

## **ANALYZING INDIAN CRIMINAL JUSTICE ADMINISTRATION FROM VICTIMS' PERSPECTIVE**

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“[P]eople by and large have lost confidence in the criminal justice system..... Victims feel ignored and are crying for attention and justice.”<sup>1</sup>

### **Introduction**

The victim constitutes the most important as well as the most aggrieved entity in any criminal justice administration. The emergence of “victimology<sup>2</sup> movement” in the late 1970s and early 1980s in the United States of America<sup>3</sup> (U.S.) is credited for putting at the forefront the plights of the victims by describing them as the “forgotten entity” in the criminal justice administration. The movement in the U.S. was a result of the continuous neglect and ignorance of the rights of the victims in the criminal justice process.

The story holds true for India also. In India, it is widely believed that victims do not have sufficient legal rights and protections, and hence they are considered to be the most neglected entity in the entire criminal justice administration. There is a general feeling that unless justice to the victims is made the focal point of the Indian criminal justice administration, the system is likely to become an institution for perpetuation of injustice against the victims.

Unfortunately in India, after the crime is reported and the criminal motion is brought into force, the entire focus tilts towards the accused, forgetting completely the victims’ rights and perspectives. As a result, the victims are sometime termed as “forgotten entity” or

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<sup>1</sup> *Justice V.S. Malimath Committee Report on Reform of Criminal Justice.*

<sup>2</sup> It is an academic scientific discipline which studies data that describes phenomena and causal relationships related to victimizations. This includes events leading to the victimization, the victim’s experience, its aftermath and the actions taken by society in response to these victimizations. Therefore, victimology includes the study of the precursors, vulnerabilities, events, impacts, recoveries, and responses by people, organizations and cultures related to victimizations.

<sup>3</sup> ANN WOLBERT BURGESS, REGEHR CHERYL & ALBERT R. ROBERTS, *VICTIMOLOGY: THEORIES AND APPLICATION* 31-32 (Jones and Bartlett Publishers, Massachusetts 2010).

“marginalized entity” in the Indian criminal justice administration. The unresponsive attitude of the criminal justice administration contributes to the plights and pains of the victims in many and varied ways. When we look at the criminal justice administration along with its procedure, we find that it is tilted more and more in favour of the accused at the expense of the rights of the victims. The accused have been provided with protection at all the stages—pre trial, trial and post trial of the criminal justice. As soon as the crime is committed and accused is nabbed, effort is made to provide him with all the rights such as the right to legal representation, right to medical examination, production before the magistrate within 24 hours, right to be informed of the ground of arrest, etc. However, as against this, victim is left at his/her mercy. The fine imposed on the accused forms part of the compensation to the victim. However, the fine amount is too inadequate to bring any substantial meaningful changes in the life of the victim. Further, rehabilitation is the most neglected area in the entire criminal justice administration. Since rehabilitation has financial implications, the state generally neglects this dimension. However, such attitude of the state adds to the plights of the victims especially when victims have been subjected to sexual offence, which at times result in loss of employment, unwanted pregnancy, mental trauma, and ostracization from society and several other problems. Hence, for all these reasons, victims continue to be the “marginalized entity” of the Indian criminal justice administration. However, in the last few years, with the growing awareness regarding the plights of the victims, efforts have been made to undo the situation. E.g., some changes have been made in the law and procedure to take care of the victims’ rights. One such example is the insertion of Victim Compensation Scheme in Section 357A of the Criminal Procedure Code (Cr.P.C.), 1973 (inserted by Act 5 of 2009).

This paper aims to critically look at the rights which a victim should have in our criminal justice administration, and what are the obstacles to it. The paper looks at the response of the various actors in the criminal justice administration towards the victims’ rights. The paper focuses on Indian scenario with special reference to position at international level.

### **Victims’ Rights**

Generally, 2 types of rights are recognized of victims in any sound criminal justice administration: First, victim’s right to participate in criminal proceedings and secondly, right to seek compensation from the criminal court and/or from the state for injuries suffered.

