclature, which was centered around adequately providing to the victim's needs. The function of Victimology was to lessen the tensions between the victim and the offender, consequently ensuring that the offender does not engage in acts of which the aggrieved individual has become victim to. Judging that the victim suffers physical and psychological wounds at the hands of the offender the UN declaration provides that such instances are difficult to recuperate from, as such, the authority should ensure that financial assistance is provided to the distressed party. The concept of victim compensation can be traced back to Greece, Rome and England. Renowned philosopher, Jeremy Bentham contends that those intended to keep peace in society should ensure they do so at all times, in a similar sense, if the judiciary's responsibility is to protect the rights and interests of the citizens, then they should do so without fail. Similarly, the Indian judiciary has been on a quest to achieve, "full victim protection" status and are still doing so.

India being a developing society, faces setbacks, when trying to execute certain implementations in the contemporary society. With relevance to the judiciary system, the same, can be suggested. In some instances, there could be an insufficient amount of resources to cater to the individual who's life has been affected, however the Judiciary system still extends its efforts to ensure that the individual does not feel left out whilst in their most vulnerable state.

VI. RELEVANT CASE LAWS

(A) National

a. ⁸Vishakha v State of Rajasthan

In this case the court had taken heed of the fundamental rights articulated under 14, 19 and 21 of the Indian constitution, provides that every working environment should be conducive and safe for its employees, this was considered a basis for every working environment all across India.

The Apex court held that women are entitled to a freedom from sexual harassment at the work place, there are also various frameworks that state the same, it is the responsibility of the employer to ensure that all the procedures are followed accordingly. The Apex court's objective was to ensure that gender equality was achieved and upheld, and no gender, especially women

⁸ Vishakha v State of Rajasthan AIR 1997 SC 3011

have to feel like lesser of a human being in a work environment, and no violation of ⁹Article 21 of the Indian constitution will be accepted in the Judiciary system in India.

After all the subtlety the term “sexual harassment” seemed to have created, the Apex court finally laid down the final articulation of what it truly means. The Apex court provided that, any form of physical contact that posed uncomfortable to woman, or any sexual intention towards a woman will constitute sexual harassment. The Apex court provided that if it so happened that the female developed an uncomfortable feeling from the encounter of the abovementioned, then this means that she has been sexually harassed. Ideally, this brought forth the enactment of the Vishakha guidelines which laid the foundation for procedures at the workplace for women and generally protects the rights and interests of women from all walks of life.

In essence, women should not be left out, and their rights should be protected. There is a Legislation called The Sexual Harassment Act which had come into effect on the 23rd of April 2013, which concretely contextualizes the importance of women rights and protection and emphasizes on relevant compensatory measures if the abovementioned occurs.

b. ¹⁰Delhi Domestic Working Women’s Forum v Union of India

In this case the presiding judge had observed that a victim of crime had been disregarded multiple times in the judiciary system, it is also worth noting that circumstances such as those like rape, comes with a form of embarrassment, fear of humiliation and the fear of being judged, as such experiences these leave most unbearable psychological wounds, and only required when it is of benefit to the legal proceedings. The court provided that compensation will bring some closure to the victim even though it cannot fully erase the psychological wounds, especially those that emanate from rape.

It is worth appreciating, that the acknowledgement of a rape case is not achieved fully in India, the judiciary still fails to properly address them and give the women victims the justice they deserve, in light of the aforementioned, rape cases are still regarded to be minor cases and some even take years to reach a verdict.

When comparing victimization cases in India, with those of other countries, the gap is large, and India still has a long way to go, the Judiciary system still lags behind in terms of victim intervention.

⁹ Article 21, Constitution of the Republic of India.

¹⁰ Delhi Domestic Working Women’s Forum v Union of India (1995) 1 SCC 14

(B) International

The US case of ¹¹Barnes v Costle brings forth the concept of the rights of women in the workplace, feminism, and the extent to which the working environment is conducive for women. The district court revised its decision and made a conclusion that sexual harassment, is a form of gender discrimination in the workplace, the court labelled the aforementioned as vulgar and disrespectful to the female counterpart, and creates a hostile and unproductive working environment for women. The court raises that it will not show any mercy whatsoever towards a person that makes a woman encounter such experiences. The plaintiff, demanded that she strictly maintains a professional relationship with the defendant, however the defendant always persisted. The court provided that this was a conscious gross violation of the female's rights, furthermore, the court provided the common occurrence of such instances is not new in the US judiciary, as such, it takes precautionary measures in ensuring that the victim is compensated and their rights are protected and upheld with due regard, during and after the legal proceedings have taken place. It is stated in the legal proceedings that the defendant fired the plaintiff, after she bluntly refused his sexual intentions multiple times, the court provided that there is an indication of "guilt consciousness" from the defendant when they fired the plaintiff, as there is no concrete reason as to why they exactly fired the plaintiff.

