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RIGHTS OF VICTIMS IN INDIA- NEED FOR PARADIGM SHIFT**ABSTRACT**

Addressing the problem of victim's rights has been a growing concern in legal systems all across the world. Our criminal justice system is accused oriented instead of being victim oriented. Extensive studies have been focused on the rights of the accused but the victims have been deprived of any such recognition. The rights of the accused find a prominent place in the procedural law, but the same cannot be said for the victims of crimes. Despite there being international standards and obligations, there is a failure on the part of the Indian legal system to provide recognition to the rights of the victims. Both victims and accused should stand equally on the scales of justice.

Victims of a crime are subjected to psychological, physical and social torment. Understanding the plight of the victims, the Supreme Court has evolved the victimological jurisprudence through a plethora of cases in the last decade so as to give due consideration to the victims in determination of guilt of the accused. Adoption of victim centric approach by the courts provides an opportunity in awarding compensation, rehabilitation, sensitivity etc. towards the victims. The Criminal Code of Procedure, 1973 has provided various compensatory rights to the victims under Sections 357, 358, 359 and 250. In the light of this, various authorities have formulated multiple guidelines and recommendations. Parallel developments, both at the domestic and international levels, evidence a wide movement towards the recognition of the rights of the victims.

Keywords: Victimological Jurisprudence, Victim Rights, Criminal Justice System, Victims of custodial crimes, Rape victims, Victim compensation

INTRODUCTION

Victimology is defined as the study or the science of the relationship between the perpetrator, who has committed a wrong and the victims i.e. people who have been affected by it. The etymology of the word victim comes from two backgrounds. The word 'victima' is from the Latin origin which means 'victims' and the word 'logos' is from a Greek origin which means

a science or a discipline. Benjamin Mendelsohn is known as the father of victimology for he was the first one to use the term in the 1940's.

The concept of 'victimization' was defined in the Declaration of Basic Principles of Justice for Victims and Abuse of Power, introduced by the UN General Assembly in 1985. It highlighted the need for the protection of victim rights and laid down several guidelines to be followed by multiple countries while making policies, rules and regulations. Evolution of Victimology as a concept, has also led to the inclusion of people whose legal and human rights have been violated and hence are affected by its consequences. It is a subset of criminology but with a specific emphasis on the psyche of the victims. It talks about the psychological, mental, compensatory and emotional aspects of the aggrieved depending upon the nature and type of wrong and how it is dealt with by the criminal justice system. Victims are massively neglected in the Indian society. There is inadequacy of laws protecting the rights of such victims in the criminal justice system of our country. The most targeted victims in our society include women, children, people with disabilities and the poor who don't have the means to defend themselves.

The historical development of victimology in India can be traced back to the various scriptures like Manusmriti, Yajnavalkyas etc. These scripts were able to recognize the need for the compensation to victims for their losses and injuries suffered, even back then. In Sharia Laws of Islam, there existed a concept known as 'Qisas' which is also known as the Law of Retaliation¹. This law allowed the victim or the families of the victims to decide the punishment of the perpetrator based on the seriousness of the offence. If the offence is that of murder or that of serious bodily injury, the victims or his/her family could choose for punishments like execution; a life for a life. However, they also have the choice to demand compensation from the defendants or free them from any kinds of punishments. There is no specific law in India that deals with victim rights, such cases are only dealt through affirmative actions by the courts or by the establishment of various committees that introduces guidelines and procedures by which rehabilitation to the victims can be given.

Justice J.N Bhatt² has defined 'victimology' from a compensatory perspective whereby he states that it is a study behind the suffering and the resulting compensation caused by it. Schultz defines victimology as the "study and the degree of the participation of the victims in the development of the offences and an evaluation of what is just and proper for the welfare of the victims." Benjamin Mendelsohn, inventor of the science of victimology, categorized victims based on surveys, interviews and multiples analysis' that he was able to conduct while he was practicing. He observed that in most cases the victims and the offenders usually have a close relationship with each other. He classified victims as:

- (i) Completely innocent victim: Such victims have no knowledge about the forthcoming event and are subjected to the crime with without any warning. Such a person could be a child, someone who is unconscious etc.
- (ii) Victim with minor guilt: Such victims usually unknowingly end up in harm's way thereby getting victimized in the process.

¹Susan C Hascall, 'Restorative Justice in Islam: Should Qisas be Considered a Form of Restorative Justice?' (2012) Berkeley Journal of Middle Eastern & Islamic Law, Forthcoming ; Duquesne University School of Law Research Paper No. 2012-11 <<https://ssrn.com/abstract=2120726>> accessed 18 August 2019.

