

A VICTIM'S ODYSSEY THROUGH THE MANY ORDEALS

Aditya Trehan, Ph.D Scholar, Manav Rachna University, Faridabad & Assistant Public Prosecutor, Directorate of Prosecution, Govt. of NCT of Delhi Email :- adityatrehan86@gmail.com.
Dr. Kaveri Sharma Associate Professor, School of Law at Manav Rachna University.

Abstract

A Crime has far-reaching effects in society than what merely meets the eyes, especially for the one who is at the receiving end of it that is the "victim". The victim as an individual living in the society, the repercussions of any act that violates his right to live, reverberates through the world at large. In such cases, giving due recognition to the condition of the victim following the crime and providing him or her every chance to recoup becomes as essential as ensuring that justice is carried out with adequate admonishment so as to deter anybody from committing an offence. When the judiciary fails to do the same what may happen is that the aggrieved may resort to taking law into his own hands which would then culminate in social unrest. This is where the rights of the victims come into picture. A victim who is devoid of his rights may in every possibility either suffer throughout his or her life or end up turning into a criminal if not provided with the correct means to seek justice and get himself or herself heard. The Indian judiciary's evolution has been multi-dimensional over the years owing to the numerous amendments that have paved the way for a system that was predominantly focused on retribution to one that recognises the agonies of the victims. Nonetheless, the changes are headed towards creating a more robust and pragmatic environment for them that not only addresses the dormant issues but constantly strives to rebuild all that has been broken. This paper focuses on the developments and roadblocks that have shaped the victim's rights since the evolution of concept of victim in the last decade and onwards.

Keywords: Evolution, Rights of Victim, Victim Compensation, Indian Judiciary

The Evolution of Concept of Victim

Prior to 2009, there was no definition of a victim nor any focus of law on sufferers of crime. The Criminal Procedure Code (Amendment) Act, 2008, which brought about notable modifications and introduced the notion of a victim, went into full effect in 2009 and completely transformed the Indian criminal justice system. It was mainly the effect of recommendations made by the Malimath Committee and the influence of UN Declaration of Justice for Victims of Crime, 1985.

Victim is defined in Section 2(wa) of the Criminal Procedure Code as: "*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.*" This definition seems limited as compared to the UN declaration's concept of victims, which treats a person as a victim in two situations: i) a victim of crime and ii) a victim of abuse of power. This definition further give stress on the basic human rights and violation of those fundamental rights by any person.

Some key aspects of Criminal Procedure (Amendment) Act, 2008

1. A rape victim can, on receiving permission of the court, engage an advocate to assist with the prosecution.
2. The recording of rape victim's statements shall be carried out by female police officers at the victim's home or at a location of choice and victim's parents, legal guardians, or immediate family members be present, if possible.
3. As per 2008 amendment, the concept of "victim" has been expanded to include the victim's guardian or legal heir.
4. The investigations into victims of child rape or child abuse be completed within 3 months from the date the information was collected by the concerned police personnel.

5. In case the trial or investigation is related to Sections 376 to 376D IPC, the investigation shall be completed within two months of the commencement of the trial of the witnesses.
6. In rape cases, the prohibition on printing or publishing proceedings can only be lifted provided that the names and addresses of the parties are kept secret.
7. The concept of Victim Compensation Scheme has been inserted in the scheme of Cr.PC in which every State Government is obligated to prepare a scheme to fund victims or their dependents who have been lost or injured as a result of a crime and most of the states have launched schemes in their respective states.
8. Victims have been given right to appeal against judgment of acquittal of the accused, conviction of lesser offence or inadequate compensation.

