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GRADUAL RECOGNISATION OF VICTIM RIGHTS **UNDER CRIMINAL JUSTICE SYSTEM**

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INTRODUCTION:

In any crime there involve two persons that are victim and offender/perpetrator of crime. In criminal justice system much more emphasize is given to accused. More concern to protect his right during investigation, trial and also after conviction. In fact the victim is somewhat ignored in the justice system.

In primitive society the responsibility of protecting one self against crime and also punishing the offender rested with the individual which reflected the ideas of retributive restitutive justice. As the society got organized in the form of state the responsibility of protecting members against criminals and punishing them shifted to the state. The penal law of ancient communities is not the law of crime but, it is a law of wrongs. The injured person ordinarily take civil action and recover compensation.

Victimology means the scientific study of victims of crime. It seeks to study the relationship between victim and offender and the victims placement under the criminal justice system. The victimology focused his attention on the possible role of victim on the circumstances surrounding him in the commission of the crime.

Historical Prospective -

The pioneering work in the area was initiated in the late 30s and 40s. B.Mendalohn is credited as the first to study relationship between victim and offender. He termed the two as penal couple. Further Dr. Hensvon Hentig , Lawyer and Dr. Henry Ellenvagar, psychiatric are to other pioneers in the area of victimolgy. These two persons in fact treated the victimology as a part of criminology.

B. Mendalohn studies the victim on the basis of their contribution to crime and classifying them in to following categories.

- ◆ Completely innocent victims , e.g, children, persons in sleep.
- ◆ Victim with minor guilt and victims of ignorance such as pregnant women who go to quacks for procuring abortion.
- ◆ Voluntary victims, such as the ones who commit suicide or are killed by euthanasia.
- ◆ Victims who are more guilty than the offenders, such as persons who provoke others to commit crimes.
- ◆ The criminal type of victims who commit offences against others and get killed or hurt by others in self defence.

Von Henting made the first even study of the role of victims in crime and found some general characteristic among them which may be summarized a follows :

- ◆ The poor and ignorant immigrants and those who are requisitive or greedy are the victims of offences involving frauds.
- ◆ Quite often, the victims of larceny (Theft) are intoxicated or sleeping persons.
- ◆ The depressed or apathetic person is a victim because he is “deprived of warning posts” and is indifferent to harm or injury “in prospect”.
- ◆ Wanton or sensual persons may become victims due to situations precipitated by themselves.
- ◆ A lonesome and heartbroken person may become especially vulnerable because of the loss of critical faculties in him.

Theories of Victimology: -

Although the field of victimology has largely moved away from simply investigating how much a victim contributes to his or her own victimization, the first forays into the study of crime victims were centered on such investigations. In this way, the first studies of crime victims did not portray victims as innocents who were wronged at the hands of an offender. Rather, concepts such as victim precipitation, victim facilitation, and victim provocation developed from these investigations. Victim precipitation is defined as the extent to which a victim is responsible for his or her own victimization. The concept of victim precipitation is rooted in the notion that,

although some victims are not at all responsible for their victimization, other victims are. In this way, victim precipitation acknowledges that crime victimization involves at least two people an offender and a victim and that both parties are acting and often reacting before, during, and after the incident. Identifying victim precipitation does not necessarily lead to negative outcomes. It is problematic, however, when it is used to blame the victim while ignoring the offender's role. Similar to victim precipitation is the concept of victim facilitation. Victim facilitation occurs when a victim unintentionally makes it easier for an offender to commit a crime. A victim may, in this way, be a catalyst for victimization. A woman who accidentally left her purse in plain view in her office while she went to the restroom and then had it stolen would be a victim who facilitated her own victimization. This woman is not blameworthy the offender should not steal, regardless of whether the purse is in plain view. But the victim's actions certainly made her a likely target and made it easy for the offender to steal her purse. Unlike precipitation, facilitation helps understand why one person may be victimized over another but does not connote blame and responsibility.

In view of advancement of victimology studies the theory of victim precipitation, victim felicitation and victim provocation perceived as a negative approach to the victim because it only focus on how the victims own contribution led to victimization.

Types of Victims :-

The broadly victims are at three level. One primary victim who suffered injury or harm by the offender directly.

Secondary victim who suffered harm or injury as a result of harm or injury to primary victim.

The third one is tertiary victim who is another person besides immediate victim. There are other way also by saying independently like accident victim, environment victim, consumer victim, Domestic Violence Victim, Child victim etc.

Impact of victimization - The Victim may suffer physical, financially and psychologically. The physical impact like hypertension, increase heart beats, grief, sadness-

Financial Impact – The financial impact of crime on the victim may be in any one or more of the following forms :-

- ◆ costs and expenses incurred in medical treatment for physical injuries.
- ◆ damage to property or articles in possession.
- ◆ Litigation cost incurred in fighting against the crime and criminal i.e perpetrator.
- ◆ Employment loss or financial suffering due to loss of earnings.
- ◆ funeral or burial expenses, if any.

