

## A critical Study on the Victims of Rape –An Analysis The Role of Judiciary and Government in their Rehabilitation and Protection in India

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**Abstract:** Victims of rape under Indian Penal Code, 1860 are least supported than the accused, and the victims in other crimes by the government and in the present adversarial criminal administration and justice system in their rehabilitation and protection. In the current decade of victimological research, there is a substantial interest in the study of impact of crime on victims and ways to assist them. Assistance to victims of crime is of great significance because victims have suffered irreparable damages and harm as a result of crime. The problems of violent bodily crime victims and the impact of crime on them is varied and complex. Therefore, the agencies of the criminal justice system expected to be receptive to the compensatory needs of the victims of violent bodily crimes and address their issues sincerely and empathetically. Like in the United States, Europe and the other developed countries. Neither Equal treatment nor access to justice shall be denied to victims of crimes.

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### Introduction

State being the guardian, have the duty to protect its citizen. If any offence is to be committed in state territory it is due to failure of state and liability is of state to protect the victim and to make them in their previous condition in the society. Such Victims are entitled to share the promises of social justice contained under the Constitution of the India. But today it is perceived that the purpose of criminal justice system appears at present to be confined to the simple object of ascertaining guilt or innocence and use the victim only as a witness.<sup>1</sup> A victim may be a direct victim who have received injury or a indirect victim, who are dependents on the direct victim or a legal heir who have suffered a loss indirectly. These victims may face primary victimization<sup>4</sup> that is a harm caused due to the crime committed by the culprit or face secondary victimization<sup>5</sup> which is followed due to the effects of crime such as torture by police, prosecution failure, denial by society, etc. Ultimately it demands to define a victim which was undefined in India for long time. Victim is a person who is put to death or subjected to misfortune by another ; one who suffers severely in body or property through cruel or oppressive treatment: one who is destined to suffer under some oppressive or destructive agency: one who perishes or suffers in health from some enterprise or pursuit voluntarily undertaken as defined under Oxford English Dictionary. As per UN declaration, Article 1- "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights,

through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.<sup>2</sup>

Article 2. - A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm

in intervening to assist victims in distress or to prevent victimization.

Recently, under the Code of Criminal Procedure (Amendment) Act, 2008,

first time in India the term Victim is statutorily defined by additional clause, In section 2 of the Code of Criminal Procedure, 1973 after clause (w), the following clause shall be inserted, namely:—, (wa) "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.

The victim suffered by violent bodily crime or victims of rape is deprived of the normal quality of enjoyment of life and sometimes face threat to their well being and safety. Hence in the current criminal administration of justice system, it is the responsibility of the state to prosecute offenders and provide retribution for offence to the victims of crime. The obligations of state in the Indian Constitution to protect

and help victims' of violation of human rights can be culled from Article 14 and Art. 21, which contain important fundamental rights to be read with directive principles of state policies contained in Articles 39 A, 41, 46, and 51 C of the Constitution.

The first part of Article 14 is negative term prohibiting the state not to deny equality before law' to any person. The second part of the Article has a positive content indicating an obligation on the state to extend equal protection of laws' to every person. Whereas Article 21 ensures life with dignity, right to legal aid, fair trial, as a part of inalienable Right to life and Personal Liberty'. Article 51(c) directs the state to make endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another.

The apathy towards the rights of victim and very little or no participation given to him in the course of trial, coupled with frequent occurrence of witnesses turning hostile under compulsions like intimidation, coercion or allurements deflects the course of justice, invariably resulting in acquittals. The victims are thus left to suffer physically, mentally and financially under the crime committed against them. There are least provisions in the existing laws to help and support the victim or allow him any participation in the enquiry or investigation of crime. After the commission of the crime against him and till the actual trial begins in court, he is at the mercy of the state and the society. The victim requires greater help and support soon after commission of crime including medico-legal, financial assistance to fight for the justice.

The historical evolution of the concept of victimology in crude sense was not only part of Hammurabi's code but also existed in developed sense in ancient Greek city-states. Traditionally, the victim has not received a prominent position in the criminal justice system compared to the accused. Hence the victim requires attention in regard to his various rights especially payment of compensation. The concept of compensation was also not new to India and existed in more developed sense than the present. Manu in Chapter VIII, verses 287 clearly says that : if limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expense of the cure or the whole.' He further in verse 288 says that : He who damage the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to damage.'

