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RIGHTS OF VICTIMS IN CRIMINAL JUSTICE SYSTEM

AUTHORED BY - RADHA VASANT SHELKE

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Introduction

The drafters of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power have tried to give the widest scope in the definition of the term victim to give it a larger coverage. They have defined a victim as, “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 the Member States, including those laws proscribing criminal abuse of power”. This has made it possible to include not just the main victim who has suffered the trauma of the crime first-hand but also extends to people who have suffered vicariously through the main victim, to also be included in the definition of a crime victim.

Victim’s Rights Under the Indian Criminal Justice System

Most of the time we see how the main attention of the State and its functionaries is to punish the accused and in doing so the interests and rights of the victim get ignored. To ensure that justice is properly dispensed the United Nations General assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which recognized 4 major rights for victims of a crime. These rights are: -

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

Ensuring access to justice and fair treatment, compensation/restitution and providing the required assistance to the victim are some of the rights that should be given to the victim without any default in any criminal justice system. These sacred elements have been given recognition in the Indian

criminal justice system too.

Access to Justice and Fair Treatment

Looking at the provisions of law, one can easily make out that criminal justice is more tilted towards ensuring the protection of the accused. The main attention of the State is to hear him out and if his guilt is proved then take all measures to ensure that he does not go unpunished.¹

We can find various provisions like section 56 and section 76 of CrPC that make it mandatory for the accused to be presented before a judicial magistrate within 24 hours of arrest without any delay shield the accused from unnecessary harassment. However, concerning the victim, the rights are not well codified under the Indian criminal justice system

Despite the tilt towards the accused, there are still provisions granting rights on the victim which help in eliminating further victimization. Section 439 provides that before granting bail to the accused the victim has to be informed unless for cogent reasons court thinks it would not be practicable to inform him. Furthermore, by the virtue of section 439(2), the victim can also appeal against the bail granted to the accused. This provision ensures that the accused is not eased out without the knowledge of the victim. When a crime happens, it is treated not just as a crime against the individual but as a crime against society. Therefore, State is the prosecutor in such cases and a Public Prosecutor or an Assistant Public Prosecutor is in charge of the case. In case the victim wants to engage any pleader then he can do so. Such a leader has to act under the direction of the Public Prosecutor or the Assistant Public Prosecutor. Section 154 of the Code prescribes the procedure for lodging the first information report (F.I.R). As per this section, the victim can either give information relating to the commission of the cognizable offence in writing or orally to the officer in charge of the police station who shall then reduce it to writing. In case the officer in charge of the police station refuses to take down the information then the victim can the substance of such information to the Superintendent of Police who can either conduct the investigation himself or ask any of his subordinates to do the same. It has been a much-debated question whether lodging FIR is mandatory or if there is discretion upon the officer in charge of the police station.

¹ 1 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 available

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² Criminal Injuries Compensation Act, 1995 (U.K.), Victims and Witnesses Protection Act, 1982 (U.S.A.), Victims' Rights and Restitution Act, 1999 (U.S.A.).

Compensation / Restitution

It has been a topic of much debate and discussion whether the baton of the justice gives ends at the final result of the case, i.e., merely punishing the wrongdoer or does it extend to ensuring that the aggrieved party is rehabilitated. Rehabilitation of the victim becomes even more essential in certain grave crimes like rape etc. and without providing a proper mechanism for rehabilitation the whole criminal justice system would fall shallow. The true idea of justice can only be achieved when there are not just punitive measures for the wrong-doer but also providing rehabilitative measures for the ones who fall prey to such wrongful acts. The fines and other punishments are given to the accused by the court are punitive measures. The criminal courts have to deal with the punitive part and punish the offender for his wrongful acts, whereas, the civil court has to get the victim compensated by the accused. Along with the punitive measure, the criminal court may also allow compensation to the crime victim that can be done without causing any disturbance to the civil and criminal process and would also save time, money and efforts. The provision related to compensation is encapsulated under section 357 of CrPC. However, compensation under this section can only be provided if the accused has been convicted and sentenced. While deciding the compensation the court will look into both physical and financial loss caused to the accused. If the court orders a sentence of fine or any other sentence of which a fine is a part then the maximum compensation that can be given, as per section 357(1) is the maximum fine that can be imposed as compensation as to be given out of the fine so imposed. Furthermore, section 357(3) can be construed liberally as it allows compensation only in cases where a fine is not imposed. The object of sub-clause 3 of section 357 is to allow compensation in those cases where fine does not form a part of the punishment given.

