

Criminal Justice System in India Shifting Its Attention from the Accused to the Victim- Critical Study

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Abstract:

Legal system is excessively concentrated on the offender's rights rather than the victims of the crime. This trend needs to be corrected, and victims and future victims must come first- Ford, Gerald R. In order to prevent, deter, and control crime as well as to punish offenders, the criminal justice system serves as a social control tool. An act of crime is viewed as a strike against societal order and humanity. The guiding principles of the Indian legal system are "innocent till proven guilty" and "Let 100 Guilty Be Acquitted but One Innocent Should Not Be Convicted." Legislators have devised numerous rights, safeguards, and processes over the years to help offenders change and be rehabilitated back into society. However, the victims—the party most impacted by the crime—have received little attention. Does locking up the offenders suffice? Does the victim get any genuine, significant relief as a result? Most of the time, the victims receive no adequate support or aid. They have the barest rights and protections. Their rights have been covered in numerous legal reports, such as the Malimath Committee report and the 154th Law Commission report, but how effective have they been? Added in 2009 by the Cr.P.C of 2008, Section 357A of the CrPC, 1973, provides for a victims compensation programme. By the same statute, a proviso was added to section 372 that grants victims the ability to appeal. These changes are a start in the right direction for victims' rights, but is it enough? How far have we progressed on the road from retribution to rehabilitation?.

INTRODUCTION

A crime is an act of wrongdoing that affects society and mankind as a whole as well as an individual. Since it is regarded as a crime against humanity as a whole, the State is the one who takes the first steps in bringing charges against the guilty. Crimes, however, affect people significantly as well as only symbolically harming society and the social order. Relevance of the actual victims of crime is overshadowed and diminished by the idea that mankind as a whole is

the victim. From the periphery, they are reduced to nothing more than a silent observer as the State and the accused engage in legal proceedings.

The offender, how he must be punished, when, where, etc., are the key concerns of the Indian justice system. Even if they were the ones who upset the claimed "social order," the benefit of doubt is always given to the offender/accused.

The Cr.P.C 1973's Section 2(wa) defines "victim" in Indian Penal Code. It simply denotes to a natural/legal person, who experiences any harm or loss as a result of crime activity. It does include his or her guardian or legal heir, but is normally used in the context of the individual whose suffering is a direct or proximate outcome of the act (Department of Justice, Criminal Procedure Amendment Act 2008).

FAIR TREATMENT AND ACCESS TO JUSTICE

By providing details to the law enforcement agency, who are obligated to get the same documented, the victim of a crime initiates the criminal justice system. The sufferer, after providing the details, is entitled to a copy of the first information report "immediately, free of charge." When a police station's officer in charge declines to perform on such information, the victim may write to the SP of district, who then oversee the complaint's investigation. In absence of these processes, the victim may file a complaint with the judicial magistrate, who will then conduct an oath-taking interview with the complainant and conduct an investigation before taking cognizance of the case (Department of Justice, Criminal Procedure Code 1973). After that, the victim is only contacted to ascertain the name of the accused, else if any relevant information were found while inquiry, and she is not involved in any other aspects of the investigation. (*Section 7, Indian Evidence Act 1872*).

The procedural statute has not given the status of victims who are children or women the consideration it merits. A lady or kid who is taken into account as a suspect is not protected by virtue of section 160 Cr. PC, which states that "no male person under the age of 15 years or woman shall be obliged to visit any place other than the place in which such male person or woman resides." Rape victims' suffering is made worse by the fact that they are kept in "protective custody" in judicial custody or women shelters, despite the fact that such imprisonment is illegal, under the pretence that they must provide testimony.

Predictable and insufficient, the legal system has failed to adequately address the demands of physical assault and other heinous crime against female victims. The law fails to fulfil the victim's needs for treatment with dignity, ongoing protection against intimidation, easy access to the justice system, legal assistance, and rehabilitation by imposing harsh and minimal consequences for the offence and by altering the liability of evidence. Even more so when the victim is a minor, there is currently no legal provision requiring in-camera trials. Furthermore, there is no legal framework that addresses the requirements of rape victims in terms of

rehabilitation. The Indian apex Court's response in the Delhi Domestic Working Women's Forum case contrasts with the legislature's and the executive branch's lack of interest in the issue. The event that led to the case involved eight army personnel raping six women who were working as domestic helpers in Delhi while aboard a train travelling between Ranchi and Delhi. Once the petitioner forum members were unable to meet the victims due to the employers, they requested the court's instructions for a quick and fair investigation of the crimes. The following "general guidelines for supporting the victims of rape" were provided by the court (*Mohan, 1987*).

