

Victimology in India with Special Reference to Child Victim

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Abstract: *Victimology is the science of study of victimization and relation of victim and offender and the interaction between victim and criminal justice system¹. India having accusatorial criminal justice system has forgotten the victim. In spite of 357 and 357A along with some special law it lack in protection and identification of victims. The present article will deal with the most vulnerable class i.e. Child victim, How judiciary have filled the legislative vacuum through its constitutional compensatory jurisprudence by providing protection and rehabilitation. Judiciary has recognised so many new classes of victims in many of its landmark judgements, like Vishaka case² in which a new class of women victim at workplace was recognised similarly prisoners as victims were recognised in D.K.Basu by Supreme Court. Despite of providing compensation and rehabilitation, judiciary has also recognised some new sub classes of child victim. This Article will focus on these recent recognised sub classes and why such sub classes need an immediate attention. In spite of special legislative framework of POSCO Act 2012 and Juvenile Justice Amendment act 2015 child victims are in more vulnerable stage than any other class. Compensation will not do all and end but it will help victim to come back in to main stream but who are the real victim especially in cases of child victim is area of concern. Though so many sub classes are recognised by Indian judiciary yet it the area of immediate research.*

Key words -: child victim, legislative framework, judicial development.

Introduction

*Mujh par zulmo ki inteha kar do,
Phir koi bezuba mily na mily.*

A criminal justice system is the system by which society first determines what will constitute a crime and then identifies the accused, tries him, and if

found guilty convicts him and punishes him for violating the criminal law³. Criminal justice administration is one of the major sectors of public administration, broadly comprising three principal components, viz., police (i.e., law enforcement); judiciary (i.e., adjudication); and correctional institutions. (i.e., jails, prisons probation and parole)⁴ and in this system these distinct agencies operate together both under the rule of law and as the principal means of maintaining the rule of law within society. Its basic objective is not only to enforce law, but also to ensure equity and justice. Its success or failure determines the fate of societal progress⁵. The main role of criminal justice system is to uphold the rule of law, provide fair trial to accused and provide rehabilitation to victim so that he will not become prey to the crime again. To ensure that innocents are not victimized by the criminal justice delivery system, the accused has been granted certain rights and privileges⁶. These rights and safeguard are provided in constitution⁷ and various statutory provisions⁸. The victims who put the law in motion are usually the forgotten class in our criminal justice delivery system⁹. The sole sufferer had a very limited role in complete justice delivery system from initiation till the end of the proceeding. He is neither participant in the proceeding launched against the offender nor a guiding element in any stage of the

³ Roshun Thomas, "Administration of Criminal Justice in Ancient India", Journal of Indian Legal Thought, Vol. (3), p.159 (2005).

⁴ Rakesh Kumar Handa, "Restorative justice from victim prospective and its utility in India", thesis, to faculty of law, Delhi University(2005).

⁵ Mir Mehraj-ud-din, "Crime and Criminal Justice System in India", New Delhi: Deep and Deep Publications, p-56(1984).

⁶ P.V. Reddy, "Role of Victims", Student Bar Review, Vol.18(1), NLSI, Bangalore, p.4.

⁷ Indian constitution, article 21, (2006).

⁸ See The Code Of Criminal Procedure, 1973.

⁹ Subash C. Raina, "Evolution of victimological Jurisprudence in India Law", Judiciary.

And Justice in India. New Delhi: Deep and Deep Publication, p-82(1992).

¹ Black law dictionary.

² Vishaka Vs State of Rajasthan (1997) 6 SCC 241.

prosecution¹⁰. There has been gross neglect of the victim's need and interest. In addition he is made to suffer not only in the hand of accused and their associates but at the hand of prosecution agencies. The law even does not afford him any relief by way of compensation or rehabilitation for the harm suffered except to a limited extent¹¹. While highlighting the apathy of our criminal justice system Krishna Iyer, J. in case of *Rattan Singh v. State of Punjab*¹² aptly remarked thus, it is the weakness of our criminal justice system that victims of crimes do not attract the attention of law. Even the "Committee on Reforms of Criminal Justice System" popularly known as the Malimath Committee in its report, it recognized that victims do not get at present, the legal rights and protection they deserve to play their just role in criminal proceedings which tend to result in disinterestedness in the proceedings and consequent distortions in criminal justice administration¹³.