### Global Recognition of the Rights of the Victims

In 1973, a dedicated group of victim advocates and scholars from around the world assembled in Jerusalem, Israel for the 1st international symposia on victimology.<sup>4</sup> This symposium brought into limelight the plights of the victims at international level and it revitalized advocacy for victims' rights. As the pressure grew, the United Nations (U.N.) adopted two General Assembly resolutions dealing with the rights of the victims. The first<sup>5</sup> one is U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (the Declaration) and the second<sup>6</sup> one is Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and International Humanitarian Law, 2006<sup>7</sup>. The Declaration and the Principles are considered to be kind of *Magna Carta* of the rights of the victims. The Declaration recognized the following rights of the victim<sup>8</sup> of the crime:

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<sup>4</sup> P.J. John Dussich, *Victimology-Past, Present and Future*, [http://www.unafei.or.jp/english/pdf/RS\\_No70/No70\\_12VE\\_Dussich.pdf](http://www.unafei.or.jp/english/pdf/RS_No70/No70_12VE_Dussich.pdf).

<sup>5</sup> <http://www.un.org/documents/ga/res/40/a40r034.htm> (last visited May 15, 2013).

<sup>6</sup> <http://www1.umn.edu/humanrts/instreet/res60-147.html> (last visited May 15, 2013).

<sup>7</sup> It provided for following rights of the victim:

- Restitution
- Compensation
- Rehabilitation
- Satisfaction and
- Guarantee of non-repetition.

It further says that victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. It further says that victims shall have following rights:

- Equal and effective access to justice;
- Adequate, effective and prompt reparation for harm suffered;
- Access to relevant information concerning violations and reparation mechanisms.

<sup>8</sup> The term "victim" has been defined under the Declaration as: "[P]ersons 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". It further says: "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 victim-mization".

- Access to justice and fair treatment<sup>9</sup>
- Restitution<sup>10</sup>
- Compensation<sup>11</sup>
- Assistance<sup>12</sup>

Despite Indian judiciary being very clear and forthcoming, the India could not even adopt the 1985 U.N. Declaration on Justice for Victims of Crime and Abuse of Power which turned out to be blue print to as many as 75 nations for creating victim based legislations. As a result, victim continues to be the forgotten entity in the Indian criminal justice administration.

### **Primary Victimization and Secondary Victimization**

Generally, it is said that victims suffers victimization at 2 level-primary and secondary.<sup>13</sup> Primary victimization is the initial interaction between the person who is the victim and the one who caused the harm. In other words, it is the moment that the crime took place. This will result in immediate consequences and impact that victim's overall perception of the world. Some examples of a primary victimization would be rape, robbery or a violent attack. Secondary victimization is when a victim of family or sexualized violence speaks out about the abuse and is re-victimized through the words or actions of service providers, family, "friends" or other members of the community. This can happen in many ways including disbelieving or denying, blaming the victim, criticizing, etc. Sometimes, secondary victimization is much more agonizing than the primary victimization as the victim has to constantly explain to state and private individuals as to how she/he suffers primary victimization which bring backs old horrible memories and sometimes

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<sup>9</sup> It says that victims should be treated with compassion and respect; judicial system should be established that enable victims to seek redress; victims should be informed; victims' views should be presented and considered; victims should be assisted in the process; privacy and safety should be ensured; informal mechanisms for dispute resolution should be available.

<sup>10</sup> It says that offenders should be responsible for their behavior and make restitution; governments should consider restitutions; where public officials acting in an official capacity violated national laws, victims should receive restitution from the state.

<sup>11</sup> It says that where compensation is not fully available from the offender, the state should endeavour to provide financial compensation.

<sup>12</sup> It says that victims should receive material, medical, psychological and social assistance; police, justice, health and social service personnel should receive training or sensitize theme to the needs of victims.

<sup>13</sup> HARVEY WALLACE & CLIFF ROBERSON, VICTIMOLOGY: LEGAL, PSYCHOLOGICAL AND SOCIAL PERSPECTIVES, 67 (3rd ed., Pearson Publication 2011).

the victim itself is blamed for the victimization especially in sexual offences cases, both inside and outside the court.

