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AN ANALYSIS OF ROLE OF THE STATE IN THE ADMINISTRATION OF JUSTICE WITH SPECIAL REFERENCE TO JUSTICE TO VICTIMS OF CRIME

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Abstract:

The State, community and parties to crime have prominent role to play in the administration of criminal justice system. Hitherto the criminal justice system was more concerned with punishing the offender. Fortunately, the focus is shifting towards meeting the needs of victims of crime also. A state, community and an offender are all having an obligation to fulfill the loss suffered by a victim of crime. Roles of State and community in ensuring justice to victims of crime have to be properly analyzed. Theme of this paper is to explore as to how state and community have to use their potential to ensure justice to victim of crime. Family group conferencing is one method that has been tried in some western countries to realize justice for victim of crime. India has been experimenting with community based dispute settlement mechanism which makes sure that the demands of victim are met and the feeling of victim of being ignored is minimized to certain extent. This paper attempts to critically analyze role the state and community can play in ensuring justice to victims of crime in India.

Key words: criminal justice system, victim of crime, State, Community, compensation

I. Introduction:

From the dawn of civilization to the present day, legal systems have been experimenting in refining the justice delivery system to make it more easily accessible, prompt and effective.¹ The institutions of *nyaya panchayat*, guild courts and people's courts are some of their manifestations in the past.² Even institution of family has played a vital role in ensuring justice to the parties affected by the crime. In India, the "top down" model of justice administration through modernized techniques does not yield satisfactory result was realized in the post internal emergency period with the experience of gross human rights violations by the system

¹ P.Ishwar Bhat, Law and Social Transformation (Lucknow, Esatern Book Company, 2009) at p.820

² *Id.*

itself because of delay, formalism, expenses, and lack of communitarian participation.³ In reaction to this state of affairs, Art.39-A was incorporated into Part-IV of the Constitution of India for promoting equal justice for all. Rights of the parties affected by the crime got streamlined as a feature of justice delivery system. Some attempts were made for strengthening the rights of victims of crime. As a mechanism of rendering to each person his or her due, a system had to evolve just and fair procedure to protect life, personal liberty and other interests. In spite of its best efforts, legal system could not mould litigation as a satisfactory method of resolving the disputes nor has its search for appropriate model reached final destination.⁴

All legal systems must have the goal of promoting justice to victims. This goal is the other side of the criminal justice system's spectrum because every crime has simultaneously the offender/s and victim/s. Balance of justice can ill-afford to ignore any of the sides. The very genesis of criminal law is traceable to a set of principles that primarily aimed at compensating the victim. A duty had been prescribed upon wrongdoers to compensate the victims of offences against property in addition to undergoing a process of purification under ancient Indian Law. The Muslim Law also recognizes the rights of victims to participate in criminal trial and exercise his option of punishment or compensation. This is another historical factor that evinces the significant role of the victim in the process of administration of justice.

The state's assumption of responsibility to control crimes, and modernization's increased focus on reform of prisons and prisoner and comforts to the accused, relegated the position of victim into insignificance and vanishing point of criminal law.⁵ One should ask question whether the responsibility of the State ends merely by registering a case, conducting investigation and initiating prosecution and whether apart from taking these steps, the State has further responsibility to the victim.⁶ The State is under an obligation to provide not only compensation but also rehabilitation to victims or their family members irrespective of the fact that whether the state or its functionaries are guilty of any wrong. Irrespective of the result of criminal prosecution victim needs to be compensated in addition to the concept of compensating the victim by way of public law remedy in writ jurisdiction. In view of this felt need, a provision is made in Cr.PC, now in *Bharatiya Nagarik Suraksha Sanhita* 2023, for the payment of compensation to victims. Sec. 395 and 396 of BNSS, 2023 deal with the payment of

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 846.

⁶ *Suresh and Anr v. State of Haryana Criminal Appeal No.420 of 2012* at. 9

compensation and victim compensation scheme respectively. Courts have observed to the effect that interim compensation ought to be given at the earliest in any proceedings. In ancient societies, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was a means by which the offender could buy back the peace he had broken.⁷

There is a paradigm shift in the approach of judiciary towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid 1960s and gained momentum in the decades that followed.