Most of the criminal system is focused on criminals, crime, its rehabilitation, treatment and punishment and very less concerned with victim, victimization, his treatment and his rehabilitation, supreme court has given mandate by the framer of the constitution to be guardian of the fundamental rights of its people and it has been performing its duty sincerely and in this process by interpreting article 14, 19 & 21 it has made lots of evolution in victimology of Indian criminal justice system. Forgotten victim has received recognition in criminology. For example, the guidelines issued by the Supreme Court of India in *Vishaka Vs State of Rajasthan*¹⁴, *Apparel Export Promotion Council Vs A.K.Chopra*¹⁵, *Neera Mathur Vs LIC*¹⁶, *Air India Vs Nargesh Meerza*¹⁷, *Delhi Domestic Working*

*Women's Forum Vs Union of India*¹⁸, *Chairman, Railway Board Vs Chandrima Das*, *ramphal v state of delhi*. The Hon'ble Supreme Court has directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life and liberty of victims. For example, *Kewal Pati v. State of U.P*¹⁹, *Supreme Court Legal Aid Committee v. State of Bihar*²⁰ provide aid in failure to provide timely medical aid by jail authorities, rape of Bangladeshi national by Railway staff²¹, Custodial death²², gas leak victims²³ are some of the cases where supreme court has understood its responsibility and had acted accordingly.

Victim and his kin and kiths have legitimate expectation that state will punish the accused and provide compensation to the victims²⁴ but there is failure in the system in order to provide compensation to the victims, question arises whether court have duty to provide compensation to the victim on acquittal or conviction irrespectively where state fails to provide so, as only punishing an accused is not going to provide justice to the victim. He need a mechanism to for rehabilitation, such as monetary compensation²⁵. the Hon'ble Supreme Court has directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life and liberty of victim. 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 illusory²⁶.

The Supreme Court of India has interpreted the existing law and the Constitution of India so as to resolve many problems which have not been

¹⁰ V.N. Rajan, "Victimology in India", New Delhi: A.P.H Publishing Corporation, p-63, 1995.

¹¹ D. P. Sharma, *Victims of Terrorism, New Delhi: A.P.H. Publishing Corporation*, p-84, 2003.

¹² *Rattan Singh v. State of Punjab* (1979) 4 SCC 719.

¹³ Recommendation of the Malimath Committee on reforms of Criminal Justice System available at: <http://www.pucl.org/Topics/law/2003/malimath-recommendation.html> (accessed on 24th .dec, 2015).

¹⁴ *Vishaka Vs State of Rajasthan* (1997) 6 SCC 241.

¹⁵ *Apparel Export Promotion Council Vs A.K.Chopra* 1991 SCC 759.

¹⁶ *Neera Mathur Vs LIC* (1992) 1 SCC 286.

¹⁷ *Air India Vs Nargesh Meerza* (1981) 4 SCC 335.

¹⁸ *Delhi Domestic Working Women's Forum Vs Union of India* (1995) 1 SCC 14.

¹⁹ *Kewal Pati v. State of U.P* (1995)3 R.C.R.(Criminal) 411.

²⁰ *Supreme Court Legal Aid Committee v. State of Bihar* (1991)3 SCC 482.

²¹ *Chairman, Rly. Board v. Chandrima Das*, (2000)2 SCC 465.

²² *Nilabati Behera v. State of Orissa*, 1994(1) R.C.R.(Criminal) 18 : (1993)2 SCC 746.

²³ *Union Carbide Corporation v. Union of India*, (1989)1 SCC 674.

²⁴ *Laxmi v. Union of India*, (2014)4 SCC 427.

²⁵ *Mohammad Haroon v. Union of India*, (2014) 5 SCC 252.