## **Victims' Assistance Initiative at International Level**

### **American Initiative**

The victimology movement in U.S. started in 1970's and 1980's and became a very powerful movement. Some of the initiatives in the U.S. for the assistance and protection to the victims include the following:

- In 1982, the U.S. President Reagan Commissioned the President's Task Force on Victims of Crime under the direction of Assistant Attorney General Lois Haight Harrington. As a result of the recommendation of the Commission, in 1984, the Victims of Crime Act was passed which established the Crime Victims Fund (CVF). The Fund is supported by money collected through criminal fines, forfeited bail bonds, penalties and special assessments. Victims can apply to this fund to cover crime related medical costs, funeral costs, mental health counseling, or lost wages that are beyond the insurance coverage. Generally, victims are required to report to crime within 3 days and file claim within 2 years. Maximum awards generally range from \$10,000 to \$25,000.
- In April 2004, the U.S. Congress enacted the Crime Victims' Rights Act. This Act identifies the following rights of the victims:
  - To be reasonably protected from the accused.
  - To have reasonable, accurate and timely notice of proceedings.
  - To not to be excluded from any such public proceedings.
  - To be reasonably heard.
  - To confer with an attorney for the government in the case.
  - To full and timely restitution as provided by law.
  - To be free from unreasonable delay.

This federal Act was the basis for many states in U.S. to enact state legislation for the victims' protection.

- National Organization for Victim Assistance (NOVA): It was established in 1975 as a national umbrella organization dedicated to expanding current victim services, developing new programmes and supporting passage of victims' rights legislation. In addition to this, NOVA also serves as a conduit of information and

technical assistance for local and regional victim assistance programme.

- **Victim Information and Notification Everyday (VINE):** The VINE program is a national initiative that enables victims of domestic violence or other related crimes to access reliable information about criminal cases and custody information of offenders 24 hours a day via phone, internet or email. Through, VINE, victims can be registered to be notified immediately in the event of their offender's release, escape, and transfer or court appearance.
- **Victim Impact Assessment (VIA):** In the U.S., one of the most effective tools victims have in the fight against crime is VIA used at the time of sentencing of defendants. Most states allow either oral or written statements, or both, from the victim at the sentence hearing, and require it to be included in the pre-sentence report, given to the judge prior to imposing sentence. Typically, a VIA will contain the following:
  - The physical, financial, psychological or emotional impact of the crime.
  - The harm done to the family relationship by the crime, such as the loss of a parent.
  - The need for restitution.
  - The medical and psychological treatment required by the victims.
  - The victim's viewpoint regarding quantum and nature of sentence to imposed on the offender.

### **Other Jurisdictions**

**Canada:** In recognition of the U.N. Declaration on the Rights of the Victims, many provincial governments in Canada enacted victims' right legislation, beginning with Manitoba's Justice for Victims of Crime Act, 1986. The Manitoba legislation included provisions such as crime prevention, mediation, and conciliation and reconciliation procedures as means of assisting victims. The State of Ontario enacted Victims' Bill of Rights, 1995 that focuses on crime control. Subsequently, all the other states also passed legislation for victims' assistance.

**New Zealand:** In 1963, the New Zealand passed the New Zealand Criminal Injuries Compensation Act that resulted in the establishment of a 3 member Crimes Compensation Tribunal with

discretionary powers to receive victims' claims and determine appropriate remuneration.

**England:** In England, the initiative was taken by Marjory Fry, a magistrate, who brought into national attention the inadequacy of court-ordered restitution where offenders are often either not apprehended or not convicted, and when they are convicted, they do not have the financial resources to compensate the victim. As a result, Criminal Injuries Compensation Scheme was framed in 1964. Under the scheme, Criminal Injuries Compensation Board was set up which later on was renamed to Criminal Injuries Compensation Authority. Since the scheme was set up in 1964, the authority and its predecessor, the Criminal Injuries Compensation Board, have paid more than £3 billion in compensation, making it among the largest and most generous of its type in the world. Under the scheme, the claim must be based on the crime that has been reported to the police. One interesting feature of the scheme is that claim is not dependent on the conviction of the accused as it is based on the principle of civil law principle of "balance of probabilities" rather than the criminal law principle of "guilt beyond reasonable doubt". Further, in 2003, the Criminal Justice Act was enacted. This act is a comprehensive legislation dealing with almost all the aspects of the criminal justice such as police powers, bail, disclosure, allocation of criminal offences, prosecution appeals, double jeopardy, hearsay, bad character evidence, sentencing and release on license.