A gleam of hope after 2013 Amendment in Criminal Laws

Five years after these changes were integrated into the legislature, another pivotal reformation awaited the criminal laws. Regarding sexual offences, numerous substantial modifications to the substantive and procedural law have been implemented. The Criminal Law Amendment Act of 2013 made the following modifications:

- a) Insertion of section 166-A that prescribes punishment for public servant disobeying direction under law while conducting investigation in cases of certain specific cognizable offence and section 166-B which prescribes punishment for non-treatment of victims of any offence defined under Section 326, 375 ad 376 (acid attack and rape) by anyone in charge of public or private hospital.
- b) Sections 354A, 354B, 354C, and 354D of the IPC recognise sexual harassment, voyeurism, disrobing, and stalking as distinct offences.
- c) Insertion of section 370 and 370A regarding human trafficking in general of a trafficked person by enumerating measures to counter the perils of human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude, or the forced removal of organs.
- d) Insertion of Section 376A regarding “inflicting an injury that causes the person’s death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remainder of that person’s natural life, or with death.”
- e) The definition of aggravated rape was improved, and the provision’s scope was expanded to cover rape committed by a person in a dominant position, by a member of the armed forces deployed in an area, rape committed in the context of community or sectarian violence, or of a woman incapacitated and punishment were also improved.
- f) The victim’s compensation has been increased to cover medical and rehabilitation costs, and the sentence has been increased to twenty years, with the possibility of an additional life sentence in cases of “gang rape”.
- g) Sentence for rape convicts have been increased to include life-term and death sentence.
- h) The legislature also added Section 376E for repeat offenders, which set forth harsher punishments for individuals found guilty under it. In this section, the death penalty was added to the list of penalties along with life in prison without the possibility of parole.
- i) Increasing the sentence under section 509 IPC for saying or doing something that is meant to outrage a woman's modesty from 1 year to 3 years together with a fine.
- j) Protection from disclosure of the victim's identity has also been extended to victims of repeat offenders.
- k) Wider interpretation of the term ‘Rape’ to include non-penetrative sex in addition to other forms of penetration to any extent, inclusive of body parts and objects.
- l) After receiving the information of crimes such as acid attack, sexual harassment, disrobing, voyeurism, rape, etc. by the police, women officer must record the statement at a place of the choice of the victim post which the district court must take the victim's statement immediately after application moved by the police. If the victim is impaired, the help of interpreters should be sought and the statement recorded in video mode.

- m) The prosecutor is treating the statement recorded by the magistrate as evidence that the victim is protecting his right to cross-examination.
- n) Due care has to be exercised that rape victims or victims of sexual offences who are under the age of 18 are protected against confrontation by the accused.
- o) The penalty for rape has been enhanced from 10 years to Imprisonment for life and fine under POCSO Act.
- p) In case of gang rape of child, the punishment has been increased from 20 years to life imprisonment and fine under POSCO Act.
- q) The penalty for Disrobing u/s 354-B IPC was increased from 3 years imprisonment of 7 years with fine.
- r) The trial for rape must proceed on a daily basis and be finished within two months of the charge-sheet being filed with the court.
- s) The amendment prohibits the use of previous sexual experiences when evaluating the victim's consent, as well as the use of evidence or inquiries during the victim's cross-examination regarding their overall immoral nature or prior sexual relationships.
- t) The burden of proof for consent now lies with the accused. Further explanation to Section 375 IPC added the definition of consent as unambiguous voluntary consent indicating the woman's willingness through words, gestures or any form of verbal or non-verbal communication to participate in the sexual act. According to the definition, it is clear that silence or the absence of a 'no' from women cannot be construed as a 'yes'.
- u) When taking evidence from disabled people, the courts should use interpreters, record statements through camera and such evidence will be regarded oral evidence and admissible in court.
- v) Assistance of interpreters is to be taken by the Courts to take evidence of differently abled persons, while statements are to be recorded in video form and such evidence is to be considered as oral evidence and will be admissible in courts.
- w) A ban has been put on the two-finger test on rape victims on the grounds that it violates their right to privacy.
- x) Prior to the amendment, Section 114-A of the Act was replaced with a new section that in a rape prosecution under section 376(2) (a) to (n) IPC, sexual intercourse of the accused must be established and the question arises whether such intercourse was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

The Criminal Law Amendment Act, 2018: Another endeavour to mend

Despite the reforms effected by the Criminal Law Amendment Act 2013, the nation witnessed an increase in the number of sexual offences against women and children at an alarming rate. Amongst the very many occurrences of crimes against women and children, there were two such incidents which generated extensive criticism at a global sphere. In 2018, the Kathua rape case, the nation witnessed wide-spread reprobation in which an 8-year-old Muslim girl from Kathua near Jammu and Kashmir, was abducted, raped and killed by seven men and a juvenile. In the Unnao rape case, a 17-year-old girl was gang raped by 5 men in Unnao, Uttar Pradesh, India and later was burnt alive by the accused men for approaching the police. These circumstances urged the Indian judiciary to promulgate the Criminal Law Amendment Act, 2018.