²⁶ *In Hari Krishan and State of Haryana v. Sikhbir Singh* AIR 1998 SC 2127.

anticipated by the Law makers at the time of enacting the laws or by the constitutional framers at the time of drafting the Constitution by using the appropriate interpretation techniques for the purpose of promoting Justice and for the purpose of preventing and protecting the rights of the Victims. The Hon'ble Supreme Court of India has evolved new mechanism in the forms of guidelines and regulations to promote rights to victims and role of Supreme Court in protecting victims' rights through interpretation of various statutes available. Lacuna present in existing law and how Supreme Court has pro actively filled the vacuum.

Legislative policy for victim in india

In India apart from special acts there are following possible legislation aimed for providing compensations to victims are

- The Criminal Procedure Code 1973
- The Motor Vehicle Act 1988
- The Fatal Accident Act 1855
- The Probation Of Offender Act 1958
- The Human Right Act 1993
- The Domestic Violence Act 2005
- The Indian Constitution

The term victim is defined under section 2(wa) Criminal Procedure Code 1973 "'victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.²⁷" This definition was not present, from very beginning in to the code; it is a very recent development. This definition is added just after the recommendation of 154th law commission report through 2008 amendment the aim of providing some kind of relief to the forgotten class of criminal justice system. Up to 2008 amendment there was no statutory scheme as such for victims in criminal procedure code 1973(cr.p.c. here after) that allow the victim to get compensation from state or the wrong doer. There was 357 to provide compensation to victim that is also depend up on the wishes of courts which was sparingly used by courts. We have move a so many step head in the development of victimology in India still so many flows yet exist. The major provision related to victim and its compensation in c r .p. c. are section 2(wa) as discussed above, section 357 relate to compensation to victim by court, section 357A victim compensation scheme, section 237,250,358,372 also have some bearing of victims rights .Some time victim may approach to high

²⁷ The Code of Criminal Procedure ,1973.

court under section 482 cr.p.c for compensation or rehabilitation as inherent power. Apart to criminal procedure code section 2 of fatal accident act provide for compensation and similar way motor vehicle act also provide for compensatory provisions. Domestic violence act also provide statutory provisions for compensation in matrimonial matters.

Special laws for victims

Apart from above stated universal legislative framework of Indian legislative victimology. It has moved a mile step ahead in providing special protections to vulnerable class some of the special legislative polices for the protection and benefits of victims are

- The Protection of Women from Domestic Violence Act, 2005.
- The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
- Protection of Child from Sexual Offence act 2012.
- Sexual Harassment of Women at workplace(prevention, prohibition and redressal) act 2013 .
- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- The Prohibition of Child Marriage Act2006.
- Protection of Child Rights Act, 2005

Inspite of universal and special legislation, approximately for all marginal class the concept of compensation and rehabilitation remained at subordinate stage. *Justice Krishna iyer* highlights the apathy of victims in criminal justice system of India²⁸

Judicial development of victimology

Haq dark o haq dengey zalim ko saza dengey

Ek shama jala dengey ek shama bujha dengey

Supreme court as guardian of the constitution and its people had proactively helped in development of victimology. The two main components of victimology are compensation and rehabilitation, Supreme Court has played a vital role in development of both from pre criminal procedure code to till date for all types of victims. Development of *compensatory jurisprudence* through article 32 by Supreme Court is of vital importance against the state lawlessness²⁹ police

²⁸ Rattan Singh v. State of Punjab, AIR 1980 SC 84.

²⁹ Rudal Sah v. State of Bihar, (1983) 4 SCC 141.

atrocities³⁰custodial tortures³¹and other violence. The power of courts to award compensation is not ancillary to other sentences but it is in addition. This power was intended to assure victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender³². Trying to rehab the victim is somewhat constructive approach and a step ahead in Indian criminal justice system. For the end of justice court have to take some reasonable grounds while awarding compensation to victim, and also have to see the paying capacity of accused³³ the amount of compensation awarded apart being appropriate for victim should be reasonable and not arbitrary. What is reasonable depends up on the facts of each case and the nature of the offence.³⁴