The 154th Law Commission Report devoted an entire chapter to 'Victimology' in which the growing emphasis on victim's rights in criminal trials was discussed extensively. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes.⁸

The principles of victimology have foundations in Indian constitutional jurisprudence. Article 41 of the Constitution of India mandates, inter alia, that the State shall make effective provisions for "securing the right to public assistance in cases of disablement and in other cases of undeserved want." So also Article 51A makes it a fundamental duty of every Indian citizen, inter alia 'to have compassion for living creatures' and to 'develop humanism'. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology.⁹

The question is whether the plenitude of the power vested in the Courts under Section 357 & 357-A of Cr.PC, notwithstanding, the Courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the Courts. In other words, whether Courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?¹⁰ This power is conferred

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

to take steps to reassure the victim that he or she is not forgotten in the criminal justice system. It is a well designed measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes.

It is imperative to educate the investigating agency as well as the trial Judges about the need to provide access to justice to victims of crime, to collect evidence about financial status of the accused. It is also imperative to create mechanisms for rehabilitation measures by way of medical and financial aid to the victims. The remedy in civil law of torts against the injury caused by the accused is grossly inadequate and illusory.

Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the apex Court. The decisions in *Nilabati Behera v. State of Orissa*¹¹ and in *Chairman, Railway Board v. Chandrima Das*¹² are illustrative of this trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations awarded have been against the instrumentalities of the state for failure to protect the rights of the victim.

These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether offenders are apprehended or punished. The principle invoked is the obligation of the state to protect basic rights and to deliver justice to victims of crimes fairly and quickly.

According to V. R. Krishna Iyer, J. "It is a weakness of our jurisprudence that the victims of crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law".¹³ D. P. Wadhwa, J. observed that in our efforts to look after and protect the human rights of the convict we cannot

¹¹ (1993) 2 SCC 746.

¹² AIR 2000 SC 988

¹³ *Rattan Singh v. State of Punjab*, (1979) 4SCC 719

forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguards of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. A victim of crime cannot be a 'forgotten person' in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc... An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.¹⁴

As against these developments, two integrated factors that try to help in restoring the right balance by focusing on justice to victims are human rights approach and post-modernist search for traditional solution. The important factors that are guiding the growth of the law in this sphere are International human rights instruments, legislative and judicial contributions and reports of Law Commission and Committees. According to P. Ishwar Bhat, the extent of development in this sphere falls short of the social expectations, and thus disappointing the justice-demanding minds.¹⁵

II. Scheme for victim protection:

As per the UN Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985 the term "victim" includes any person who, individually or collectively, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his Fundamental Rights, through acts or omissions that are in violation of criminal laws. It is very much essential to render justice to victims of crime which consists in recognition and protection of their several rights. They are entitled to the mechanisms of justice and prompt redress for the harm suffered; right to information about such mechanisms; right to treatment and assistance; right to fair restitution by the offender; and in the alternative, right to be compensated by the state.¹⁶ Under the Constitution of India support to victim oriented reforms got crystallized by extending the logic that procedure established by law under Article 21 should be just, fair and reasonable, and should result in protection of dignified life and personal liberty not only of the accused persons but also of the victims of offences and wrongful acts. The justifications for victim-orientation are several: (i)

¹⁴ *State of Gujarat v. Hon'ble High Court of Gujarat*, (1998) 7SCC 392

¹⁵ P. Ishwar Bhat, *Op-cit.*, at p.846.

¹⁶ UN Resolution Number 40/34 November 1985. Principles 4 to 8.

victim is the unfortunate recipient of harm, loss or injury, especially when crimes arise from deep-seated economic dissatisfaction and social maladjustment;(ii) state has the responsibility of protecting the life, limb and property of the subjects, and its failure should be made good by a compensatory system;(iii) victim needs protection against retaliation by the accused; and (iv) his role in helping investigation and prosecution is crucial, and to be used with adequate opportunity for participation, and should not be an object of harassment and privacy encroachment.¹⁷ There has been only a belated realization about the need to equip the legal system with sufficient victim-orientation. The relevant legislative provisions, human right principle, Law Commission report and Justice V. S. Malimath Committee report have oriented towards rendering justice to victims.