Psychological Impact -

Where the victim is confronted with the crime perpetrator immediate reaction will be anger or fear depending on his physical strength and capacity to face the misfortune. Shock and mental trauma follow subsequently after the crime has been committed and the victim regains senses and is able to recapitulate as to how he has been victimized. He gets so much distressed that he loses self-confidence and self-esteem and life seems to have to meaning for him.

The psychological impact of victimization is clearly reflected in the behavioral responses of the crime victim, which may include increased alcoholism, excessive use of drugs. Segregation of social relationships, avoidance of people's contact or social withdrawal and so on. He or she also develop a serious post traumatic stress disorder.

In 1926 Sweden introduced a system in which victims were paid compensation out of the fine imposed on the offender some concrete progress was made in Europe, the USA and some other countries commencing from the early sixties only. Schemes to pay the victims out of public funds were introduced in Europe, Canada, Australia and New Zealand. Switzerland, where some pioneering work commenced in 1963, even went to the extent of amending its Constitution to promote victim compensation programme. So, the system of restitutive justice is not confined now to payment out of the fines imposed on offenders but the State has also accepted responsibility for compensation in varying degrees in these countries. Because of the obvious reasons, mainly economic, almost nothing has been done so far in the third world countries.

The UN General Assembly Declaration of 'Basic Principles of justice for Victims and abuse of power, which was adopted in November 1985 contains an exhaustive definition of the terms 'victim of crime in Articles 1 and 2 which reads as follows.

“Article 1 – ‘Victims’ means those who individually or collectively, have suffered harm including

physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental right, through acts or omissions that are in violation of criminal laws operative within members States including those prescribing criminal abuse or power.

“**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 terms ‘victim’ also included, where appropriate, the immediate family or the dependents of the victim and persons who have suffered harm in the intervening to assist victim in distress or to prevent victimization.

The U.N declaration of 1985 places victims under two broad heads, namely, 1. Victims of Crime ; and 2. Victims of abuse of Power.

The right of victims of crime include -

- ◆ **Right to Access to justice and fair treatment** - It includes fair and compassionate treatment with dignity, prompt redressal, fair and inexpensive judicial trial mechanism, informed right, inclusion of mediation and arbitration etc.
- ◆ **Right to restitution** – Includes appropriate and fair restitution to victims, their families or dependents, replacement of community facilities and reimbursement of the expenses of relocation wherever such harm results in dislocation of a community ; medical expenses, costs etc.
- ◆ **Right to compensation** - If compensation is not fully recoverable from the offender or other sources, it should be imbursement by the State. Financial compensation shall be payable to victims who sustained significant bodily injury or impairment of physical or mental health as result of crime. The U.N declaration (1985) also suggested establishment of National Funds for compensation of victims of crime.
- ◆ **Right to Assistance** - Such assistance may be in the form of necessary material, medical, psychological or social assistance through governmental, voluntary, community base or indigenous means; availability of health and social services and other relevant assistance; services of police, justice, health, social service and other personnel concerned, training to sensitize these services for helping victims.

Victims of abuse of power -

The expression ‘abuse of power’ denoted acts or omission that do not constitute violation of

criminal law but are nevertheless recognized to have been committed against the norms relating to human rights by persons/authorities in power. Persons who individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights due to abuse of power by authorities are called victims of abuse of power.

The basic principles formulated for justice for crime victims under the UN Declaration (1985) identified the following areas: -

- Access to justice and fair treatment.
- Restitution
- Compensation; and
- Assistance

Victimological Developments in India Criminal Law Jurisprudence.

The Law Commission of India as a result of which, it made suggestions for introduction of provisions for compensatory relief to crime-victim under the Indian law of crimes and procedure in its 152nd Report (1994) and 154th Report (1996).

The Law Commission of India in its 154th Report on the Code of Criminal Procedure in 1996 devoted an entire chapter to 'Victimology' in which the growing emphasis on victim's rights in criminal cases was discussed extensively. The Commission noted that increasingly, the attention of criminologists, penologists and law reformers has been directed to victimology, control of victimization and protection of victims of crimes. The incident of crimes often entail substantive harms to people and not merely symbolic harm to social order. Therefore, needs and rights of victims of crime should receive priority attentions in the total response to crime. One universally recognized method of protection of victims is the compensation to victims of crime.

Indian Constitutional Base -

The fundamental rights enshrined in Part III of the Constitution and directive principle of state policy in Part IV form the butwork for a new social order in which social and economic justice would blossom in the national life of the country. Article 51-A mandate , inter alia that it is a fundamental duty of every Indian citizen to have compassion for living creatures and to develop humanism. These provisions formed the basis for development of Victimological principles.