Palaniappa gawnder v state of Tamil Nadu ³⁵first case of compensation of 1973 code supreme court speaking through *justice Y.V Chanderchud* that compensation under 357(1)(c) of present code only come out of fine in matter where sentence of death or life imprisonment is awarded along with fine and sentence of fine should not be unduly excessive. In the present case fine Rs. 20000/= along with life imprisonment was awarded my madras high court out of which 15000 was given to heirs of deceased as compensation. Supreme court held that no doubt high court being court of justice have full power to combine death or life sentence with sentence of fine ,but fine should not be excessive in all cases, it may be excessive in economic offences where accused through his ill will has enriched himself by violating economic laws. The power to combine death sentence with fine should sparingly be used. Supreme court uphold the order of compensation by reducing the amount of 20000 to 3000, this was the case where supreme court first time uphold the compensation order. *Justice V.R krishnaayyer rightly opined "It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependents of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law this is a deficiency in the system which must be rectified by the*

³⁰ Saheli v. Commr. of Police, (1990) 1 SCC 422.

³¹ Sudha Rasheed v. Union of India, (1995) 1 Scale 77.

³² Vinay and anoht v State of Karnataka, LINID 2015 SC. 256.

³³ Mahindra co.ltd v State,2007 SCC 526..

³⁴ Hari Kishan & Anr. v. Sukhbir Singh & Ors ,AIR1988,2127..

³⁵ Palaniappa gawnder v state of Tamil Nadu AIR1977,SC,1323.

Legislature."³⁶developing constitutional compensation supreme court made it clear that mere shield of public interest will not be allowed to state in order to do atrocities on victim, keeping person after the order of acquittal in prison for 14 years without any reason is appropriate case to provide compensation ,even though there is no such legislation but as per article 32 of Indian constitution supreme court have power to safeguard the fundamental rights given in part III of the constitution and for the enforcement of them supreme court can give compensation to the victims and such compensation are palliatives in nature and remedy for civil damages still remained open for the victim. Not allowing compensation in such gross injustice will just be a lip service to the fundamental rights³⁷.

Development of Child victimology

"Job bachpan tumhari goud mein aaney se katrane lage

Jub maa ki kokh se jhankti zindagi bahar aaney se ghabrane lage

Samjho kuch ghalat hai

Jub talwarein phoolon par zor aazmane lagein

Jub masoom ankhon mein khauf nazar aane lage

Samjho kuch ghalat hai

Jub oos ki boondon ko hatheliyon pe nahin hathiyaron ki nok par theherna ho

Jub nanhe nanhe talwon ko aag se guzarna ho

Samjho kuch ghalat hai

Jub kulkariyan sahem jayein

Jub totli boliyan khamosh ho jayein

Samjho kuch ghalat hai"

By Prason Josh

The era of globalisation where human rights are its flouriest stage and are recognised by almost every state, child rights are also the part of international as well as national human rights³⁸. But the child atrocities are also on their height in this era. India

³⁶ Rattan singh v. State of Punjab, 1979(4) SCC.

³⁷ Rudal saha v. State of Bihar 1983.

³⁸ United Nation Declaration Of Human Rights ,1948.

inspite of many penal laws and the recent POCSO Act, 2012³⁹ prescribing severe punishment for crimes against children, the number of such cases has increased from 38,172 in 2012 to 58,224 in 2013 and to 89,423 in 2014⁴⁰. About 53% of Indian children are facing child abuse mostly are from age 5 to 12⁴¹ affecting them sexually, physically, emotionally and mentally. Court cannot remain silent and hand folded when the legislation is ineffective to curb the mischief for which it has been formed. Being a silent spectre will not only amount to injustice but also the violation of the oath that courts had taken. Madras high court speaking through Justice N.Kkirubakaran provide directions to state and central government in relation to protection of child abuse in India, some of the important directions are as follows⁴²

- Central government should consider for providing additional punishment like CASTRATION apart from the punishment provided in POSCO ACT, JJ ACT etc. especially for child rapist.
- Central government to form commission for research on child abuse in India.
- Central government to endeavour to introduce free compulsory sexuality education in high school level to enable student to understand gender identity.
- State government and central government should run massive awareness programme for crime against children as provided under section 43 POSCO ACT.