The judicial precedents, have provided a critical analysis, of how the Indian Judiciary system differs from other Judicial system, keeping in mind that "every house has its own laws" there are still universal laws that every country should harbor, that encourage the term "Globalization"

VII. COMPARATIVE STUDY OF NATIONAL & INTERNATIONAL EFFORTS FOR VICTIMIZATION

It is evident that the efforts that India invests in victim protection are far behind compared to those of the USA. The comparison is that, other countries have diversified their approaches with relevance to victim appreciation of which India has not and still has substantial amount left to cover. Substantially, women and child victimization most especially, tends to receive backlash, on its slow implementation of legitimate frameworks, in the Indian judicial system. With the abovementioned, the current policies will be evaluated to give light on how they have shaped the judicial system in a better way, compared to ancient times.

In ancient Indian times, the use of the Arthashastra and Manu'sriti where the basis of victim

¹¹ Barnes v Costle 561 F (1997)

compensation, and foretold the sequence of events and necessary procedures after an incident, although not having been adequate to fully compensate and regard the interest of the victims, these were still the Laws that were utilized. As time progressed, and India gained independence, many laws needed to be reformed, with victimization Laws being a part of them.

(A) Indian Penal Code

¹²The Indian penal code, harbored Section 227 which discouraged societal exploitation. The Indian penal code is instrumental, in providing the proper procedures when tackling legal proceedings, it ensures that offenders take responsibility of their offence and the victim is compensated, accordingly. Article 227 A is an “all inclusive” section of the Indian penal code, it is inclusive of marginalized communities, racially oppressed persons, women and children. This is how it garners its significance in the Indian Judiciary system as it lays down the laws that thoroughly protect the victim while simultaneously achieving justice.

(B) Criminal Procedure Code

¹³The criminal Procedure code not only lays down the procedure of which the authorities should tackle the offence and the offender, but also broadens its spectrum to victim relations and interests as well. Section 357A of the CrPC establishes the basis of victim compensation or acquittal, ideally, compensation to the victim is only supposed to be sponsored by the offender, however, the state also takes responsibility to support the afflicted individual. This ensures that the State, not only intends to provide access to justice to the individual as a form of compensatory measure, but also extends further, to ensure that the interests of the victim are kept in sight, this entails the purpose of the Criminal procedure code in protecting a victim.

(C) Indian Constitution

¹⁴The Indian constitution is the Law of the land, and lays the foundation of an effective judiciary system. The laws enshrined in the constitution safeguards the citizens of India, establishes the appropriate code of conduct for its citizens and the state institutions. The Indian constitution reiterates Article 21 various times which stipulates that all Indian citizens are entitled to live a life of dignity, the dignity of a person used to be disregarded in ancient times as the then authorities saw fit, however modern day, concludes differently. Article 14 also acquires the citizens of India equality of all in the eyes of the Law. Segregation, and marginalization has lingered for long in India, and until this day, the prevalence has not been fully erased, however,

¹² Indian Penal Code, sec. 227 Act No. 45 of 1860

¹³ Code of Criminal Procedure, sec. 357A, 1973

¹⁴ Constitution of the Republic of India, art. 14, 21.

the enforcement of Article 14 makes it difficult to oppress or discriminate marginalized communities. All citizens are considered equal and are treated as such in the India, offenders that try to violate article 14 of the constitution, receive severe punishment at the hands of the Indian Judiciary System.

(D) Universal Declaration

The Universal Declaration for Human rights serves as the basis for many countries around the world to properly reinforce and emphasize the importance of fundamental rights in each of their individual constitutions. Facing the reality of the aftermath of a crime inflicted upon one's self is difficult. The conventions provide that a crime does not simply entail, violating the law, it goes further to pose financial constraints, feelings of agony, distress, trauma, and the fear of the judgement from society, fundamentally, the psychological effects the victim has to endure are dire, this is why, it is necessary for the system to adjust and refine its laws and procedures just a little bit more, to properly cater to victims from all dimensions of grievances. The Universal Declaration aims to fill the gaps in the judicial system especially with relevance to upheaval of human rights and the protection of their interests.

VIII. CONCLUSION

In a nutshell, despite the evidence of a varied number of reforms from Ancient India to modern India, the gap is still an underlying factor in the Indian judiciary system. Furthermore, the various precedents in India on victimization, do not help to solve the problem, they make the victimization problem prevail more and more overtime. It is however, worth appreciating that the Indian judicial system has pushed for various reforms, for legislature to revise certain Laws which were considered unjust, or not accommodative enough to victims. In essence, the substantial developments that the judiciary has pushed for in terms of promoting victim rights cannot go unnoticed.