Justice Malimath Committee Report (2003)

Justice Malimath Committee Report on victim of Crime and reforms in Criminal Justice System (2003). inter alia observed.

“Historically speaking, criminal justice system seems to exist to protect the power, privilege and values of the elite sections of society. The way crimes are defined and criminal justice system is administered, show that there is an element of truth in the above perception even in modern times. However, over the years dominant function of criminal justice is protected to be protecting all citizens from harm to their person or property, the assumption being that it is the primary duty of the state under the rule of law. Criminal justice came to comprehend all about crime and criminal, the way he is death with, the process of proving his guilt and the ultimate punishment given to him. The civil law (of torts) was supposed to take care of the monetary and other losses suffered by the victim. Thus, victims remained marginalized and the state stood forth as the victim to prosecute and punish the accused.” the Committee found no credible reason for the provision in the Code of Criminal Procedure, 1973 that compensation could be awarded only if the offender has been convicted of the offence with which he is charged.

The Malimath Committee in its report suggested that the right of victim to appeal against the order passed by the trial court should be further extended and right to appeal against acquittal to the High Court should not only be limited to the prosecution but should be available to the accused as well, where prosecution declines to file the appeal.

As a result of the recommendations made by the Malimath Committee, Section 372 of Cr. P. C. as amended by the Cr.P. C.(Amendment) Act, 2008 now provides that the victim need not approach the prosecution for its consent or approval to file an appeal against the acquittal of the accused. Besides, a new Section 354-A was inserted in the Cr. P. C. by the Cr. P. C. (Amendment) Act of 2008 which provides for compensation to victims of crime and protection of their constitutional rights.

Compensatory relief to victim is the ‘key feature’ of restorative justice system.

The concept of restorative justice is woven around four major themes, namely 1) Restoration, 2) Accountability, 3) Community Protection, 4) Skill development.

- ◆ **Restoration** - It implies help and support to victim of crime, whether the offender is apprehended and arrested or not. Thus, restorative justice lays equal importance on the rehabilitation of both victim and the offender to realize the rehabilitation of both victim and the offender and makes offender to realize the consequences of his offence on the victim and compensate the latter for the loss or injury caused due to crime.
- ◆ **Accountability** – The process of victim-offender mediation lead the offender to accept accountability for harmful consequences of his criminal act on the victim and he makes amends to the victim and also to the community. Accountability of the offender and acceptance of guilt by him, has a soothing effect on the victim which facilitates overcoming trauma and distress caused due to his victimization. It is positive approach involving both. Offender and the victim to understand each other.
- ◆ **Community Protection** – Community surveillance provides best opportunities to the offender to rehabilitate and reforms himself and channelize his energy into productive activities. For victim, community's protection and assistance greatly helps in his return to normal life, forgetting the past (victimization) and look for the bright future. It provides him moral strength to withstand the sufferings and consequences of his victimization.
- ◆ **Skill Development** – Vocational training provides opportunities for the offender as also the victim to develop new skills which may help in his restoration and rehabilitation. Competency of development programs constitutes a vital segment of the restorative justice system.

Police and Judicial Attitudes -

The police are more likely to bring charges in an assault case if the victim and offender are strangers and less likely to do so if they are related or known to each other. The greater the prestige of the victim, the lesser the chances of the case being dropped. Older victims being regarded as defenseless, it has been found that cases in which the homicide victim was sixty or older were less likely to be dismissed by the prosecutor.

Judicial attitude, as reflected in sentencing, also appears to be amenable to the personal factors and characteristics of victims. More severe judicial action is discernible in cases of helpless victims, e.g. elderly persons, children and females. Lesser severity is reflected in the sentencing in victim precipitated crimes/Interestingly enough, the American studies also reveal that the attractiveness of the victim and defendant also affected sentences passed by the court, greater

sentence passed where the victim happened to be attractive and lesser sentence in case of attractive defendants.

In respect of giving compensation to victim section 357 under code of criminal procedure is there. Initially section 357 (1) permitted the Court to give compensation to victim out of the fine amount imposed after conviction. But, on 41st law commission report the section 357 clause 3 inserted and give discretion to the Court that the trial court is not “when the court imposed a sentence of which fine does not form a part, the court may when passing judgment order the accused person to pay by way of compensation such amount as may be specified in the order to the person who has suffered any loss or any injury by reason of the act for which accused person has been so sentenced.

Further with affect from 31st 2009 of definition of victim in corporate in the Cr.PC as section 2(wa). The definition suggest victim means a person who suffered any loss or injury caused by any reason of the act or omission for which the accused person has been charged and the expression victim included his or her guardian of legal heirs.