Child is the father of man wrote William Wordsworth, if the children of our nation are not protected than future of our nation is in question.

In Supreme Court Women Lawyers Association (SCWLA) V Union of India & Anr⁴³ Supreme court speaking on child rape, court said that it does not create offences nor they do introduce legislative punishments it the duty of legislature in Vishaka & Ors. v. State of Rajasthan & Ors⁴⁴ and

³⁹ Protection of Child from Sexual Offences Act, 2012.

⁴⁰ 'X' v. Union of India and others, Madras high court, dated 16.10.2015.

⁴¹ Supra, note 37.

⁴² ibid.

⁴³ Supreme Court Women Lawyers Association (SCWLA) V Union of India & Anr, civil Writ Petition No. 4 of 2016, (supreme court)

⁴⁴ Vishaka & Ors. v. State of Rajasthan & Ors 1997 6 SCC 241.

Sakshi v. Union of India & Ors⁴⁵ are two different cases where international conventions are relied on, of which India is signatory and no new law or punishment was created. Supreme court cannot create new punishment for rape which is already provided in Indian penal code but the fact that child atrocities are at their height in present and time has come to provide separate punishment for child abusers and it is therefore we direct legislature to take consideration of the fact and add a separate punishment for child rapist in IPC likewise 376(A), 376(B) and all. Differentia should be created between minor and the child for the purpose of child abuse.

*"15. This Court cannot provide a higher punishment. It can only suggest to the Legislature. We are absolutely conscious that IPC provides punishment for the offence of rape. There can be no doubt that a girl child is a minor but may be a time has come where a distinction can be drawn between the girl children and the minor, may be by fixing the upper limit at 10 for the girl children. We are disposed to think so as by that age, a child, a glorious gift to mankind, cannot conceive of any kind of carnal desire in man. Once she becomes a victim of such a crime, there is disastrous effect on her mind. The mental agony lasts long. Sorrow and fear haunt forever. There is need to take steps for stopping this kind of child abuse and hence, possibly there is a need for defining the term "child" in the context of rape and thereafter provide for more severe punishment in respect of the culprits who are involved in this type of crime. In the light of the said decision, we part with the suggestion with the fond hope that Parliament would respond to the agony of the collective, for it really deserves consideration. We say no more on this score."*⁴⁶ that Section 376(2)(I) deals with a culprit who commits rape on a woman who is under 16 years of age but the instances are numerous where the girl children and babies are raped appraising madras high⁴⁷ court supreme court also directed as legislatures to see whether a separate punishment like chemical castration can be imposed on such child abusers who are very maniac to society and are inhuman by their act of doing offence against toddlers and girl child below the age of 10 year. Directing to cast new law for

⁴⁵ Sakshi v. Union of India & Ors 2004 5 SCC 518.

⁴⁶ Supreme Court Women Lawyers Association (SCWLA) V Union of India & Anr, civil Writ Petition No. 4 of 2016, (supreme court).

⁴⁷ 'X' v. Union of India and Others, Madras high court, 16.10.2015.

child victims of rape less than 10 year of age made it clear that it has emerged as new class of victim which need an immediate attention of legislature. Creating sub classes in to classes show the attitude of judiciary for the development of victimology in India. Another new class of child victim has also been recognised by Indian judiciary which has remained unrecognised by our legislation which the child is born out of rape. These victims are still not considered to be victim in our India and there is no study on this and not even data is available but as per one of the article though not Indian put the light on the need of research in this field in respect of victim child born out of rape can very well understood.