The new amendment were made to Indian Penal Code, Indian Evidence Act and Code of Criminal Procedure. According to the Amendment Act, 2018, the minimum sentence for rape was increased from 7 years to 10 years rigorous imprisonment which can be extended to life imprisonment. In the case of raping a girl under age of 16 years, the sentenced was increased from 10 to 20 years of imprisonment extendable to life imprisonment. Likewise, in the instance of raping a girl under age of 12 years, punishment has increased with minimum 20 years of imprisonment extendable to life or with capital punishment. And in case of gang rape of a girl under 12 years, the penalty was increased to life imprisonment or death penalty.

Role of Courts in protecting rights of Victims

The emphasis on victimology has increased significantly as Indian criminal jurisprudence has evolved. There have been cases where the courts have been making observations and statements on victim's rights and a careful handling up of such delicate matters. Some of them are as mentioned below:

The Supreme Court in *Mangal Singh v. Kishan Singh*¹, held that there is an injustice to the victim if the trial is delayed and such delay has an adverse effect on the parties to the case as well as the society at large. In many cases, much suffering is inflicted on the victim, and victim may suffer more than the accused.

In *Parvinderjit Singh v. State (UT Chandigarh)*² the court found that in order to protect the victim and allow the investigation to be unhindered, accused can be arrested thereby restricting his liberty.

In *Rattiram v. State of M.P.*³ the court held that right to fair trial is not an exclusive right of the accused, this right is also recognized for the victim.

In *Delhi Domestic Working Women's Forum v. Union of India*, the Apex Court had laid down certain guidelines for assisting the victims of rape according to which, it is necessary to set up the *Criminal Injuries Compensation Board* considering the Directive Principles contained under Art 38(1) of the Constitution of India.

The Supreme Court in *Nipun Saxena v. Union of India*⁴, believed it important that National Legal Services Authority (NALSA) set up a committee to develop Model Compensation Rules for victims of sexual offences and acid attacks. Subsequently, in 2018, Compensation Scheme for Women Victims, Survivors of Sexual Assault and other Crimes was finalised. Following the acceptance of this scheme by the court it is currently applicable all over the country.

In *Sathyavani Ponrani v. Samuel Raj*, the Madras High Court held that victims had every right to participate in the prosecution process and that trial courts must not deny this right to any victim. It was further held that there is nothing to prevent the victim from having a lawyer of his choice and allowing him to handle the case by aiding the prosecutor wherever necessary and stated that "*As the victim seeks to assist the prosecution there cannot be any prejudice since what is sought to be made is only to assist the prosecution and not to replace the prosecution. Moreover, in view of the huge inflow and pendency of cases at times, it may not be possible for a public prosecutor to concentrate fully on a single case*"⁵

In case of *Mallikarjun Kodagil v State of Karnataka*⁶, the Apex Court felt the need for a 'Victim Impact Statement' based upon which the kind of rehabilitative support that the victim requires depending upon the severity of the wrongful act and also to award appropriate punishment to the offender.

In *Krishna Lal Chawla Vs. State Of U.P.*⁷ the Courts impose on trial courts and judges the responsibility of protecting against cumbersome litigation in order to preserve the liberties guaranteed by Article 21 of the Constitution and to prevent parties and courts from losing money and unnecessary time.

¹ AIR 2009 SC 1535.

² 2009 AIR SC 502.

³ (2013) 12 SCC 316.

⁴ (2019) 2 SCC 703.

⁵ Decided by Madras High Court on 7 July, 2010.

⁶ (2019) 2 SCC 752.

⁷ Criminal Appeal No. 283 of 2021 (Arising out of S.L.P. (Crl.) No. 6432 of 2020).