The provision of section 353 A also added and introduce a victim compensation scheme by the State Government in coordination of Central Government. The scheme suggest that whenever recommendation is made by the court to district legal service authority or state legal service authority for compensation the authorities to decide quantum of compensation to awarded under the scheme. Even when the offender not traced or identified and when no trial take place. The victim or his dependents may make an application to authority for award of compensations. These authorities also pass an order for immediate first aid facility or medical facility to be made available for free of cost. On the certificate of police officer not below the rank of officer in charge of police station or a magistrate of the area concern or may pass any interim relief which deemed to appropriate.

The victim also got opportunity u/s. 372 of Cr.P.C proviso clause which states that, victim shall have a right to prefer and appeal against any order passed by the court acquitting the accused or convicting for a lesser offence on imposing inadequate compensation. Earlier to it the appeal is to be depend upon the public prosecutor whether to prefer or not.

Also section 164(A) in respect of medical examination of victim of rape insulted wherein the consent of victim is material before her examination in person.

Right of Victim to be heard during bail –

The victim and the de facto complainant can be heard at the stage of considering the bail applications of cancellation of bail with the permission of the court. But however, the Court may in appropriate case if comes to a conclusion that in the interest of justice it is necessary to hear the de facto complainant or the victim they may be heard. However, the discretion has to be exercised judiciously with reasonable care and caution. *Harsha Sisodia, v State of A.P. 2010 (3) Bom Cr C 202 AP.*

Pronouncements of concerning victim : -

In *Mohd. Shah V. Empero, AIR 1934 Lah 519* the offender was convicted under sections 32, 149 and 148 of the Penal Code. He was awarded one year imprisonment and a fine of Rs 500 out of which Rs. 400 was awarded to the heirs of the victim. The Lahor High Court held imprisonment to be substantial and, therefore, fine to be unwarranted.

In *Rudal Shah V. State of Bihar, AIR 1983 SC 1086* observed that a person is entitled to compensation for the loss or injury caused by the offence, and it includes the wife, husband, parent and children of the deceased victim.

The Apex court in *Sarvan Singh v State of Panjab AIR 2000 SC 362*, enumerated the factors which the courts should take into consideration while ordering award of compensation to the victim of crime. These factors include capacity of the accused to pay, nature of the offence and the nature of injury suffered by the victim as also the overall effect of crime on the victim's familial and social life and emotional or financial loss caused to him/her. The Court ruled that the quantum of compensation must be reasonable, depending upon the facts, circumstance and justness of victim's claim. The accused must be given reasonable time for payment of compensation and if necessary, it may be ordered to be paid in installments.

In *Phoolwati V NCT. Delhi, 2000 Cri. L.J.1613(Del.)*, the Court awarded a compensation of three lakh rupees to the wife of the deceased for the death of her husband caused in police custody.

The Supreme court in the case of *Nulabati Behera v. State of Orisa, (1993) 2 SCC 746*, emphasized on the need to evolve new tools and mould the remedies for harm done to victim of crime. In this case, the petitioner had claimed compensation for the death of her 22 years old son in police custody in District Sundargarh of Orissa. The state government on behalf of police contended that the deceased had escaped from police custody and he was run over by a train while being chased by the police party. Therefore, it was not a custodial death. However, the Supreme Court rejected the plea of the Government as there was no evidence of death having been caused by the accident and awarded a compensation of one and a half lakh rupees to the mother of award of compensation.

The Supreme Court in the historic *Bodhisatwa Gautam v Subhra Chakraborty, AIR 1996 SC 922*, . The Court in this case noted.

“Rape is a crime not only against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of woman and pushes her into deep emotional crisis. It is, therefore, a most dreaded crime. It is violative of the victim’s most cherished right, namely right to life, which includes right to live with human dignity as contained in Art. 21 of the Constitutions”.

The Court ordered that the accused shall pay an interim compensation of Rs 1000/- per month to the victim (Woman) of his crime i.e rape during the entire period of trial proceedings. The Court further ruled that, “compensation to victim under such conditions will be justified even when the accused was not convicted. These authorities showing the trend of judicial desecration was exercise earlier very conservatively and gradually the victims are trying to compensate by giving direction in this regard. Apart from criminal law procedure now the victims are also did independently by enacting different legislation that are Motor Vehicle Act, Protection of Woman again Domestic Violence Act, Maintenance of parents Act, Probation and Offender Act, Prevention of Atrocity Act etc.

CONCLUSION:

The victim of the crime were noticed much later in the Criminal Justice System but gradually they get their rights through various legislation and international declaration. Despite of such major it is observed that, there are many victims who are not ready to report the incidents on the ground that, the possibility of inefficient police, Police could not do anything in the matter or they would not want to bothered about their case. Further due to complicity of procedures under legislation they are under fear to approach the court. Therefor, there is need to make police machinery more sensitized with the rights of victims. There should be a psychologist to asses and deal with victim of the crime. The judicial officer also need to be think out of box in order to wipe the tears of every victim by thinking differently.

