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Victims of Crime: A Quest for Justice

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ABSTRACT

The term 'access to justice' is a very subjective term as it can be construed to have different meaning for different classes of persons in a society. Literally, the term 'access to justice' can be defined as an opportunity to approach the doors of just behaviour, equity and treatment. Particularly, the term 'Justice' has not been defined anywhere in the Indian Constitution but has been stated to mean as Justice "Social, Economic and Political" in the Preamble to the Constitution of India, secured to achieve through the various provisions of Fundamental Rights and Directive Principles of State Policy. As a corollary, it can be said that every person who seeks justice must be provided with the requisite monies to approach a Court of Justice. Can a victim of crime be ensured justice only by punishing the offender? The Constitution also provides the various rights for protection of the accused such as right to speedy trial but the victim's plight is not addressed anywhere. The whole focus of the Criminal Justice System is on criminal and crime, none on victim. So, the forgotten man in the legal world and society happens to be the "victim" for whose plight remedy we have the whole system.

This paper attempts to find out the deficiencies in Justice System while ensuring access to justice for victims of a crime as the victims do not acquire attention of the law makers. The victim whose rights are violated by the offender does not have any right to participate in the criminal process except as a witness. The system does not give him any opportunity to assist the court such as producing evidence or asking questions to the witnesses. The system is thus wholly insensitive to the rights of the victim. The focus is all on the accused and none on the victim.

Keywords: Justice, victims of Crime, Fundamental Rights.

I. INTRODUCTION

"People by and large have lost confidence in the criminal Justice System....Victims feel ignored and are crying for attention and justice...There is need for developing a cohesive system, in which all parts work in co-ordination to achieve the common goal..."²

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² Aisha Gill, "Crimes of Honour' and Violence against Women in the United Kingdom" 32.2 *International Journal of Comparative and Applied Criminal Justice* 243 (2008).

The justice delivery system in our country was developed keeping in mind the various kinds of people and the victims of crime being one of them. Despite an elaborate justice delivery process the victims of crime continue to be a weaker section in the criminal justice system. This is due to the fact that the legislature has not been keen to fulfil the needs of victims of crime, who eventually become a victim of the criminal justice system.

The Constitution of India recognizes Justice “Social, Economic and Political” in its Preamble but does not lay down a standard to be followed with respect to its victims of crime. Broadly, Access to Justice can be defined as a “means of approaching or nearing justice or passage that leads to justice”. In other words, justice means where there is no tyranny, dictatorship, wickedness, inequality, discrimination, insecurity of life and property. It primarily, necessitates a potential system securing appropriate legal remedies within the Civil and Criminal justice fields. Judiciary, being an integral part and parcel of an effective judicial system, has a greater role in ensuring access to justice to the victims of crime.

The operative principle of the criminal justice system is fair trial and justice to both, the accused and the victim of crime. Application of this principle involves a delicate judicial balancing of competing interests of the accused, the public and the victim. Where an offence is committed, the State apprehends the accused and brings him to trial. If he is found guilty, he is convicted and sentenced to undergo punishment. Does this complete the wheel of criminal justice? What about the crime victims? Traditionally, it may have been sufficient that the criminal is caught and punished. But, the modern approach to justice is to also focus on the victims of crime.

It is all very well that the accused is given a fair and just trial; that the guilty are punished; that the convicts and prisoners are given a humane treatment; that jail conditions are improved and the erstwhile criminals are rehabilitated, but what about the crime victims? What is the status of crime victims in the Criminal Justice system? While the accused is protected with all the resources available at the expenditure of the State, the victim is left to fend for himself with little or no support from the State machinery.

A victim is not given equal treatment in the criminal Justice process on various grounds such as access to courts, free legal aid, right of being heard, inadequate compensation, exploitation by state agencies (including the police) and is treated as a mere witness in the entire justice process. These are the various deficiencies in the justice delivery process resulting in narrowing the contours of access to justice for victims of crime.