In a very recent judgement in case of *Joseph Stephen & Ors. Vs Santhanasamy & Ors.*, a bench of Supreme Court observed that “*The victim has a statutory right of appeal under Section 372 proviso which is absolute and it is not a requirement for obtaining special leave to appeal like subsection (4) of Section 378 Cr.P.C*”, therefore making the victim’s right to appeal against the order of acquittal an absolute right.

Further, in *Jaswinder Singh (Dead) Through Legal Representative v. Navjot Singh Sidhu And Ors.* while hearing review petition has laid down importance on victimology taking note of “*defenceless and unprotected state of victim*” by observing that victims rights be equally protected like accused. The bench stated that “*....a disproportionately light punishment humiliates and frustrates a victim of crime when the offender goes unpunished or is let off with a relatively minor punishment as the system pays no attention to the injured’s feelings. Indifference to the rights of the victim of crime is fast eroding the faith of the society in general and the victim of crime in particular in the criminal justice system*”.

In *Karan v. State NCT of Delhi*⁸, Hon’ble High Court of Delhi reiterated the purpose behind the enactment of Section 357(3) Cr.PC was to ensure that our system recognises victim’s suffering. Further, the Court observed that “*Victims are unfortunately the forgotten people in the criminal justice delivery system. The criminal justice system is meant for doing justice to all – the accused, the society and the victim. Justice remains incomplete without adequate compensation to the victim. Justice can be complete only when the victim is also compensated.*” The Court made it mandatory to file a ‘Victim Impact Statement’ to arrive at the quantum of compensation which will be paid by the convict for the emotional trauma, physical injuries and even for funeral expenses if needed.

Compensation as a rehabilitative means: An analysis

Although the concept of compensation has gained more attention and recognition over time, with extensive changes supplementing the already existing provisions under the justice delivery system, a Central Victim Compensation Scheme 2015 for purpose of standardization of minimum compensation that each state is required to provide to victims of specific crimes like acid attack, rape, human trafficking, and women murdered or injured in cross-border shootings will be compensated in accordance with the Centre’s guidelines.

The scheme also provides compensation for those affected by cross-border firing, bombings or IED explosion as well as terrorism and Naxal violence. As of today, Victim Compensation Scheme (VCS) have been established across states. The fund was established with an initial collection of Rs. 200 crores. The purpose of the scheme was to assist and expand the existing VCS under the States and UTs while motivating them towards implementing the VCS, minimizing conflicts in compensation amounts notified by the different States and UTs and catering to the financial needs of victims of crime, especially sexual offences.

Under the scheme, the minimum compensation amount for Acid Attack victims is Rs.3 lakhs, while for rape, death, permanent disability and physical abuse of minor victims be compensated for Rs. 2 Lakhs. The amount of compensation would be increased by 50% over the amount given if the victim were under the age of 14. The disparity in compensation amounts among the States persists, though. The Supreme Court found it necessary for the National Legal Services Authority (NALSA) to develop a new programme in the case of *Nipun Saxena v. Union of India*. The model standards for victim compensation for women who have been the victims of crimes including sexual assaults, acid attacks, and other crimes are being developed by a committee. Because of this, the NALSA Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes was finalised in 2018 and, after being approved by the Court, became applicable all across India. According to the programme, a victim of gang rape will get a minimum of Rs 5 lakhs and a maximum of Rs 10 lakhs. A minimum of Rs 4 lakhs and a maximum of Rs 7 lakhs would be available for rape victims and survivors/victims of unnatural sexual attacks. The victims of acid attacks would receive a minimum

⁸ Crl. Appeal No. 352/2020 decided by the Hon’ble Delhi High Court on 27.11.2020.

compensation of Rs 7 lakhs and a maximum payout of Rs 8 lakhs in cases of facial damage. Despite the existence of such mandatory provisions relating to victim compensation, the outcome has not been novel or as helpful to the harmed and their families as it could have been because a sizable portion of the fund is still underutilised due to the sparse distribution of the compensation money as well as non-uniformity and non-compliance on the part of States to follow the Centre's direction.