**France:** In France, crime victims are entitled to become parties to the proceeding from the investigation stage itself. A victim also has a dynamic role in trial stage. Victims can be appointed prosecutors, when the prosecutors fail to act diligently. The role of the victims in the matter of deciding the grant or cancellation of bail, fixing up of compensation is also noteworthy in the French system. In 1993, France attempted to reinforce the possibilities of victim compensation by supplementing the laws in force.

**International Criminal Court:** An example of pro-victim approach is the newly established International Criminal Court (I.C.C.) in The Hague, Netherlands. The I.C.C. is the first international tribunal to give rights to the victim. Inspired by the 1985 U.N Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the I.C.C. allows victim to participate in criminal justice proceedings and makes it possible for the victims to obtain reparation through the court. Article 68, Section 3 of the Rome Statute states that: "Where the personal interest of victims are affected, the court shall permit their views and concerns to be presented and considered at stages of

proceedings determined to be appropriated by the court and in a manner which is not prejudiced to or inconsistent with the rights of the accused and a fair and impartial trial”.

### **Situation in India**

#### **Grievances of the Victims in Indian System**

The main grievances of the victims in India are as follows<sup>14</sup>:

- Inadequacy of the law in allowing the victim to participate in the prosecution in a criminal case instituted on a police report.
- Failure on the part of the police and prosecution to keep the victims informed about progress of the case.
- Inconvenience during interrogation by the police and lengthy court proceeding.
- Lack of prompt medical assistance to the victims of body offences and victims of accident.
- Lack of legal assistance to the victim.
- Lack of protection when the victims are threatened by the offender.
- Failure in restitution of victim.

#### **Victims Compensatory Provisions in Indian Criminal Law**

**Section 357 of the Criminal Procedure Code, 1973:** It is the basic provision dealing with the power of the court to order compensation. Clause 2 sub-section 1 of Section 357 of Cr.P.C. provides that when a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment order the whole or any part of the fine recovered to be applied in the payment of any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in civil court. Though the principle underlying Section 357 of Cr.P.C. is salutary, yet it is limited in its scope. The section will apply only when the accused is convicted that is to say that proving the guilt of the accused beyond reasonable doubt is pre-requisite for the section to come into play. Further, it also depend upon the recovery of fine from the accused, when fine form part of the sentence. If the fine is not imposed, the magistrate may order any amount to be paid by way of compensation

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<sup>14</sup> Deepak Bade, *Concept of Victimology in India*, [http://www.academia.edu/1787492/CONCEPT\\_OF\\_VICTIMOLOGY\\_IN\\_INDIA](http://www.academia.edu/1787492/CONCEPT_OF_VICTIMOLOGY_IN_INDIA) (last visited accessed May 11, 2013).



which he considers just in the circumstances of the case. It is generally seen that either Section 357 is not invoked or even if it is invoked, the compensation amount is highly inadequate as compared to the sufferings and pain of the victim. Sometime, the financial capacity of the accused is taken into account and this further reduces the quantum of compensation as most of the accused are from lower socio-economic background. Further, given the low rate of conviction in India, Section 357 had remained almost dormant for very long.

**Section 357A of the Criminal Procedure Code, 1973:** Then the most recent and important legal provision is Victim Compensation Scheme under Section 357A of the Cr.P.C. inserted by Criminal Law Amendment Act, 2009. Clause (1) of Section 357A provides that every state government in co-ordination with the central government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. Clause (2) provides that whenever a recommendation is made by the court for compensation, the District Legal Service Authority or State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme.

**Section 5 of the Probation of Offenders Act, 1958:** This provision has also empowered the courts to require released offenders to pay the restitution and costs as under. The section says that:

1. The court directing the release of an offender under Section 3 or Section 4 may, if it thinks fit, make at the same time a further order directing him to pay:
  - a. Such restitution as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and
  - b. Such cost of the proceeding as the court thinks reasonable.
2. The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of Sections 357 and 358 of the Cr.P.C.
3. A civil court trying any suit out of the same manner for which the offender is prescribed, shall take into account “any amount paid or recovered as restitution under sub-section (1) in awarding damages”.