II. CONSTITUTIONAL LAW OF INDIA AND VICTIMS OF CRIME

The Constitution of India was framed keeping in mind the ideals enshrined by our country's

freedom fighters and aims at ensuring fair and equal treatment to all classes of persons in society. In view of this, the term ‘Justice’ can be defined as fairness in protection of rights and punishment of wrongs. Further, this is sought to be achieved through a fair and proper administration of the law of the land.

The Preamble to the Constitution of India, aims at securing to all citizens Justice: social, economic and political. The three terms enumerated in the Preamble set out different standards of ensuring justice in the society. Social justice would mean that all sections of society, irrespective of caste, creed, sex, place of birth, religion or language, would be treated equally and no one would be discriminated on any of these grounds. Similarly, economic justice would mean that all the natural resources of the country would be equally available to all the citizens and no one would suffer from any undeserved want. Political justice, on the other hand entitles all the citizens equal political rights such as right to vote, right to contest elections and right to hold public office etc.

The above three connotations of justice are enforced by the provisions of Fundamental rights³ and the Directive Principles of State Policy enumerated⁴ respectively. The Fundamental rights include in its content, certain basic rights which every individual enjoys being a part of free nation and it tries to ensure that minimum standards that are required for survival with dignity and respect are not taken away. Whereas, the Directive Principles of State Policy were formulated to lay down directives for the state. Further, the judicially enforceable ‘*Fundamental Rights*’ provisions of the Indian Constitution have been set forth in part III in order to distinguish them from the non-justifiable ‘*Directive Principles*’ set forth in part IV, which establish the inspirational goals of economic justice and social transformation. It means that the Constitution does not provide any judicial remedy when directive principles are not followed.

The Directive Principle of State Policy highlighting the duty of the state to secure justice is stated in the following words “State to secure a social order for the promotion of welfare of the people.—(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations”⁵. Further, article 39A provides for “Equal

³ The Constitution of India, Part III.

⁴ The Constitution of India, Part IV.

⁵. The Constitution of India, Art. 38

justice and free legal aid: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”.

In view of the scheme of the Constitution, it can be said that the whole idea of the Constitution was to create a framework where all people have an equal access and protection of justice. The victims of crime being a section of society whose rights have already been violated either by an individual or by a group of individuals and due to this they become an inherent subject of the above mentioned scheme. Further, in order to provide for safeguards when the provisions of fundamental rights are violated by the state, the right to constitutional remedy to move directly to the Supreme Court or High Courts under Article 32 and Article 226 respectively has been provided. Hence, in our constitutional scheme, the High Court and Supreme Court have been depicted as the guardian of fundamental rights and have been bestowed with the power to make void any law passed by state and union legislature, which is violative of any fundamental right, as enshrined under Article 13 of the constitution and thereby deliver justice.

III. LEGAL SAFEGUARDS AVAILABLE TO VICTIMS OF CRIME

For the first time the word "victim" came to be defined in the Indian criminal justice system through The Code of Criminal Procedure (Amendment) Act, 2008 in sub-section (*wa*) of Section 2 of the Code, which provides that, “victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression ‘victim’ includes his or her guardian or legal heir”.

Various amendments have been made in the criminal justice system for giving rights to crime victims at different stages of criminal justice process in India from last several years, but till now crime victims are devoid of those rights. This is primarily so because in the Indian criminal justice system the crime victim has not been given any special status or right as compared to the status accorded to the accused. According to the criminal justice system any person can put the criminal law in motion. So any person may get first opportunity to lodge FIR about an occurrence, and not necessarily the victim of that crime.

In the Indian criminal justice system, the victim of a crime sets the criminal justice process in motion by giving the information to a police officer and by reducing it to writing as required by section 154 of the Criminal Procedure Code, 1973, called as the “First Information Report”.

If the officer in charge of a police station refuses to act upon such information, the victim can write to the Superintendent of the police who is then expected to direct investigation to the

Magistrate⁶. If this process fails then the victim can give a complaint to a Magistrate under Section 190 of Code of Criminal Procedure, 1973. After that the Magistrate will in turn examine the complaint on oath and enquire into the case himself or direct investigation by police before taking cognizance under section 200.

