

MAINSTREAMING VICTIMS OF CRIMES

Relevant for: Indian Polity & Constitution | Topic: Judiciary in India: its Structure, Organisation & Functioning, Judges of SC & High Courts, Judgements and related Issues

The term victim came to be defined in criminal law only in 2009 in India. The victim of a crime is never heard as a victim during the trial of a case, but as a witness.

In *Mallikarjun Kodagil (Dead) v. State of Karnataka* (2018), the Supreme Court stressed the need to have a victim impact statement “so that an appropriate punishment is awarded to the convict”. This throws up many issues that are of interest to the victims of crimes.

The term victim came to be defined in criminal law only in 2009 in India. The victim of a crime is never heard as a victim during the trial of a case, but as a witness. As the victim is represented by a prosecutor, her concerns as well as the impact of her victimisation remain unexpressed. By and large, the police, prosecutors and courts do not have any substantive legal obligation towards crime victims. Indifference to crime victims remains deep-rooted in the accused-centric criminal justice system. ‘Secondary victimisation’ takes place when the agencies of the criminal justice system treat victims of crime unfavourably, or marginalise them during the trial.

The trial process is organised in such a manner that the personal appearance of the victim at all the crucial stages is restricted. The victim is not present when charges are framed against the accused, when the accused is discharged, when bail is granted, when parole is considered, and when punishment or compensation is decided. On the other hand, the accused is always required to be present during all these stages. Crimes are registered in the form of sections of the Indian Penal Code (in numbers) which do not mean anything to the victims of crime in terms of their impact. Crimes do not impact all victims in the same manner. There is no way to assess the impact suffered by a victim. And whatever little is tried in this direction is always through a third party, such as a prosecutor or judge, who is invariably incapable of registering the aftermath of victimisation.

The UN 1985 Declaration of Basis Principles of Justice for Victims of Crime and Abuse of Power effectuated a movement for victim empowerment. That led to significant reforms in the criminal process. It enabled victims to have rights and reasonable protections, and assistance and participation in the system. It also made a powerful plea to provide a voice to the victims of crime during the trial stage.

A victim impact statement is an answer to most of these concerns. It has the potential to alter the course of things for victims of crime in India. Victim impact statements are written or oral statements by crime victims, about how the crime has impacted them. Often, the family members and friends of victims also make written and verbal statements. Victim impact statements could provide information about the damage caused to victims by the crime, which is information that would otherwise not be available to the courts. Details of the financial impact of the crime — lost wages, medical or counselling expenses, transportation costs and damage to property, including a request for compensation or restitution — can also be included. Generally a victim is assisted to submit a detailed form, which is standardised for this purpose, through a prosecutor.

Hearing the victim in person or through a victim impact statement at the stage of sentencing could be crucial. After a criminal defendant is found guilty or pleads guilty and is convicted, a judge decides on the appropriate punishment. The decision about punishment is a complex one. The judge needs to consider the adequacy of the sentence as Indian laws do not follow a fixed

punishment model. Instead, there is a scale of punishment and the court decides the quantum of punishment according to this scale. The Criminal Procedure Code, in Section 235(2), places a mandatory duty on the court to hear the accused on the question of sentence. The idea is to collect personal information and consider it while specifying the quantum of punishment. While this practice is laudable, it causes a huge disadvantage to the victim of the crime as the trial court is under no legal obligation to hear the victim. A victim impact statement will help the court take a balanced view at this stage. Hearing the victim during the sentencing will help the court decide the quantum of punishment as well as assess the amount of compensation to be ordered. The U.S., Canada, Australia, and many countries in Europe have made victim impact statements mandatory. It is time for India to do so too. The victim has a right to speak and the nation has a responsibility to listen.

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Section 69 of the IT Act allows for disproportionate state action, and is antithetical to the right to privacy

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