“Pregnancy from rape occurs with “significant frequency”. Of the estimated 12% of adult women in the United States that have experienced at least one rape in their lifetime, 4.7% of these rapes result in pregnancy. Therefore, based on a 1990 study estimating that 683,000 women over the age of eighteen were raped in that year, conceivably 32,000 rape-related pregnancies occur annually. A separate study conducted in 2000 estimated that, given the decline in the incidence of rape, 25,000 pregnancies following the rape of adult women occur annually. It is difficult to determine with certainty the outcome of the approximately 25,000 to 32,000 rape-related pregnancies that occur in the United States each year. One study found that 50% placed their infants for adoptions, and 32.3% of raped women kept their infants. Another study, conducted in a separate year, found markedly different results, concluding that 26% of women pregnant through rape underwent abortions. Of the 73% of women who carried their pregnancies to term, 36% placed their infant for adoption, and 64% of women raised the children they conceived through rape.”⁴⁸

The above article shows the need of study in this field as rape is not so uncommon in India and so not the pregnancy out of them, so, what happen to the children born out of such rapes? Are they not secondary victims? What are the rights of such child which has come to existence due to un natural biological relationship and situation further worsen when neither the mother nor the biological father accept such child, what will be the legal status of such child whom should have the responsibility of such child ,what status do such child have in society how society should be expected to react on such child and many more

⁴⁸ Shauna R. Prewitt, “Giving Birth to a Rapist's Child” : Georgetown Law Journal 'Vol.98:827.

question which are unanswered in any legislation but a Allahabad high court through Justice Sahibul hasnan has taken the jurisprudence of child victimology a step ahead and included the child born out of the rapes in to category of victim as they are secondary victims. Giving answer to some the questions Allahabad high court stated that child born out of rape and the concerned mother is not willing to take care than such child became the responsibility of state as state had fail to provide protection to the victim. Such child can be given in adoption and will have inheritance in to the property of his biological father. Speaking on the lack of legislation on this particular issue give direction to both central and state governments to draft a separate legislation for the children born out of rape victim and also guided to perform survey in order to find out how any children's are born out of rape and endeavour should be made to bring them in to the line of normal life⁴⁹and for the purpose of such surveys process followed in other developed countries can be peeped in .Word life does not mean a mere animal existence ⁵⁰life indicate right to live with dignity and free from exploitation⁵¹child born out of rapes also have right to live with dignity and if parents abandons such child, it will be the responsibility of state to pay for their education and rehabilitation and well-being of the child till its majority.

Conclusion

Victimology is still on its developing stage and need comprehensive study in order to determine the classes and sub classes of victims. No doubt provisions of 357A of criminal procedure courts are there for courts to direct the state to pay compensation to victim where compensation provided under section357 of criminal procedure code 1973 is not adequate or where there is discharge or acquittal of accused and victim are required to be rehabilitated.⁵² Rehabilitation and compensation are *not be all and end all* but it is one of the methods of protection of victim⁵³but the questions are who the victims are? Are they being identified wholly? Or still there are so many classes which are still not decided. Is father of a child girl

⁴⁹ ‘A’ through his father ‘F’ v. State of U.P, Writ Petition No.8210 (M/B) of 2015 All. High Court.

⁵⁰ Bandhu mukti morcha v. Union of India, AIR1984 S.C.

⁵¹ Maneka Gandhi v. Union of India, AIR 1978 S.C.

⁵² Suresh v. State of Haryana 2015(2), SCC 227.

⁵³ Ankush shiva ji gaikwad v. State of Maharashtra 2013(6) SCC770.

raped is not victim⁵⁴ what about the mother of a toddler is she not the sole sufferer. Think about the apathy of family who is upbringing the child born out of rape and child himself born out of rape is victim⁵⁵. These are the some forgotten classes of victims which need immediate attention .Judiciary is doing its work with responsibility and whenever getting chance it is trying to find out the new sub classes of victims and giving them recognition but still lot of work is to be done and judiciary alone cannot do this. It's the combined duty of our legislature and society to find them, give those rights, treat them equally and try to stop further victimisation of victim by isolating them with main stream of society. Child victim related area need immediate research especially for victims related to rape and child born out of these non-consent biological meetings⁵⁶. Leaving the question open that only providing the mechanism of compensation or rehabilitation and giving haste and un-researched legislation without determining the victims to be protected and benefited is worth less. Aim should not only be rehabilitation or compensation but it should be to stop their victimisation so that they can come out of vulnerable class.

⁵⁴ Ramphal v. NCT Delhi 2015, criminal appeal no 141 of 2012 (Delhi High Court, 28.05.2015)

⁵⁵ Supra, 49

⁵⁶ idbi