- In situations of assaults to women, complainants have to be given legal counsel. Having someone knowledgeable about the criminal justice system was crucial. The lawyer of the victim is duty bound to guide the victim in locating assistance of a different kind from other organisations, such as mental health counselling or medical care, as well as explaining the nature of the proceedings, preparing the victim for the case, and helping her in the police station and in court. By ensuring that the same person who represented the complainant's interests in the police station represented her until the completion of the case, it was crucial to ensure continuity of support.
- The victim of a sexual assault would very well be in a distraught state when she arrives at the police station; thus, legal counsel would need to be offered there. The direction and support of a lawyer at this time and while she was being questioned would be of tremendous value to her.
- Before asking any questions of the victim, the police had an obligation to advise her of her right to legal counsel, and the police record should include that fact.
- For victims who did not have a specific attorney in mind or whose own attorney was not accessible, the police station should maintain a list of advocates ready to represent them in these circumstances..

The threat of witness and victim intimidation throughout the course of a trial at the behest of the accused and other vested interests is also not adequately addressed by the Criminal procedure code. Even the limited available options are not inventively utilised to address the problem. The conviction rate has decreased to thirty nine percent, and most dramatic cases do not begin with a trial until the witnesses have been persuaded, according to a recent Supreme Court judicial notice.

A better foundation exists for the victim's right to take part in the post-trial phase of the legal process. With the previous permission of the High Court, both the State Government and the complainant may file an appeal against a decision of acquittal. In the landmark judgement of *P.S.R. Sadhanantham v. Arunachalam*, a Constitution Bench expressly recognised the right of a victim's close relative (*Pathak, 1980*).

RIGHTS OF A VICTIM

The Basic Principles of Justice for The Victims of Crime and Abuse of Power, which was established by the UN in 1985 and ratified by numerous nations, including India, served as the catalyst for the pro-victim movement. A thorough definition of "victim" was provided in this proclamation. People realised that despite numerous attempts to comprehend the minds of criminals through criminology, victims were frequently the ones who were disregarded or ignored.

The requirements of the victim must be met, and the victim's interests must be protected, according to the preamble of the Council of Europe Statute. They must be granted the following fundamental rights, namely: Audi alteram partem, the right to be aware of their different legal rights, right to get information on activities and processes in the criminal justice system, Protection rights throughout the criminal justice system, which can include witness protection programmes, home relocation, police escorts to and from court, etc, the right to be treated fairly, respect, and dignity in treatment, Right to appeal (under proviso to section 372 of CrPC) and right to speedy trial.

These rights are the very minimum necessary to help the victim get their life back to normal by easing the burden of dealing with the consequences of the crime. However, the issue is whether these rights are correctly upheld.

REHABILITATION

According to the 154th Law Commission report crimes frequently include genuine injury to persons rather than just symbolic harm to society (Law Commission of India, 1996).

To rehabilitate people back into regular life, the system must give sufficient care, support, and aid. Victims should be handled with compassion, respect, and dignity.

In addition to receiving adequate medical attention for their physical wounds, victims should also receive mental health treatment for the trauma, stress, and other issues they may have experienced, as well as community support to help them get through any challenges brought on by the crime and, lastly, financial recompense for the harm the crime has caused.

Both the accused's punishment and the victim's rehabilitation are crucial. Even in cases when there is insufficient evidence to convict a criminal, the situation of the victim cannot be disregarded.

The court noted that a breach of the right to livelihood might threaten the right to life under Article 21 in Olga Tellis case (Chandrachud, 1985). Giving victims of crime financial compensation is one of the most important and successful strategies to aid in their rehabilitation. The steps the law has taken to assure victim compensation are shown below.

GOVERNMENTAL ACTION TO COMPENSATE VICTIMS

The emphasis on victims' rights in criminal proceedings was covered in-depth in the full chapter on "Victimology" in the 154th Law Commission Report on the CrPC. It regarded Article 41 (which includes the right to receive public aid in certain circumstances) and Article 51-A (which states that every citizen has a responsibility to foster humanism and the spirit of inquiry and change) as being the legal basis for victimology. It also implied that compensation should not be restricted to only realised fines, penalties, and forfeitures (Law Commission of India, 1973).

The Committee headed by justice V.S. Malimath on Reforms in the Criminal Justice System of India was of the opinion that India should take into consideration adopting the victim-benefit tactics being used in the United Kingdom in 2003. The state is required to provide victim compensation, according to the statement in all heinous crimes, irrespective of the fact that the offender is not punished.

It made a recommendation to establish a fund for compensating victims, to be overseen by the Legal Services Authority. As a result, 357A of the Cr. P.C was added, marking a groundbreaking development in victim rehabilitation for the Indian Criminal Justice system.