² Justice J.N Bhatt, 'Status of Victimology', Criminal Law Journal, 2000.

³ Kumaravelu Chockalingam, 'Measures for crime victims in the Indian Criminal Justice system' (Resource Material Series No. 81) <https://www.unafei.or.jp/publications/pdf/RS_No81/No81_11VE_Chockalingam.pdf>.

- (iii) Victim as guilty as the offender: Such victims either assist or participate in the commission of a crime and is equally accountable for the crime like that of the perpetrator.
- (iv) The victim more guilty than the offender: Such victims either instigate or motivate another person to commit the crime.
- (v) Most guilty victim: Such victims are usually victimized after the crime has been committed. Usually, such people are accountable for their own victimization
- (vi) Imaginary victims: Such people assume they are victimized when, in fact, they are not. This could be due to any mental illnesses like paranoia etc.

The South Asian Society of Criminology and Victimology is an international organization that has been established in various South Asian countries including India to help educate, promote and spread awareness by encouraging various universities and plays an important role by contributing to the policy making to protect the interests and rights of the victims. The Indian Society of Victimology³ was founded by Dr. K. C Chockalingam and was officially inaugurated by Justice V R Krishna Iyer. It was formed in order to raise awareness regarding the importance of victim's rights in India, to ensure advancement in the research field regarding victimology, to conduct conferences, seminars and workshops in various institutions, to raise funds to support the various causes and projects started by the society for the same etc.

RIGHTS OF THE VICTIMS

The rights of the criminals find a pivotal view in our criminal system but this is not the case with regard to the victim associated with that particular crime. Accused persons to a crime are entitled to a fair trial where their guilt or guiltlessness can be determined. But from the victims' perspective, the culprit of a crime should be punished. Both victims and criminals stand equal in the eyes of justice. The interests of the victim should be taken into consideration as much as rights of the criminal. Views to this matter were echoed in *The National Human Rights Commission v. State of Gujarat*⁴ and in *Vikas Kumar Roorkeval v. State of Uttarakhand*⁵. The court observed that the broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution.

Similarly, at the time of considering, bearing in mind the right of the accused to be released on bail or at the time of striking an appropriate punishment, the rights of victim must be taken into consideration and be examined. While considering the right of the criminal to be released, the principles set out by the court in *Arvind Yadav v. Ramesh Kumar*⁶ were taken into consideration and the Court in *State of MP v. Kusum*⁷ observed that '[I]t is also to be kept

⁴ (2009) 6 SCC 342 (40).

⁵ (2011) 2 SCC 178.

⁶ 2003 CriLJ 2552 (SC).

⁷ AIR 2007 SC 2647.

in mind that the victim and the family and friends of the victim who have suffered at the hands of the criminal also have some rights. The convicts have no indefeasible right to be released. While considering the imposition of appropriate punishment, the court must not only keep in view the rights of the accused but also the rights of the victim of the crime.' Placing reliance on *Shailesh Jasvant bhai v. State of Gujarat and Ravji a Ram Chandra v. State of Rajasthan*⁸, this was observed in a very recent case *Alister Anthony Pareira v. State of Maharashtra*¹⁰. A duty has been casted upon the system and the law to protect such victims of crime also.

Role of victims in various stages of proceedings

The United Nations Handbook on Justice for Victims, 1999¹¹ provides that victims should be allowed to participate in the justice system through direct and indirect means; timely notification of critical events and decisions, providing them full information of the procedures and processes involved and provide them with assistance, as and when required.¹²

The Indian criminal justice system seems to be more accused oriented than victim oriented. At present, victims do not seem to have been given the legal rights and protection that they ought to have as opposed to the rights of the accused that are constitutionally guaranteed under Articles 20, 21 and 22 of the Constitution of India, 1950. In the present criminal justice delivery system, except for filing a first information report, giving evidence in court and sometimes getting compensation, there is absolutely no major role for the victims including family members especially in heinous crimes like murder, rape etc¹³, the right of victim to participate in the criminal proceedings is almost absent and the victim's needs are not addressed satisfactorily. An evaluation of the recognised role of victims in different stages of proceedings is as follows:

1. Investigation

Once criminal investigation starts, the victim has no major role to play to get justice. As observed by the Malimath Committee in its report, the investigation process is exclusively a police function and the victims participate in the process only if the police find it necessary. However, there exist mechanisms for the victims to receive information about the progress in the process of investigation. Otherwise till final police report is filed and many times even thereafter, the victims have no knowledge of the developments in their cases.¹⁴ A victim of a crime is equally entitled to a fair investigation as an accused.¹⁵

In *Parvinderjit Singh v. State (UT Chandigarh)*¹⁶ the court observed that 'the freedom of an accused can be curtailed and he can be arrested for the purpose of protecting the victim and proceeding with the investigation without hindrance.'