CHALLENGES IN THE CRIMINAL JUSTICE SYSTEM

Irrespective of the fact that several sweeping changes have made their way into the Criminal Justice System there are still many issues that remain unresolved and the victim has to encounter such problems at each and every stage of the criminal proceedings. Some of them are noted as under:

1. The police department's role in our justice system is primary and most vital determinant as to the fate of every crime yet there is callousness and not adequate sensitization among the police officers towards treating the victims with dignity and care.
2. A dearth of women judges in the courts all over India carries a negative message to the society at large which looks up to such institutions for fairness and equality.
3. The laws introduced under the various amendments are most of the times implemented in letter rather than in spirit among the law enforcement agencies.
4. Equal involvement of victims at every stage of the legal procedure is still an unfulfilled task that needs to be carried out with commitment.
5. Rape survivors especially those belonging to the backward classes face challenges in registering FIRs and have to encounter many inconveniences getting themselves heard as the police refuses to register their complaints.
6. At times, registration of FIRs take over 6-7 months which further adds distress to the already helpless victims.
7. Victims who survive abuse or assaults have to endure ridicule, pressure, and harassment at the hands of the police.
8. Despite the laws making it mandatory for female officers to take down the report, yet when it comes to the reality a victim is has to go through the uncomfortable situation to speak of the details of the assault to male officers
9. The legal procedure is long and expensive as a result most victims give up on reporting the crime.
10. A victim still has no significant involvement in the current justice system but to report a crime. Thereafter it is the police department who has exclusive on who's control the investigation process falls and unless and until the police deems the victim's participation necessary the victim has no part in the investigation process.
11. The victim's grounds for appeal under Section 372 Cr.PC is limited only to the accused's acquittal, a conviction for a lesser offence, or the imposition of insufficient compensation. As a result, even if a Trial Court sentences or fines the offender, the victim has no legal remedy to pursue an appeal.⁹
12. The victim has been given the right to appoint counsel of choice for which court's permission is to be sought although mostly it is the state who appoints the prosecutor as a fit authority who advocates on behalf of the victims. Moreover, the lawyer involved has a restrictive role to play and has to perform his duties as per the court's direction and in so far as his assistance in required by the public prosecutor.
13. Rehabilitation of the victim post trauma is an ignored aspect of justice delivery mechanism and is not enforced with as much rigour and seriousness as other things such as enhancing the punishment or compensating the victims. Rape and Domestic Abuse survivors find it difficult to lead a normal life without receiving adequate trauma counselling and rehabilitative service as a means to cope with the challenges that follows any incident of violence and abuse.
14. Lack of appropriate provisions for victim protection to ensure them safety from intimidation and threats is another impediment. There is however provision for witness protection in India.

⁹ *Parvinder Kansal v. State of NCT of Delhi*, arising out of S.L.P.(CrI.)No.3928 of 2020.

15. The courts are not laying down enough stress on implementing the Victim Impact Statement which acknowledges the consequences of crime faced by the victim in deciding the appropriate degree of punishment as well as a penalty to be imposed on the perpetrators.
16. No provision for victim advocates to support the crime victims by assisting them in filling out necessary legal forms, find relevant resources, provide emotional assistance as well as sharing important information on victims' rights.
17. No effort is made towards the interest of the victim and he or she is hardly heard when an accused is released on bail.

Conclusion

Over a decade or more has gone by since victim's rights have gained momentum but the progress has taken place at a very steady pace. Yet with each passing year crime rate has seen to grow in leaps and bounds. The Hathras Gang rape case, the Gonda acid attack case and everyday incidents of such brutal acts is proof that no matter how strict the punishment gets, it is extremely difficult if not impossible to deter criminals from committing the crime. A few among the thousands of cases get a timely redressal, while many other hapless victims and their families tie their hopes to the Indian Judiciary and wait for their turn to get justice. The evolution of the concept of the victim has been significant so far, nonetheless, there are pitfalls on the path which needs to amend in order to make the road to justice a less treacherous one. The Indian Criminal Justice System awaits a more wholesome reformation in the form of a independent Victim Protection Law that would recognize the victim as a missing link and an often-ignored part and reapproach them with sensitivity and seriousness.