

her remaining life. So encourage her, educate her so that she can become an example for others.

There are many laws, which are meant for punishing wrongful act of rape *etc.* But these laws are not implemented effectively because

- \* The parents will not file a complaint because of the stigma. They do not want to be insulted in society. Most of the cases are not filed because of this reason.
- \* When parents come forward for justice, because of want of evidence the cases are dismissed.
- \* When there is sufficient evidence, there is big gap between complaint and judgment, number of humiliating questions are asked by the police, advocates in the Court at every stage of prosecution. The girl and her parents have to face humiliating and embarrassing situation. With our rigid procedures we are killing victim as well as her parents.

At each and every stage the accused will manage to go out from the case, he will manage the police, the advocate and in some cases doctors upon whose expert report case will be decided. Even the defective evidence and overall delay in deciding all makes the accused benefited.

In case of harassment dowry death, offences against State it is presumed that the accused had committed the offence.

In case of rape also the Court has to presume that the offence has being committed whether she had stated that the consent had been given or not.

There is no need of evidence for such heinous act. As our Ex-Deputy Prime Minister said the punishment for the rapist should be death. He is right it should become a law and it should be implemented strictly, so that violence against women to some extent can be reduced.

## VICTIMOLOGY - THE RIGHTS OF VICTIM UNDER CRIMINAL LAW

*By*

**—B. VIJAYA LAXMI,**  
Assistant Professor,  
University College of Law,  
Osmania University

This article is about the origin of victim and the role played by him/her in the Criminal Justice, while lodging a complaint, during proceedings, the rights relating to the victim under Criminal Law are been discussed.

### *Historical Background:*

Nowhere under the Criminal Law, the word victim had been defined. Victimology is a part of Criminology, The Criminal - Victim relationship is called Victimology. This theory is of recent origin. Three scholars from Europe first studied Victimology. *Hans Von Hentig*, according to him Victimology is

a part of criminology. He defines victim as doer-suffer. *Benjamin Mendelson*, according to him victimology is a social science and the third scholar is *Stephen Schafer*, according to him victim is a part of crime. This theory came into existence in 1940s.

The concept of victim includes any person, who suffers injury or loss due to any cause. The word victim is widely as accident victims, victims of injustice, crime victims and victims of calamities. Crime victim refers to, any person, group or entity, who has suffered injury or loss due to illegal activity. The injury

can be physical, mental or financial. A person who suffers directly or threatened physically, emotionally or pecuniary harm as a result of the commission of a crime, or in the case of a victim being an institutional entity, any of the same harm by an individual or authorized representative of another entity.

According to *Mendelson*: Victims under Criminal Law are categorized into the following:

- \* The complete innocent victim - the victim can be a child or a person who is unconscious.
- \* The ignorant victim - the victim can be a woman, who agrees for a miscarriage.
- \* The voluntary victim - victim as guilty as the offender - the victim who commits suicide.
- \* The most guilty victim - A victim who kills the attacker in self-defence
- \* Victim more guilty than the offender - the victim can be a person who provokes or induces to commits a crime.

#### Rights of a victim in Criminal Justice:

The victim has a right to start criminal action against the wrong-doer, by giving First Information Report to the police, the police will reduce it to writing<sup>1</sup>. A copy of FIR free of cost is given to the victim<sup>2</sup>. Where the Police Officer refuses to act upon such information, the victim can write to the Superintendent of the Police, who is then expected to direct investigation into the complaint<sup>3</sup>. If the Superintendent of Police fails, the victim can give a complaint to the Magistrate<sup>4</sup>, who will in turn examine the complaint on oath and enquire into the case or direct investigation by the police before taking cognizance<sup>5</sup>.

The victim does not participate in the investigation except by being called to confirm the identity of the accused<sup>6</sup>, or the material objects, recovered during the course of investigation. There is no provision for victim who happened to be women or children. According to Section 160 of Cr.PC 1973, no male person under the age of 15 years, or women shall be required to attend any place other than the place in which such male person or women resides. But this section does not apply to a woman or a child who is taken as a suspect<sup>7</sup>. The victims of rape, who are being kept under protective custody in Jails or in Nari Niketan, because they are required for giving evidence, although such detention has no legal basis<sup>8</sup>.