II.1 Judicial Response to protection of victim's interest: As per the direction of the Supreme Court in *Delhi Domestic Working Women's Forum v. Union of India*¹⁸ the National Commission for Women formulated a scheme for compensating the rape victims. In *Hari Singh v. Sukhbir Singh*¹⁹ the apex court directed all the courts to exercise the power to grant compensation to victims of crime liberally so as to meet the ends of justice in a better way. This power of court is not ancillary to other sentences but it is in addition there to. The Supreme Court in *Revada Sasikala v. State of A.P.*²⁰ awarded a compensation of Rs. 3 lakhs to a victim of acid attack in addition to the sentence awarded and penalty imposed upon the convict. In *Tekan v. State of M.P.*²¹ the Supreme Court fixed Rs.8000/- as monthly compensation payable by the State throughout life time of rape victim who was blind girl raped with a false promise of marriage and pregnancy occurring from the same. The Karnataka High Court directed the DLSA to award a compensation of Rs. 3lakhs to a minor girl who was victim of rape and who could not terminate pregnancy at 31st week.²²

Victim's right to participate in criminal proceedings has been recognized in various decisions. In *Mallikarjun Kodagali v. State of Karnataka*²³ the apex court observed "The rights of victims of crime is a subject that has, unfortunately, only drawn sporadic attention of Parliament, the judiciary and civil society. Yet, it has made great progress over the years. It is our evolving and

¹⁷ P.Ishwar Bhat, *op.cit.*, at 847.

¹⁸ (1995) 1 SCC 14.

¹⁹ (1988) 4SCC 551

²⁰ (2017) 4 SCC 546

²¹ (2016) 4 SCC 461

²² *L v. State of Karnataka*, 2019 SCC Online Kar 3520.

²³ (2019) 2 SCC 752

developing jurisprudence that has made this possible. But we still have a long way to go to bring the rights of victims of crime to the centre stage and to recognize them as human rights and an important component of social justice and the rule of law.”²⁴ Justice Malimath Committee recommended for change in the law so as to provide for victim’s right to implead as a party to the criminal proceeding where the offence is punishable with imprisonment for seven years or more. The 221st Report of the Law Commission of India suggested in 2009 to insert a provision in the CrPC providing an opportunity to the victim to file an appeal in case of acquittal, low quantum of punishment or inadequate compensation. A provision to this effect was added to section 372 of CrPC in 2009. Now Section 413 of BNSS 2023 governs the matter. In this regard, there is a need to take shift from a purely adversarial system to a mix of accusatorial and inquisitorial system of administration of justice.²⁵ It is pertinent to note the observations made by the Supreme Court in *Zahira Sheikh (Best Bakery) case*:

“... in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society are not to be treated completely with disdain and as *persona non grata*.”²⁶

III. Restorative Justice

Restorative Justice is one form of social justice. Restorative justice is a humanistic form of settling disputes that strives to reconcile the needs of victims and offenders with the needs of the community.²⁷ It focuses on repairing the harm of the injury. Two models of restorative justice used particularly in situations involving youths and their families are victim-offender mediation and family group conferencing. Throughout history, local families and communities and traditional cultures have developed ways of managing conflict and of bringing an offender to accountability to the community.²⁸ These forms of righting wrongs were ritualized but based on communication among members of the community and families of both parties. These forms of justice were found in all cultures.²⁹ In the Navajo tradition, for example, peacemaking is a

²⁴ P.Ishwar Bhat, *Law and Social Transformation* (Lucknow, Eastern Book Company, 2022) at p.855.

²⁵ *Ibid.* at p.856.

²⁶ *Ibid.* at p.857.

²⁷ Katherine Van Wormer, *Restorative Justice: A Model for Social Work Practice with Families* in Vol.84 No.03 *Families in Society*, at 441.