The victim thereafter does not participate in the investigation except by being called to confirm the identity of the accused⁷ or the material objects, if any, recovered during the course of investigation. Further, the laws relating to the victims of rape and other violent crimes against woman are inadequate. In imposing severe and minimum punishments for the rape which is prescribed under section 376(2)⁸ as a minimum sentence of ten years and a minimum sentence of life imprisonment for certain severe forms of rape and in shifting the burden of proof, the law fails to address the needs of the victim to be treated with dignity, to sustained protection from intimidation and to readily access the justice mechanism.

In addition to the above, while the victim of a crime may move the government to appoint a special prosecutor for a given case, there is no scope under the Criminal Procedure Code for the victim or informant or her lawyer to directly participate in the trial. This is so because there is no provision in the Criminal Procedure Code for providing legal aid to the victim of a crime⁹. It is only under section 12(1) of the Legal Services Authorities Act, 1987 that every person who has to file or defend a case is entitled to legal services under the Act. In pursuance of this, a victim of crime has a right to legal assistance at every stage of the case subject to the fulfilment of the means test and the `prima facie case` criteria.¹⁰

Although, the victim`s right of participation in the post-trial stage of the proceedings stands on a better footing. An appeal against an order of acquittal can be preferred, with the prior leave of the High Court, by both the state Government¹¹ and the complainant.¹² The right of a victim`s near relative, who was not a party to the proceedings, to file a Special Leave Petition under Article 136 of the Constitution in the Supreme Court challenging an order of acquittal by the High Court was expressly recognized by a Constitution Bench in *P.S.R. Sadhanantham v. Arunchalam*.¹³, telescoping the requirement of fair procedure implicit in Article 21 into Article 136, the court declared, “when a motion is made for leave to appeal against an acquittal, this

⁶. The Code of Criminal Procedure, 154 (3) (1973)

⁷. The Indian Evidence Act, 1872, s. 9

⁸. The Indian Penal Code, (1860)

⁹. The Code of Criminal Procedure 1973, s. 304, provides for Legal Aid to accused at State expense in certain cases

¹⁰. The Legal Services Authority Act, s. 12 (1) (h) and s. 13 (1) (1987)

¹¹. The Code of Criminal Procedure 1973, s. 378 (3)

¹². The Code of Criminal Procedure 1973, s. 378 (4)

¹³. (1980) 3 SCC 141

court appreciates the gravity of the peril to personal liberty involved in that proceeding. It is fair to assume that while considering the petition under Article 136 the court will pay attention to the question of liberty, the person who seeks such leave from the court, his motive and his locus standi and the weighty factors which persuade the court to grant special leave”.

Further, a recent amendment in the Criminal Procedure Code, 1973 notified in the year 2009, addressed the victim’s right to compensation. A careful glance at the Code reveals that a highly fragmented legislative scheme for compensating victims has been made.¹⁴ In pursuance of the recommendation of the Law Commission in its Forty-first Report submitted in 1969, a provision was made for the victims of crime in Section 357 of the Code. Unfortunately, under Section 357(1), compensation is obtainable only when the court imposes a fine and the amount of compensation is limited to the amount of the fine. However, Section 357(3) empowers the Court to award compensation for loss or injury suffered by a person, even in cases where fine does not form a part of the sentence and is left to the discretion of the court to decide the amount of compensation, depending on the facts and circumstances of each case.