According to Section 439(2) of Cr.PC 1973, the Court recognizes the right of the victim to move the High Court or Sessions for cancellation of the Bail granted to the accused. While closing the report by the prosecution, it cannot be accepted by the Court without hearing the informant, and also compounding of an offence cannot possibly happened without the participation of the complainant. The victim of the crime may move the Government to appoint a Special Prosecutor for a given case<sup>9</sup>. There is no provision for victim or informant or her lawyer to directly participate in the trial. According to Section 301(2) of Cr.PC 1973, the Advocate appointed by the victim shall act under the directions of the Public Prosecutor, and with the permission of the Court, submit written arguments after the evidence in the case is closed. Under Cr.PC there is no provision of Legal Aid for victim of a crime. According to Section 304 of Cr PC 1973 Legal Aid is provided to the accused. According to Section 12(1) of the Legal Services Authorities Act, 1987 (LSAA) entitles every person who has to file or defend a case to legal services, a victim

1. According to Section 154(1) of Cr.PC 1973

2. According to Section 154(2) of Cr.PC 1973

3. According to Section 154(3) of Cr.PC 1973

4. According to Section 190 of Cr.PC 1973

5. According to Sections 200 and 202 of Cr.PC 1973

6. According to Section 9 of Evidence Act 1872

7. *Nandini Satpathy v. P.L. Dani*, 1978 (2) SCC 424

8. *Hussainara Khatoun v. State of Bihar*, 1980 (1) SCC 93

9. According to Section 24(8) of Cr.PC 1973

of crime has a right to have assistance at every stage of the case. No effective provisions for growing menace of intimidation of victims of witnesses during the pendency of trial at the instance of the accused. The few provisions that exist are not meeting the needs of the victims. According to Supreme Court the conviction rate has gone down to 39.6% and the trial in most of the cases do not start till the witnesses are won over. The victim's right of participation in the Post-Trial stage of the proceedings stands on a better stage than that of trial. An appeal against an order of acquittal can be preferred, with prior leave of the High Court, by both the State Government and the complainant. The right of a victim's relatives who not a party to the proceedings, to file a Special Leave Petition under Article 136 of the Constitution.

#### Compensation under Criminal Law:

Criminal Law is of punitive nature. The right of a victim to receive compensation was recognized even under the Code of Criminal Procedure, 1898 but was available only when a substantive sentence of fine was limited. Today, we follow the ancient theory *i.e.*, if a victim has been injured, the King's Courts awarded compensation. Later on, the theory of punishments came into existence, which was adopted by the Cr.PC, 1898, where compensation was also awarded. Under Section 357(3) of Cr.PC, 1973 permits the grant of compensation even where the accused is not sentenced to fine.

The 152nd Report of the Law Commission had recommended for introducing of Section 357-A, apart from awarding punishments, the compensation be awarded at the time of sentencing to the victims of the crime. These recommendations are not been given effect by the Government. Later, the 154th Report of the Law Commission of India, recommended that it was necessary to incorporate a new Section 357-A in the Code to provide for a comprehensive scheme of payment of

compensation for all victims fairly and adequately by the Courts. The compensation had to be awarded by the Courts are: (1) For injury (2) For any loss or damage to the property of claimant, which occurred in the course of his/her sustaining the injury and (3) In case of death from injury resulting in loss of support to dependents<sup>1</sup>. This recommendation was also not implemented by the Government.

Then the Courts in their constitutional jurisdiction started awarding compensation for the victims of custodial death<sup>2</sup>, victims of torture, victims under prison authorities, victims of rape, and for all other injuries including the injury to the property.

One of the important report is the Malimath Commission Report on Criminal Justice System, by Justice *V.S. Malimath*, he had given importance to the victims under Criminal Judiciary System. He said in his report that the victim feels ignored and was crying for justice. The recommendations include:

- (1) The system must focus on justice to victim.
- (2) New directions towards better and quicker justice
- (3) Restitution for loss of life, limb and property. But no effective laws exist till now.

#### Conclusion:

To some extent the compensation awarded to the victim is justified, but the status of the victim under the Criminal Justice has to be amended. More importance has to be given by the Statute, regarding speedy trial and the presence of the victim during proceedings because he/she, the person who had been injured. The United Nations Declaration and the Human Rights Commission recommendations are not followed effectively. The assistance that is given to the accused, the same is not given to the victim. So till today, the victim is the most affected party.

1. Law Commission of India 154th Report on the Code of Cr.P

2. 1993 (2) SCC 746