There are several case laws where the courts have ordered compensation to the victim in case the State or its functionaries were unable to protect the life, liberty or dignity of such a victim. The provision for victim compensation was introduced in CrPC in 2009 by adding section 357A which mandated the State Government to coordinate with the Central Government and prepare a scheme fund for victim compensation.³

It provides that where the trial court feels that the compensation awarded or in those cases where the accused has been discharged or acquitted then compensation can be awarded to the victim for his

³ Law Commission of India, 154th Report on 'The Code of Criminal Procedure, 1973' available at

rehabilitation. Clause 2 of section 357A provides that where the court makes a recommendation for compensation the State Legal Services Authority (hereinafter SLSA) or the District Legal Services Authority (hereinafter DLSA) has to decide the quantum of punishment that has to be given. There can even be cases where the offender cannot be identified. In such cases, the Code provides relief to the victim or his dependents who can make write an application for such compensation from SLSA or DLSA who shall then conduct an enquiry within 2 months and if satisfied award adequate compensation.

The court has time and again held that section 357 regarding compensation should be construed liberally and the court should record its reason for allowing or not allowing the same.

Victim's Rights in Different Countries

While making sure that the accused does not suffer unnecessarily it is equally, important to secure certain rights for the already harassed victim in order to make the process of justice-seeking smooth. Although India such special attention to the victim lacks, however, there are several countries making progress in this regard. In England, the Code of Practice for Victims of Crime in England and Wales lays down various rights which have to be given to a crime victim. It gives the victim the right to be referred to the services that support the victim and his needs. The victim also has a right to make Victim's Personal Statement in the court wherein the victim tells the court how the crime has affected him and the court considers his statement while passing the order. This right gives the victim the chance to put forth his opinion. The victim is not just involved in the process while the trial happens but even after the conviction is done. The victim has a right to be informed about the progress of the offender and also if the court considers his parole or release. Furthermore, in order to make these rights effective, the victim also has the right to get his above-mentioned rights enforced. England has been one of the first few countries which brought a statutory scheme for victim compensation under the State under their Criminal Injuries Compensation Scheme 1964 and compensation by the offender under its Criminal Justice Act 1972.

The US Supreme Court in the case of Payne v Tennessee, for the first time recognized the rights of the victim of a crime. Victims' rights and restorative justice for them have become an indispensable aspect of the American Judicial System. A victim impact panel is constituted where the victim meets

the offender after his conviction and tells him how his act has impacted him and then asks for restoration.⁴

What More Needs to Be Done for A Victim of Crimes

After the adoption of the Declaration of Basic Principles of Justice for Victims of Power Abuse and Crime, a considerable amount of change was brought in many countries. However, there remains a general lack of policies for the assistance of victims of crime. One reason for this could be the lack of political will to do anything in this regard. While framing policies for the assistance of the victim the policy-makers should ensure certain essential aspects are not left behind. This should include measures ensuring that while seeking justice victim's privacy, dignity or personal liberty is not attacked. Once the case begins the victim is left to his own mercy. Victimization of such a person does not stop with the accused being punished but it gets extended to all the social alienation and judgments that come his way. Societal pressure is often seen as one of the primordial reasons why people don't report crimes. Steps should be taken to secure that the victim is not treated differently by society. For this apart from creating legal provisions punishing such acts by the society, awareness camps too can prove to be helpful. Under the Indian criminal justice system, there is no difference made between restitution and compensation. Whereas restitution is a way of reparation which is made by the offender, compensation is made by the State. The victim should be allowed to recover all his expenses including but not limited to those incurred on his by way of medical expenses, emotional expenses, loss of any property etc. by the offender or the State or both. This calls for a clear demarcation between reparation and compensation.

Overall, we see how in the Indian criminal justice system, the State plays a pivotal role. However, to guarantee justice is properly delivered it is essential to give the victim a central role in the whole proceeding and even after the proceedings are completed

⁴ Ram Phal v. State (Criminal Appeal 1415/2012) dated 28-05-2015

Conclusion

The modern idea that is being developed across nations is that justice should have a reformative approach towards the accused. However, this should not mean that the framework of justice should become altogether oblivious to the rights and interests of the victim. Though we can say that positive changes have been brought that try to make sure that in the whole process of delivering justice to the victim, the interests and rights are not ignored completely, we still have a long way to go. The Indian criminal justice system too favor's the protection of rights of the accused. Even the rights of prisoners are protected whereas very little concern is shown for the victim.

Justice Krishna Iyer observed, "the criminal law in India is not victim oriented and the suffering of the victim, often immeasurable are entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-products of the crime i.e. the victim".

To ensure that our legal system is in consonance with the principle of natural justice, it is important to ensure that we do not overlook the victims. The rights of the victims for protecting their interests are equally, if not more, important.⁵

⁵ First proviso to section 154(1), Code of Criminal Procedure, 1973.