**Section 163 of the Motor Vehicles Act, 1988:** In “hit and run” cases, accident victims are eligible for compensation through a special fund called “Solatium Fund”. The amount of compensation is Rs. 25,000/- in the event of death and Rs. 12,500/- for grievous

injuries. A portion of the “gross written premium” is contributed towards this fund every year by both public and private insurers. However, in case the vehicle is without insurance, the victim/dependents have the right to claim compensation from the owner/driver under Motor Vehicles Act, 1988.<sup>15</sup>

### **Justice Malimath Committee Recommendations regarding Victims’ Rights**

The Malimath Committee on the Reform of the Criminal Justice, while dealing with the victims’ perspectives, observed that criminal justice administration will assume a new direction towards better and quicker justice once the rights of the victims are recognized by law and restitution for loss of life, limb and property are provided for in the system. The Committee categorically pointed out that dispensing justice to the victims of crime can no longer be ignored on the ground of scarcity of resources. The Committee observed that victim compensation is a state obligation in all serious crimes, whether the accused is apprehended or not, convicted or acquitted. Some specific recommendations are:

1. The victim, and if he/she is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the charge is punishable with 7 years imprisonment or more.
2. In select cases notified by the appropriate government, with the permission of the court an approved voluntary organization shall also have the right to implead in the court proceedings.
3. The victim has a right to be represented by an advocate of his/her choice; provided that an advocate shall be provided at the cost of the state if the victim is not in a position to afford a lawyer.
4. The victim shall have the right to participate in criminal trial.
5. The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.
6. Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.

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<sup>15</sup> [http://pib.nic.in/newsite/erelease.aspx?relid=74471\(11/08/2011\)](http://pib.nic.in/newsite/erelease.aspx?relid=74471(11/08/2011)) (last visited May 15, 2013).

7. Victim compensation is a state obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by the parliament. The draft bill on the subject submitted to the government in 1996 by the Indian Society of Victimology provides a tentative framework for consideration.
8. The victim compensation law will provide for the creation of a victim compensation fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn.

### **Judicial Observations on Victims' Plights**

It was observed by the Supreme Court in the case of *State of M.P. v. Shyamsunder Trivedi*<sup>16</sup> that the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis, the society suffers and a criminal gets encouraged. Sometimes it is stated that only rights of the criminals are kept in mind, the victims are forgotten. In *Hari Singh v. Sukhbir Singh*<sup>17</sup>, the Supreme Court observed that courts have seldom invoked Section 357 of Cr.P.C. perhaps due to the ignorance of the object behind it. The power under Section 357 is intended to assure the victim that he is not forgotten in the criminal justice administration. The court recommended that the power of the courts to award compensation under this section be exercised liberally so as to meet the ends of justice in a better way. In *State of Gujarat v. High Court of Gujarat*<sup>18</sup>, on the question regarding fixation of wages for the prisoners, Wadhwa, J., observed that in deciding on the question of wages payable to the prisoners the state has to show equal concern for the victim and the family. In the efforts to look after and protect the human rights of the convict, court cannot forget the victim or his family, he said. The victim is certainly entitled to reparation, restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. A victim of

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<sup>16</sup> (1995) 4 S.C.C. 262.

<sup>17</sup> (1988) 4 S.C.C. 551.

<sup>18</sup> (1998) 7 S.C.C. 392

crime cannot be a forgotten entity in the criminal justice administration. It is he who suffers the most.

### **Compensatory Jurisprudence Evolved by the Supreme Court**

The Supreme Court of India has played the most commendable role in evolving compensatory jurisprudence for the victims. Some of the landmark cases in which the Supreme Court provided compensation to the victim include *Chairman, Railway Board and Others v. Mrs. Chandrima Das*<sup>19</sup>, in which the Supreme Court ordered compensation to the rape victim, who was a Bangladeshi national, by the government for the rape committed in the *Yatri Niwas* managed by the Indian Railways at Howrah Station. Then again, in *Nilabati Behara v. State of Orissa*<sup>20</sup>, the Court ordered compensation for custodial killing of the victim by the police in the State of Orissa. In both the cases, the Court held that victims' fundamental rights under Article 21 of the Constitution of India, 1950 were violated. In *Rudal Shah v. State of Bihar*<sup>21</sup>, the Supreme Court made it categorically clear that the higher judiciary has the power to award compensation for violation of fundamental rights through the exercise of writ jurisdiction and evolved the principle of compensatory justice in the annals of human rights jurisprudence. Thus, the role of the Supreme Court in this direction is laudable. The only thing required is the assistance of the legislature in the form of comprehensive law on victims' compensation and rehabilitation and executive assistance in the form of better implementation of the law.