In Arabia, Tyler noted the transition from blood vengeance to compensation. Nomadic tribes outside the cities adhered strictly to the blood-feud, but those living in towns found it necessary to practice compensation for offences against the person in order to prevent the socially disintegrating effects of the blood feud.<sup>3</sup>The practice of compensation is referred

to by Homer in the *Ninth Book of the Iliad*. Ajax reproached Achilles for not accepting the offer of reparation made to him by Agamemnon. He reminded Achilles that even a brother's death may be composed by a payment of money and that the murder, having paid his fine, may remain at home free among his own people. Among the ancient Germans, Tacitus stated: "even homicide is atoned by ascertain fine in cattle and sheep; and the whole family accepts the satisfaction to the advantage of the public weal, since quarrels are most dangerous in a free state. American criminologists suggests, "It is perhaps worth noting that our barbarian ancestors were wiser and more just than we are today, for they adopted the theory of restitution to the injured, whereas we have abandoned this practice, to the detriment of all concerned. Even where fines are imposed today, the state retains the proceeds, and the victim gets no compensation."<sup>4</sup>

As far as tracing of gradual evolution of the concept is concerned, the whole era till mid of 1900 can be generally divided into three parts. In initial year of human civilization when the human started living together, especially ,after stone age, because of absence of rule of law and authoritative political institution, right to punish or rather might to punish was with the individual and hence in crude sense the concept of compensation existed at that time .Then came the era in which the social control in terms of mechanical solidarity crept in the society and the offence against an individual lost its individualistic character and now the offence was considered to be against the tribe to which individual belongs and from this era, due to advent of concept of collective responsibility, tribe started replacing the victim's right. The third stage was the advent of monarch, on one hand criminal law saw far reaching change in all its discipline but on the other hand crystallization of notion that State or King is parent of his subjects and crime is a breach of peace of King or State.

So it was the king who have the right to punish and get monetary compensation. This position remained as it is even with advent of democracy and the cause of victim remained unnoticed until 1950 and after that a moment started in U.S. and European countries and the concept again got prominence. Theoretically radical criminologist championed the idea of causes of victim, which was result of reaction against the then criminological thinking that was only concerned with criminals and not the victims.

The payment of compensation to victims of violent bodily crimes is not to be understood as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making.

monetary amends' under the public law for the wrong done due to breach of public duty of not

protecting the fundamental rights of the citizen. The compensation is in the nature of exemplary damages<sup>4</sup> awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort.<sup>5</sup> The Criminal Procedure Code, 1973 particularly section 357A be amended suitably as per requirements of the violent bodily offences like rape so that Courts/ may award compensation to victims, which is to be paid by the offender or offenders. There should be no fixed limit of compensation as in S.358, Cr.P.C. 1973 it should be left to the discretion of the Court considering circumstances of each case and capacity of the parties, if they are unable to pay attachment of his assets or imposing a rigorous labour and amount paid to it to be directed towards the compensation. Every Court be authorized to pay compensation to victims of bodily crimes out of fines collected by the Court. The existing provisions in Criminal Procedure Code concerning the compensation to victim and conferring discretionary power on the Court should be converted to mandatory provisions, requiring to pay compensation in all suitable cases.

After Second World War, the focus has marginally shifted to unfortunate victim, countries like Canada-Monitoba enacted the Justice for Victims<sup>6</sup> of Crime Act, 1986, New Zealand has also passed Victim of Offence Act, 1987, and U.K. enacted Criminal Justice Act, 1988 and in Victims of Crime Act became a part of Federal Law in the USA in 1984. But in India, least was done to fulfill the required needs of the victims of crime except limited provisions in laws which are scattered. So the Hon<sup>ble</sup> Supreme Court of India had directed to the National Commission for Women to evolve a scheme so as to wipe out the tears of unfortunate victims of rape<sup>6</sup> accordingly the report was sent to the central government in 1995 which was debated and Committee of Secretaries gave various guidelines in that regard. Recently the Report on National Seminar (held on 25<sup>th</sup> July 2009 at New Delhi) on Revised Schemes for Relief and Rehabilitation of Victims of Rape<sup>6</sup> organized by National Commission for Women reveals that the recommendation was made to design on the basis of Andhra Model, a Compensatory Scheme for victims of crimes which is in consonance with the 154<sup>th</sup> report of the Law Commission on comprehensive compensation to victims of crime. As per UN Declaration on the Victims of Crime and Abuse of Power, 1985, The provision contained shall be applicable to all, without distinction of any kind, such as race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.<sup>6</sup> The victim set criminal law in to motion and then goes

in to obligation. The victims of violent physical or bodily crimes are rarely benefitted than the economic crimes by our criminal justice system. The crimes like homicide, grievous hurt, rioting, custodial torture, criminal force, assault, bodily injury causing permanent impairment or disfigurement and rape leave behind a very traumatic effect on the victims of crimes, who need medical care, legal assistance, restitution and compensation.