It is significant that the Legal Services Authority, comprising of technical experts, has been entrusted the task of deciding the quantum of compensation, since they are better equipped to calculate/quantify the loss suffered by a victim. However, the provision loses its teeth because the discretion remains with the judge to refer the case to the Legal Service Authority- a situation that is the vanishing point of Indian victim compensation law. The problem is compounded by the fact that traditionally Indian judges have been hesitant to invoke this provision. A more effective solution could be to make compensation a statutory right, with a provision mandating that the judges have to record reasons for not awarding compensation. However, there is scope to further extend compensation to victims in those cases that end in acquittal or discharge beyond rehabilitation to compensation for loss. This is an extremely progressive development that takes into account practical reality of an overburdened criminal justice system, which is unable to identify all offenders and prosecute them. It is pertinent that a time period of two months has been provided within which the Legal Services Authority should conduct its enquiry and award compensation. This in turn would ensure speedy justice to the victim and lead to accountability. Moreover, it should be noted that the section speaks of ‘adequate compensation’ and thus ensures the quantum of compensation awarded to be just and fair.

In *Hari Krishna*,¹⁵ the Supreme Court interpreted the scope of Section 357(3) to mean that a

¹⁴. The Code of Criminal Procedure 1973, s. 357, 421 & 431, empower a criminal court, at its discretion, to award compensation to a victim of crime as well as to recover it and pay it to him

¹⁵. *Hari Krishna & State of Haryana v. Sukhbir Singh*, (1988) 4 SCC 551

reasonable amount has to be awarded as compensation taking into consideration not merely the gravity of the injury or misconduct of the accused but also the capacity of the accused to pay.

Another right which came to be recognized later on for the better protection of victims of crime is of Personal assistance and support services. The 14th Law Commission in its Report recommended that a State funded compensation Fund should be created by every State Government. The Fund must have a corpus of at least Rs. 500 crores, which must steadily grow at 100% every year to ensure continued availability of funds. Victims in most cases are usually poor and compensation cannot alone solve the problems of the victim of crime. Hence, a consolidated state funded victim welfare fund has been created on a statutory basis, which will be designed to meet both the immediate financial assistance that some victims in distress will need, inclusive of medical and hospitalization expenses, along with compensation.

IV. JUDICIAL APPROACH TOWARDS VICTIM JUSTICE

As discussed in the preceding topics, the victim's right to justice under the criminal justice system has culminated from the broader vision of access to justice as laid down under the Constitution of India. In pursuance of this, the constitutional courts have been inclined to examine the plea of victims for redressal of the losses suffered by them by violent incident riots and caste clashes. The principal that is evoked is that of "culpable inaction" under which the state and its agencies are expected to anticipate the losses or damage to public and private property in certain situations over which the potential victims have no control. The courts have gone as far as to find the state liable only where a definite failure on its part has resulted in the loss. One such case is the outbreak of riots in the wake of the assassination of the Prime Minister in October 1984 which resulted in large-scale damage to the properties of members of the Sikh community in several places of the country. In *R. Gandhi v. Union of India*¹⁶, the Madras High Court, acting on the report of a commissioner appointed by it to assess the losses, directed payment of varying amount of compensation for the losses to property of the Sikh community in Coimbatore.

In the landmark case of *Boddhisattwa Gautam v. Subhra Chakraborty*¹⁷ the Supreme Court of India evolved creative principles of victimology and victim justice and observed "The policy of our criminal justice system is victim-oriented and we have to a certain extent incorporated the idea of compensatory criminal jurisprudence. The problem arises in implementation of this policy. The attitude of the judiciary needs to change. The provisions being discretionary, it

¹⁶. (1989) AIR 205 (Mad)

¹⁷. 1996 (1) SCC 490

neither imposes a legal obligation on the judge to order compensation in all suitable cases to the victim of crime, nor does it require reasons to be recorded for not doing so. Similarly, these provisions do not vest in the victim's legal right to be compensated either by the accused or the state for loss or injury caused by the commission of the offence. The victim remains at the mercy of the discretion of the judge for the award of compensation because of the word 'may' in Sections 357(1) and (3) of Criminal Procedure Code. This, being the vanishing point of victim compensation in India. Mere punishment to the accused though it may exhaust the primary function of criminal law, is not fulfilment of the Rule of Law.