### **Broad Guidelines of the Supreme Court for the Assistance to the Rape Victims**

Shocked and aghast at the plight of the rape victims, the Supreme Court in *Delhi Domestic Working Women's Forum v. Union of India*<sup>22</sup> laid down broad guidelines for the assistance of the rape victims:

- The complainant of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice administration. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for

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<sup>19</sup> (2000) 2 S.C.C. 465.

<sup>20</sup> (1993) 2 S.C.C. 746.

<sup>21</sup> (1983) 3 S.C.C. 508.

<sup>22</sup> 1995(1) S.C.C. 14.

the case and to assist her in the police station and in the court, but to provide her with guidance as to how she might obtain help of a different nature from other agencies, e.g., counseling through medical assistance. It is important to secure continuity of assistance by ensuring that same person who looked after the complainant's interests in the police station, represent her till the end of the case.

- Legal assistance will have to provide at the police station. Since the victim might be in a distressed state upon the arrival at the police station, the guidance and support of the lawyer at this stage is very important.
- The police should be under a duty to inform the victim of her right to representation.
- A list of the advocate willing to act in those cases should be kept at the police station for the victims who did not have particular lawyer in mind, or whose lawyer was unavailable.
- In all rape trials, anonymity of the victims must be maintained as far as necessary.
- It is necessary, having regard to the Directives Principles of State Policy (D.P.S.P.) under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board (C.I.C.B.). Compensation to the victim shall be awarded by the court on the conviction of the offender and by the C.I.C.B., whether or not the conviction has taken place. The court shall take into account the pain, suffering and shock as well as loss of earning due to pregnancy and the expenses of child birth, if this occurred as a result of the rape.

These Principles were reiterated in *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>23</sup>.

### **Real Hindrances to Victim Assistance in India**

**Police Act, 1861:** The Colonial Police Act, 1861 continues to govern Indian police administration in the country. The police are insensitive towards the needs and problems of the common citizen. The police are still romanticizing with the colonial era wherein its role was confined to maintenance of law and order as well as the suppression of freedom struggle. The same mental attitude is followed in socialist welfare society which India initiated post independence. The role of the police is highly disappointing when it comes to the assistance of the victim. The police are probably the first official machinery to

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<sup>23</sup> 1996(1) S.C.C. 490.

whom the victim of a crime approaches. But the general trend of the Indian police is to ignore the plight of the victim and look at the victim as a suspicious creature and sometime even casting doubt on the integrity and character of the victim especially women victims. Lot of effort was made since independence to reform the police and make it more democratic and people-centric but all effort went in vain due to the lack of political will power. The police are important machinery in the hand of ruling elite and no political master would like to part with it. This trend has acquired phenomenal acceptance among the ruling political elite in recent times due to the increased criminalization of politics and administration in the country. Little wonder, some of the important recommendations of the Administrative Reforms Commissions such as first and second Administrative Reforms Commissions went in vain. The National Police Commission (1977) recommendations on police reform was also not given due consideration by the government. Not only that, even the salutary directives of the Supreme Court in *Prakash Singh v. Union of India*<sup>24</sup> to the states regarding implementation of the police reform did not bear any result. The Police Act Drafting Committee under the Chairmanship of Shree Soli Sorabjee submitted its Model Police Act in the year 2006, but it was not implemented. Rather, after the crime is committed and victim approaches the police station for the assistance of the police, the secondary victimization of the victim starts which, at times, is much more agonizing than the primary victimization of the victim. Further, no training is given to the police regarding handling of the victim. The tough training given to the police regarding handling of the criminal is sometimes blindly applies to the victim which multiplies the pain of the victim. Training in victim assistance is alien to Indian system of training. The psychological support which victim requires by the criminal administration machinery is altogether missing, thus, adding to the plight of the victim. The concept of "Victim Impact Statement" is also alien to Indian system of criminal administration. The police, as the most important arm of criminal justice administration, lack the compassionate mindset requires for handling of the victim. As a result, the victim suffers secondary victimization at the hand of the police. Sensitization and democratization of the police is the need of the hour.