Drastic changes have been made in the year 1983 on the law on rape (u/s375 of IPC) where an imprisonment of minimum seven years has been imposed and imposition of fine is made compulsory. In case of rape, the trauma which the victim of the crime undergoes in our society or the stigma which a woman feels after being victimized of rape is ineffable but the practical problems which comes off for as aftermath of rape is loneliness and desertion by husband and family. Consequently a woman is left to starve, just due to being victimized and now she is left in such a condition where there may be chances of repeated several abuse. It is true that money cannot repair the chastity and purity which is most precious asset of a woman; nevertheless if sufficient compensation is granted to her, she would not have to depend on the mercy of any body.<sup>7</sup> The recent order in the criminal appeal, the Supreme Court of India reduced the minimum imprisonment from seven years to three and half years by asking accused to pay compensation by way of enhancement of fine to the victim.<sup>8</sup> Today the law in some cases prevents and punishes cruelty to domestic animals, an involuntary act is not regarded by the law as crime. Epileptic is never punished for an offence although he has produced injuries consequences to other, but in quasi crime such as the sale of adulterated stuffs, for which a vendor is punished in spite of his ignorance of the adulteration, here penalty attaches to the act, independent of knowledge of facts. It is now high time to ensure the existence of democratic principles and rule of law by facilitating the access of justice and protection to victims of crime through suitable schemes, systems, legislations and positive approach of the judiciary and social support. Especially victims of rape receive loss to themselves as well as indirect victim( family).

To comment on this aspect of crime problem, Emile Durkheim, in his treatise Crime as a normal phenomenon<sup>1</sup> said its society composed of persons with angelic qualities would not be free from violations of the norms of that society.<sup>4</sup> Historically, the concept of crime seems to have always been changing with the variations in social conditions being the evolutionary stages of human society.

The criminal administration justice system is classified into two major basic systems : 1) Adversarial Criminal Justice System, 2) Inquisitorial Criminal

Justice System: The goal of both the systems is same, that is, Justice, but the means are different. The Adversarial system is prevalent in the commonwealth countries, which is inherited from the British rulers, in this system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defense before a neutral judge. The Judge acts as a referee and decided whether the prosecution has been able to prove the guilt of an accused beyond a reasonable doubt. The system, per se, appears to be fair and justified, but viewed from the perspective of the victim, it is heavily loaded in favour of the accused and is insensitive to the rights of the victims or their plight because generally the judge in his anxiety to maintain his position of neutrality, fails to take initiative to find out the truth and do the needful to restore or compensate the loss of victim.

#### **Psychological impact on Victims on denial by the Society, relatives:**

In many matters, rather than providing support society, relatives, friends come forward to discourage the victim in fighting with the justice system. In painful time, our own runs from the humanitarian duties. For example rape victims are blamed by saying that victim should have been careful. Had the victim been careful such type of incident could not have been happened.

Indian legal system has not influenced by a particular theory of victimology. Various theories have direct and indirect impact on the victim justice system in India. The Structural- Choice Theory (Miethe and Meier (1994)<sup>9</sup> have suggested a *Structural –Choice Theory* of victimization; there are structural factors that place, people at different levels of risk, but within a particular level of risks, some people are still more likely to be targeted as victims. According to Miethe and Meier proximity and exposure to crime are structural factors that determine the overall level of risk. Target attractiveness and capable guardianship are components that determine which specific targets an offender will choose has influenced juvenile justice, women's rights and rights of the weaker sections in

India. Women are more protected under various personal laws because of the structure of the Indian Society which was responsible for making them victims. Weaker section was vulnerable to various discriminations by the society, so the special protection is given to them by special laws, rules, schemes (Atrocity Act, Legal Aid Services, concessions in court fees). So there is a need to think over the following points :

To critically analyze laws relating to Rehabilitation and protection to victims of rape in India and International community.

To analyze proper theories relating the victimization and award of compensation.