Hence, the court should be liberal in utilizing the discretion vested in them in granting compensation to the injured in a criminal case. It is imperative to convert the discretionary power of the court into a legal mandate requiring it to in all suitable cases, pass compensation orders and when it decides not to do so, make it obligatory to record reasons for not doing so. From the aforesaid cases we may conclude that the Apex Court in India has set a trend of compensatory criminal justice jurisprudence, which in effect is developing the ground towards restorative justice in our criminal justice system. Unlike in the Western countries, the victims of crime in India do not have a statutory right to be compensated. There is no compulsion on the court to record reasons for not invoking its powers to provide compensation. Moreover, there is no effective institutional mechanism for recovering the ordered compensation from the recalcitrant accused and paying it to the victim".

Further, the Supreme Court of India in the case of *Palaniappa Gounder v. State of Tamil Nadu*¹⁸. In this case, the High Court after commuting the sentence of death on the accused to one of life imprisonment, imposed a fine of Rs.20,000 on the appellant and directed that out of the fine, a sum of Rs.15,000 should be paid to the son and daughters of the deceased under Section 357 (1) (c) of the Code of Criminal Procedure, 1973. The Supreme Court while examining the special leave petition of the appellant observed that there can be no doubt that for the offence of murder, courts have the power to impose a sentence of fine under Section 302 of the IPC but the High Court has put the "cart before the horse" in leaving the propriety of fine to depend upon the amount of compensation. The court further observed, "the first concern of the court, after recording an order of conviction, ought to determine the proper sentence to pass. The sentence must be proportionate to the nature of the offence and sentence including the sentence of fine must not be unduly excessive." In fact, the primary object of imposing a fine is not to ensure that the offender will undergo the sentence in default of payment of fine but to

¹⁸. (1977) AIR 1323 (SC)

see that the fine is realized, which can happen only when the fine is not unduly excessive having regard to all the circumstances of the case, including the means of the offender. The Supreme Court thus reduced the fine amount from Rs.20000 to a sum of Rs.3,000 and directed that the amount recovered shall be paid to the son and daughters of the deceased who had filed the petition in the High Court. This is a case wherein the Supreme Court reduced the amount of fine and achieved a proper blending of offender rehabilitation and victim compensation. The important point, which emerged in the case, was the Supreme Court upholding the order of compensation.

The Supreme Court of India in *Delhi Domestic Working Women's Forum v. Union of India*¹⁹ recognized the plight of rape victims and indicated the following broad parameters for assisting the victims of rape:

(1) The complainants of sexual assault cases should be provided with legal representation.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity of the victim must be maintained.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment.

¹⁹. (1995) 1 SCC 14

(8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rapes.

V. IMPEDIMENTS IN VICTIMS ACCESS TO JUSTICE

There are certain primary impediments in the establishment and functioning of victim's access to justice. Firstly, the victims are not able to approach the court of law due to their poor financial condition and are also unaware of the available legal aid services provided by law. Secondly, the conviction rate of accused is very low owing to non-implementation of procedural laws. Thirdly, the accused are generally not capable of providing compensation to the victim as they are usually from the lowest socio-economic strata of society and thereafter earnings by the offender as a prisoner would not be sufficient to pay the compensation. Fourthly, the delay in the justice delivery process leads to denial of victims access to justice.

VI. CONCLUSION

The end of the administration of justice is to see that justice is done without fear of favour, let or hindrance, malice, affection and ill will. Justice involves an evaluation of value judgements, morality and ethic. The notion of justice is a universal one for it connotes fairness, equity, good social conscience and balance of competing interest in the society. The victim in the criminal justice process is left in the hands of the state agencies and continues to be a neglected category. Despite the enactment of various legislations, there has been a failure to enact suitable laws which would study the impact of crime on a victim as well as a failure to implement the law both in letter and in spirit of the law.

Thus, with a view to provide justice to victims of crime, assistance to victims should be provided by ensuring greater participation of the victim in the criminal justice process and by making the agencies of the criminal justice system to be more receptive to the needs of the victims of crime and address their issues sincerely and empathetically.