²⁸ *Id.*

²⁹ *Id.*

form of communal response to help people who have been harmed by another.³⁰ Restorative justice suggests that the most important fact about crime is that it causes harm to individuals, their families and communities.³¹ The most salient question thus becomes “How can we best repair that harm?” not, “How can we punish crime?” Instead of focusing on a past wrong, what is needed is a form of justice that helps orient offenders toward the present and future state of affairs, toward membership in the community rather than removal from it. What is needed is a three pronged system of justice; justice for the individual offender, the victim, and the community.

Whereas the situation of victims has not been satisfactory in India, developed countries, including the United Kingdom, have gone far ahead to render victim justice, but the expectations and aspirations of victims remain high even in those countries which do not match the accomplishments made elsewhere.

In *Bodhisattwa Gautam v. Subhra Chakraborty*³² the apex court, having satisfied the prima facie culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. The Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985 as follows:

1. The complainants of sexual assault cases should be provided with a victimâ€™s Advocate who is well acquainted with the CJS to explain to the victim the proceedings, and to assist her in the police station and in Court and to guide her as to how to avail of psychological counselling or medical assistance from other agencies;
2. Legal assistance at the police station while she is being questioned;
3. The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and 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 need a lawyer;

³⁰ Dennis Sullivan and Larry Tifft , Restorative Justice: Healing the Foundations of Our Everyday Lives, Monsey, NY: Willow Tree Press, 2001.

³¹ Gordon Bazemore, Community Justice, and a Vision of Collective Efficacy: The Case of Restorative Conferencing in Criminal Justice, 2000.

³² AIR 1996 SC 922

4. The Advocate shall be appointed by the Court, in order to ensure that victims are questioned without undue delay;
5. In all rape trials, anonymity of the victims must be maintained;
7. It is necessary, having regard to the Directive Principles contained under Art. 38 (1) of the Constitution of India, to set up a Criminal Injuries Compensation Board.

IV. Indian families:

The family system in India is playing its role in ensuring justice to the victims of offence and wrongful acts. Some of the experiences the authors wish to share in this article which may help in bringing some improvements in the legal system.

One incident involving theft of golden ornament:

The author himself came across one theft incident in one family. A married woman allowed her own sister's son to stay with her family for education purpose. All the family members showed love and affection on that boy. But unfortunately that boy was not interested in pursuing his education. That boy was in the company of bad friends. The boy decided to discontinue his education and while leaving the home of his relatives, he committed the theft of golden ornaments when no other member of the family was present. It was a shocking incident for that family. They did not lodge police complaint against that boy. They took this issue with the family members of that boy. The family members of both the parties sat together and decided to allow that boy to continue his education. But that boy did not participate in any family functions and he started avoiding the members of his relative families. The family members of both parties succeeded in making that boy to realize the consequences of his offence. The members of family of that boy were asked to make good the loss suffered to the relative family. This incident brings home the fact that punishment is not the only solution in the form of justice to the victims of the offence and wrongful acts. The punishment would have removed that boy from the community. Even the members of victims' family were not interested in sending that boy to the prison which would have spoiled the life of that boy. This incident shows that if the culture of the family is good, it can bring youth on the right path which is very much required for preserving the health of community and the Nation.

V. Conclusion:

A restorative family justice model can help in healing victims and helping offenders to repair the damage they have done. In terms of its ability to incorporate native rituals in healing meetings and in inclusion of religious concepts those are culturally specific to the participants, this model has special appeal for the people. The perceived need is for a new system of restorative justice based on social and economic justice and on concern and respect for all victims and victimizers, a new system based on remedies and restoration rather than on prison punishment and victim neglect, a new system rooted in the concept of a caring community... [where] power and equality of all social primary goods—liberty, opportunity, income, wealth, and the bases of self-respect—are institutionally structured and distributed to all members of the community and where the spirit of reconciliation prevails.³³



33. Available at www.personal.kent.edu/.../RESTORATIVE%20JUSTICE%20THE%20ROLE%20OF. Last accessed on 30 Jan 2023.