**Lack of Speedy Trial:** It is the major contributor to the pain of the victim. The victim crying for justice is left at the mercy of the court system wherein a case drags on for years. In the meantime, the witnesses are threatened, purchased, intimidated, material evidence

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<sup>24</sup> 2006(1) 8 S.C.C. 1.

tampered, key player in criminal administration bribed which ultimately result in low conviction rate and accused is set free and becomes role model for prospective criminals in the society. In the meantime, victim is traumatized and ultimately led a life of depression. Mental pain is compounded rather than alleviated due to slow nature of judicial administration in our country.

**Lack of Rehabilitation:** The government failure at rehabilitation of the victim is the most serious factor contributing to the pain and plight of the victim. The victim of sexual offences and victims who are minor or insane requires better psychological environment to make a new beginning in life. But the rehabilitation infrastructure is very poor in India. There is no fixed budgetary allocation for the rehabilitation and everything is left at the mercy of the concerned ministry. In the past few years, Ministry of Women and Child have shown interest in focusing on rehabilitation infrastructure, yet the overall picture is dismal. Most of the rehabilitation work done by Non-governmental Organizations (NGOs) is also not very satisfactory. Further, regular medical and psychological counseling is missing in these rehabilitation centres. There has been report that these centres have become den of exploitation of inmates by the authorities himself.<sup>25</sup> E.g., “A living hell with stinking toilets, abusive staff and lack of supervision by senior officers of the department of women and children. This place can’t be called a rehabilitation centre”, is how the rehabilitation home in Mumbai named *Navjeevan Mahila Sudhar Vastigruha* was described by the 2-member committee set up by the Mumbai High Court. The committee, comprising superintendent of police Rashmi Karandikar and psychiatrist Dr. Harish Shetty, was appointed to hold a preliminary enquiry against allegations of sexual abuse after repeated incidents of inmates escaping the home. The centre came into limelight because of repeated escape of inmates from the centre. “It is a failed centre. The women have experienced accelerated trauma in the rehabilitation centre and they have a sense of deep mistrust, rejection and injustice with no faith left in the establishment. It is a deep sense of shame to society that we still have medieval, feudal rescue homes which marginalize these women more than they already were,” said Dr. Harish Shetty. In another shocking incidence, mentally ill women lodged at a rehabilitation centre in

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<sup>25</sup> *A Living Hell, Can't Be Called Rehabilitation Centre*, [http://articles.timesofindia.indiatimes.com/2012-12-04/mumbai/35593850\\_1\\_rehabilitation-centre-mankhurd-shelter-resource-centre](http://articles.timesofindia.indiatimes.com/2012-12-04/mumbai/35593850_1_rehabilitation-centre-mankhurd-shelter-resource-centre) (4/12/2012) (last visited May 15, 2013).

West Bengal were subjected to sexual abuse.<sup>26</sup> The caretaker of the rehabilitation centre allowed inside the centre outsiders in evenings, who then sexually abused the inmates. This mental asylum was run by NGO and funded by central government. When the media reported the matter, the West Bengal government cancelled the license of the rehabilitation centre and shifted the inmates to another rehabilitation centre. The story holds true for many rehabilitation centers across the country. Hence, constant monitoring and supervision of this rehabilitation centers needs urgent attention so that such centers do not become den of exploitation of the victims. A fixed budgetary allocation for rehabilitation infrastructure by the central and state ministry is the need of the hour. It is to be hoped that Section 357A will play a major role in this direction. Some states have taken a lead in this direction. E.g., the Maharashtra Government is in process of drafting a victim rehabilitation policy.<sup>27</sup> This was informed by the Maharashtra Government to the Mumbai High Court which was hearing a petition filed by an NGO called “Forum Against Oppression of Women”.<sup>28</sup> The draft policy will provide assistance for rape victims, acid attack victims and sexual assault victims. The scheme will provide financial, medical and legal assistance to the above mentioned victims. This draft rehabilitation scheme is in pursuance of newly inserted Section 357A of the Cr.P.C. which obligates the state to frame a scheme for rehabilitation and compensation to the victims. According to the policy, immediately after the incident of crime, a victim will be entitled to compensation as the policy is not linked to the outcome of court cases. Apart from these progressive steps, there is a need to provide vocational training to the victims so that they can be self reliant in life.

### Suggestions

- India should adopt and ratify U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 as soon as possible which will show her commitment to make its criminal justice administration more victims oriented.

