

CHANGING THE DISCOURSE ON VICTIM JURISPRUDENCE

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

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With the state firmly planted in the driver's seat, the engine of our criminal justice system runs full throttle in the name of justice; but on-boards only the accused and the functionaries. The primary victims — mere witnesses in the eyes of the law — are side-lined and left to their own resources. The victims, for no fault of their own, are frequently left without remedy where the institutions geared towards securing justice to them fail to deliver. Any reform in criminal laws would be incomplete without accounting for these concerns.

While several steps have been taken to come up with remedies, progress has been piecemeal and marked by judicial initiative rather than legislative enterprise. While the Supreme Court has led the movement for recognition of victim rights to access to justice, compensation and assistance, little has changed in terms of both the black letter of the law and the ground realities. There is an overwhelming need to re-conceptualise the institutions of our criminal justice system to account for victims both at the pre- and post-crime levels. As opposed to post-crime mitigation and rehabilitation, a pre-crime conceptualisation of victimisation is geared towards prevention.

Crime prevention is an oft-cited but least studied aspect of our criminal justice system. Examination of crime-prevention from the victim's perspective is even rarer. Among other methods, situational crime prevention through risk-mapping and vulnerability-mapping stands out in terms of viability and efficacy. A truly effective criminal justice system can identify potential victims and to put measures to protect them in place — before the incidence of crime itself. Capacity building and effective implementation are key to such endeavours.

In a post-crime scenario, however, there is a need to shed the image of the victim as a mere witness and to institutionally recognise their rights and requirements. The same thing can be achieved through a legislative recognition of the following points. First, the conceptualisation of access to justice for victims requires viewing such access less in terms of Directive Principles of State Policy under Article 39A, and more as a fundamental right under Articles 14 and 21. There is an urgent need to strengthen the complaint mechanism for non-registration of FIR u/s. 154(3) Code of Criminal Procedure, and extension of Section 166A(c) in the Indian Penal Code to all cognisable offences. Further, access to justice also requires the creation of victim-friendly procedures that are aimed at reducing their inconvenience.

Second, it is imperative to recognise the need for effective victim participation. Currently, the victims and their counsels are entitled to extremely limited participation. In line with the global trend, there is a need to recognise the right of victims to be heard at all appropriate stages of a trial. Victim Impact Statements can help accord this right. Moreover, substantive access to justice also requires access to legal aid. Such legal aid has the potential to culminate in effective victim participation if provided to the victim from the stage of reporting to the stage of sentencing and appeal.

Third, such legal aid to victims is also imperative for fruition of their right to information. The right to information, in turn, enables their access to all other rights. Ergo, victims must be entitled to information regarding their role in the criminal justice process, what they can expect from the

criminal justice system, status of the trial, and also their other rights and entitlements as a victim of crime.

Fourth, the right to information can also go a long way in securing the right to protection. The victim must be kept abreast of all developments in the trial process which may potentially compromise their security. This would require intimation of the victim in connection with any hearing changing the nature of the accused's custody including his release on bail or parole. The framework for such intimation is already available to specific victims in Section 15A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Other measures for witness protection such as relocation and change in identity, as provided for in the Witness Protection Scheme, too need to be reviewed and enforced effectively.

Fifth, the concept of assistance as envisaged in the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power needs to be recognised as a right, not merely for victims of rape and acid attack, but for all victims of crime in general. The state must play the role of a facilitator in providing to the victims all such assistance as is necessary — medical, psychological, financial and material. The same would require institutional capacity building, through ramping up of infrastructure such as one-stop centres, training of existing functionaries, and by engaging with and promoting the non-governmental organisations involved in providing such assistance to victims.

Sixth, the right to compensation, recognised to a limited extent under our current laws, is lacking in many respects. Primarily, the political will for its enforcement at a state level has been found to be wanting. Additionally, the Victim Compensation Scheme provided for under Section 357A of the Code of Criminal Procedure must be revitalised by revising it in terms of accessibility and adequacy.

Finally, the right to restitution must be separated from the right to compensation. Both terms have been used inter-changeably in our criminal justice system, leading to a large degree of confusion. But if the scheme of the 1985 Declaration is adopted, restitution can be differentiated from compensation in that the first right is enforceable against the accused while the second right is enforceable against the state.

In this sense, the right to restitution is already present to some extent in Section 357A of the Code of Criminal Procedure, but has been mis-termed as 'compensation'. Section 357 provides that where the court imposes a sentence of fine, the court may use the same, in whole or in part, for paying compensation for any loss or injury. The Supreme Court has repeated that the provision should be used liberally. The same must be made mandatory wherever appropriate.

The global discourse on victim jurisprudence has now matured enough to be incorporated directly into our laws. In his seminal piece, Herbert L. Packer stressed that a criminal justice system focuses on two values — of crime control and due process. But in line with Douglas E. Beloof's addendum to Packer's models, there is a need to introduce a third value — victim participation. Without such a value, the aim of justice will remain unfulfilled; always just a little out of reach.

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