According to Section 357A of the Cr.P.C, there is a victim compensation programme. The victim may ask the State or District Legal Service Authority to provide him or his dependents compensation for the loss or harm the perpetrator caused him, as well as for rehabilitation, under this clause. The ability granted by the aforementioned article allowed for the creation of the Tamil Nadu Victim Compensation Scheme, 2013.

As per the National Services Authority's statistical data on the compensation of victim programme, compensation totalled two hundred and fifteen crore rupees in 2019–2020. Nevertheless, approximately twelve thousand applications are still awaiting a response.

In *Ram Phal vs. State and Others*, the judiciary held victims are now the ones who suffer the most from crimes and have less of a part in the justice process. They must be granted certain rights and benefits in order to prevent the criminal justice system from becoming distorted (Bhat, n.d.).

DEFICIENCY IN THE SYSTEM

The main objective for a victim of crime is to put the horrific experience behind him and get on with his life. Although it seems clear, the criminal justice system is so dysfunctional that doing so can be challenging, if not impossible.

In its 2003 report on changes to India's criminal justice system, the Malimath Committee noted that victims often lose interest in the legal process because they lack legal protection and rights.

When it comes to upholding victim rights, the Indian criminal justice system falls far short. Below we list a few of the numerous issues. The right to a timely and efficient trial is based on the well-known tenet that "delayed justice is denied justice." India, however, is an exception. Due to the overwhelming number of pending cases, it sometimes takes years for victims or their families to receive any type of justice or relief.

As a result of the system's generous options for the accused to defend his acts, the case drags on for years, depriving the victim of the right to prompt justice, and increasing the already excessive number of open cases.

"5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive, and accessible," states the UND on of The Basic Principles of Justice for The Victims of Crime and Abuse of Power.

Due to the fact that the crime occurred 35 years before, the accused in State of Rajasthan vs. Manohar Singh was not eligible for a prison sentence; nonetheless, the court ruled that the accused and/or the state pay the victim's damages.

The court ruled that "this component (victims' rehabilitation) occasionally eludes notice notwithstanding legislative revisions and rulings of this court." The obligation to recompense the victim, which is today considered to be essential to just punishment, has not been completely addressed by the court of sessions and the high court, according to the bench's findings.

By the time the verdict was officially rendered, the victim and their family ought to have moved on. The 35 years that were gone, what about them? For more than three decades, the victim and her family had to again go through the pain and stress of the occurrence. Lack of training and victim-sensitivity education for cops, judges, and other authorities dealing with victims would be another fault in the system.

The United Nations Declaration on the Fundamental Principles of Justice for Victims of Crime and Power Abuse states that " Employees in the areas of law enforcement, justice, health, social services, and other relevant departments should undergo training to make them more aware of the needs of victims as well as instructions to provide adequate and prompt assistance." In a recent Supreme Court hearing, the judge inquired about the alleged rapist's willingness to wed the young girl. This technique has been strongly prohibited by the same court in *Shimbu & Anr v. State of Haryana*. Considering how unreliable and unpredictable the legal system is, how could the victim have faith in it?

The absence of adequate support and aid systems for crime victims is another weakness in the system. Facilities for appropriate and essential health treatment should be made available to victims for both the physical and mental harm they have suffered. They should receive both

financial and social support in order to get over their challenges and issues. They must also be informed of the availability of these services and supports. The United Nations Declaration on the Fundamental Principles of Justice for Victims of Crime and Power Abuse states that victims "14. shall get the required material, physical, psychological, and social assistance through governmental, volunteer, community-based, and indigenous methods."

CONCLUSION

The accused have always been at the core of the Indian justice system. Along with the changes, their rights, protections, and laws for incarceration are continually changing. However, the victim's rights and rehabilitation—the person who must deal with the repercussions of the crime—have been blatantly disregarded. In contrast to being considered as just another case, the victims must be handled with respect and dignity. The victim should be questioned while giving appropriate attention to his individual circumstances, rights, and dignity, as suggested by the Statute of Europe. Just as they are educated to handle criminals, police officers and other law enforcement employees should also get training on how to treat victims with compassion and assurance. Victims should receive more than simply money in recompense. To guarantee that victims, particularly illiterate victims, are aware of their rights to seek restitution, clear regulations and standards must be established. The criminal justice system in India has to change its emphasis from safeguarding the rights of the accused to protecting those of the accused. Priority should be given to their representation, remuneration, and support. It is insufficient to condemn criminals to long terms in jail. In order to decrease the losses and harms suffered by the victim when fresh offences are exposed, reparative measures must likewise change over time. We still have a long way to go on the road from retribution to rehabilitation, despite the fact that the study of victim has been acknowledged and tried to be included into the Criminal Justice System of India.

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