To analyze the judicial interpretation on award of

compensation by High courts and Supreme Court in India.

To suggest appropriate model rehabilitation and protection based on the form and nature of crime.

To analyze for the compensation and restitution to the victims of violent crimes

To analyze the psychological and social impact on the victims of rape .

To analyze the role of government in protection and rehabilitation to the victims of rape by making different enactment and efforts.

To analyze the role of Indian Judiciary to make the victims in their previous position.

#### **So above points need to be discuss to give the answer of following three questions:**

1. Whether Victims of violent bodily crimes in general and rape victims in particular are neglected in the Indian legislative framework and Criminal Justice System and there is any need to reform provisions of law relating to the protection and rehabilitation to the victims of rape?

2. Whether the payment of compensation to victims of bodily crimes, especially rape victims for their rehabilitation and protection is overlooked by the Indian judiciary and requires relook?

3. Whether there is any need of redefining responsibilities of an Individuals, State, Society, towards the victims of rape and the Victims are least supported and paid attention than Criminals and other victims in their rehabilitation and protection?

The research is intended to critically analyze Indian legal System including the provisions under the constitution of India, Indian Penal Code, Criminal procedure code and the Interpretation by the High courts and Supreme courts of India with regard to compensatory jurisprudence. The study includes the secondary victimization that is indirect post victimization caused due to the offence.

#### **Justice J.S . Verma Committee Recommendations 2013**

On 22 Dec, 2012, a Judicial committee headed by J.S. Verma, a former Chief Justice of India was appointed by the central government to submit a report. The committee submitted its report after 29 days on 23 Jan. 2013 after considering 80,000 suggestions specially on sexual assault received by them from eminent jurists, legal professionals, NGOs women's group and civil society.

Justice Usha Mehra Recommendation 2013

Justice Usha Mehra Commission on 22 February 2013 submitted its report to on the 16 December 2012 Delhi gang-rape incident to the Union Government of India. The report was received by the Union Minister of Law and Justice Ashwani Kumar and the Union Home Secretary R.K. Singh.

#### **Mallimath committee Recommendations-**

Justice V.S. Mallimath Committee on Reforms of Criminal Justice System. Volumes 1 India (March 2003)- This report is also called as Malimath committee report, in this various committee members, recommended the suggestions on reforms of criminal justice system and tried to make effective criminal justice system, also to focus on the present role of victim in entire criminal justice system. Researcher also agrees with this report because —justice given to victim“ as well as critical analysis on loopholes of the system and also various recommendations. Investigation process role of judiciary, classically compiled. The vision for better criminal justice system is useful for revisiting the areas.

**Prakash Talwar "Victimology" ISHA publishing house, New Dehli ,2006**

In this book the basic concept and development of science of Victimology has been explained and also helpful to cleared idea about what is victimological science.

**Mohammad Farajiha Ghazvini . "Police Protection to Victims of Crime" - Deep and Deep publication Private limited,2000**

The 'Concept and definition of Victim, who is victim of crime, origin and history of victim, classification of victims Is sort out from this book'? Author says about how

victim is originated and how it suffered from different types of offences. That's why this book is a stem of this research.

**Journal of Indian law Institute "victim and abuse of power „2002 VOL -1**

In this article researcher found the condition of poor victim's and how it results into abuse of power in developing countries.

**K.D Gour Textbook on Indian Penal Code, 3rd Edition, 2004 Universal Law Publishing Company Private Limited**

In this book Prof. Gaur included the article on —justice to victim which stressed upon the weakness of our criminal jurisprudence. Also in this article one quotation by Hon'ble Justice Krishna Iyer very much inspires the reader. So this book is very helpful to start introductory part of research

**K.I Vibhute "Criminal Justice Eastern Book Company, Lucknow-**

This is great compilation of different articles on various topics like activities of human right the need of reforms in Criminal Justice System. In India Present problems in relation to victim of crime, how victim struggled for getting justice in this book the authors concentrated mainly on approach of human rights towards justice to victim of crime. As per my opinion this book is contribute a great stuff for research.

**N.V Paranjape. Criminology and Penology -12<sup>th</sup> edition,2005 Central Law Publishing**

In this book the concept of crime has been given also researcher referred various dimensions of Victimology from this book.

**The Code of Criminal Procedure Code (Amendment) Act, 2008-**

prescribes certain amendments in the existing provisions relating to compensation.

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