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<sup>26</sup> *Mentally Ill Women Sexually Abused, Tortured In West Bengal*, [http://zeenews.india.com/news/west-bengal/mentally-ill-women-sexually-abused-tortured-in-wb\\_787228.html](http://zeenews.india.com/news/west-bengal/mentally-ill-women-sexually-abused-tortured-in-wb_787228.html) (13/07/2012) (last visited May 15, 2013).

<sup>27</sup> *State to Pay Victims of Crime*, [http://articles.timesofindia.indiatimes.com/2011-06-14/mumbai/29656573\\_1\\_compensation-victim-policy](http://articles.timesofindia.indiatimes.com/2011-06-14/mumbai/29656573_1_compensation-victim-policy) (14/06/2011) (last visited May 15, 2013).

<sup>28</sup> *Maharashtra Rape Compensation Policy to Be Tabled Soon*, [http://zeenews.india.com/news/maharashtra/maharashtra-rape-compensation-policy-to-be-tabled-soon\\_837836.html](http://zeenews.india.com/news/maharashtra/maharashtra-rape-compensation-policy-to-be-tabled-soon_837836.html) (25/03/2013) (last visited May 15, 2013).



- A comprehensive legislation at the central level is required for victim compensation and rehabilitation which will be obligatory for the state government to follow. The proposed legislation should be a comprehensive one, and should deal with all the aspects of victim compensation and rehabilitation. A Victim Compensation Authority has to be established under the new Act. Any lethargic approach on the part of the concerned officials in implementing the Act should be met with imposing penalty. The monitoring mechanism should be tight which can ensure better implementation of the legislation. The rehabilitation of the victim should not depend on the conviction of the accused. Special care must be taken of the victims of sexual violence. The legislation may be called Victims Compensation and Rehabilitation Act. All the broad guidelines given by the Supreme Court in a number of cases regarding compensation and rehabilitation of the victim must find place in the new legislation. There should be special stringent punishment and penalty for public servant being perpetrator of crime against the victim. The rehabilitation should definitely include vocational training and employment component. Further, witness protection should be an integral part of the new legislation.
- Every effort must be made to recover fine from the accused as his liability is primary. The fine for most of the crimes should be substantially increased in view of the modern day expenses, keeping in mind that a good portion of fine will go towards compensation and rehabilitation of the victim. If the fine amount appears inadequate for victim rehabilitation, the gap must be bridged by state assistance for the rehabilitation of the victim. This approach will reduce unnecessary financial burden on the state.
- Police should be sensitized towards the rights and plights of the victims. All rank of police hierarchy should undergo compulsory training course on victim assistance in which concerned NGOs can also play an important role. The course should enable the police to understand the medical, psychological, legal and financial needs of the victims. The present police mindset is not supportive of victims. Sometimes, victims and accused are treated in the same manner thus compounding the plight of the victim. The police are the most important machinery in the criminal justice administration, and if the police are not victim sensitive, then all efforts at victim rehabilitation are bound to fail.

- Victim Impact Assessment (VIA) should be made an integral part of Indian criminal justice administration.
- Victim should have a prominent say in criminal justice right from filing of the First Information Report (FIR) till the conviction and sentencing of the accused. They should be allowed to play active part in investigation and trial stage.
- A panel of lawyers should be available to provide legal assistance to the victims as soon as the matter is reported to the police, as per the guidelines of the Supreme Court.
- The efforts of Indian Society of Victimology (I.S.V.), Chennai must be commended by the government and if possible, a periodic grant should be made to them. If the efforts of I.S.V. are channelized in proper direction, they can play a very prominent role in the area of victim assistance. The research conducted by them can be of great help to the government and NGOs working in the field of victim assistance.

### **Conclusion**

The movement for victim assistance will have to go a long way before any tangible result can be produced. The endeavour must be to make the victim an integral entity of the criminal justice administration from the present status of forgotten entity in the criminal justice administration. A movement has already been initiated by the I.S.V., Chennai whose result will definitely be felt in the coming years. No criminal justice administration can afford to ignore the rights and plights of the victims of the ever increasing number of crimes. The plights of the victims are many and varied, and hence it requires greater attention by the criminal justice administration. The need is to make the system more sensitive to the plights of the victims.