When a victim of a cognisable offence gives information to the police regarding the same, the police are required to reduce the information into writing and read it over to the informant-victim which is to be signed by him/her and he/she is entitled to get a copy of the FIR. If the police refuse to record the information, the victim-informant may send the same, in

⁸ 2006 (2) SCC 359.

⁹ (1996) 2 SCC 175.

¹⁰ (2012) 2 SCC 648.

¹¹ United Nations Office for Drugs and Crimes, 1999.

¹² United Nations Office for Drugs and Crimes, 1999, Chapter II, pg. 34.

¹³ *MG George Muthoot v State of Kerala*, 21 January, 2010.

¹⁴ Malimath Committee Report on Reforms in Criminal Justice System, 2003.

¹⁵ *Nirmal Singh Kahlon v. State of Punjab and Ors* AIR 2009 SC 984.

¹⁶ (2008) 13 SCC 431.

writing and by post, to the Superintendent of Police concerned.¹⁷ In case the police refuse to investigate the case for whatever reason, the victim-informant has to be notified of that fact. The police officer is required to notify the informant of that fact¹⁸. Under Section 190 of the Cr. P.C., the victims are entitled to directly approach the Magistrate with their complaint. After the police report is taken cognisance of by the Magistrate, if he decides to drop the proceedings, it is required of him to hear the victim-informant by issuing notice to him.¹⁹

Thus, the right of the victim to be informed has been protected under law, however no active role has been accorded to them in the investigation procedure.

2. Framing of charges

The victim plays no role at the stage of framing of the charges. However, the Court in *RS Mishra v. State of Orissa*²⁰, observed that 'while framing the charge, the rights of the victim are also to be taken care of as that of the accused. This responsibility lies on the shoulders of the Judge. In the event of discharge of the accused, the Judge is required to record the reasons of such discharge.'

3. In determining the nature of offence

In *Sitaram Paswan v. State of Bihar*²¹, the court observed that the impact which the offence had on the victim should be a significant factor in determining the nature of offence. The punishment awarded to the accused should be proportional and must correspond with the gravity of the offence committed. Further it was held that the facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which shall enter into the area of consideration.

De Jure Nexus

4. In determining the punishment

Sentencing is an important task in the matters of crime. Imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done is one of the prime objectives of criminal law.²² In *State of Madhya Pradesh v. Santosh Kumar*²³ it was observed that '[T]he Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime while considering the imposition of appropriate punishment.'

VICTIMS OF CUSTODIAL CRIMES

The right to life is one of the elementary human rights. A person lodged in custody continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. The persons shall retain the residue of their constitutional rights on being arrested and deprived of their liberty in accordance with the procedure established by law.²⁴ Even with constitutional and statutory provisions safeguarding the liberty and the life of an individual, the incidence of custodial torture and death has been rising continuously and a

¹⁷ The Code of Criminal Procedure, 1973 (2 of 1974), S. 154.

¹⁸ The Code of Criminal Procedure, 1973 (2 of 1974), S. 157(2).

¹⁹ 1997 CrLJ 4636 (SC).

²⁰ (2011) 2 SCC 689.

²¹ AIR 2005 SC 3534.

²² *Alister Anthony Pareira v. State of Maharashtra* (2012) 2 S.C.C. 648, para. 69.

²³ AIR 2006 SC 2648.

²⁴ *State of AP v. CR Reddy*, AIR 2000 SC 2083.

person in custody is subjected to inhumane torture and becomes a victim of abuse of power. Most of the times, the victims of such brutality belong to weaker sections of society, which at times, results in their deaths.²⁵

In *Jaywant P Sankpal v. Suman Gholap*²⁶, the court has held that 'physical torture of a person while he is in custody violates norms relating to arrest and detention of a person in connection with an offence. Prisoners cannot be thrown at the mercy of the policemen as if it were a part of an unwritten law of crime.'²⁷

In the backdrop of prevalence of custodial crimes at an increasing rate, it is important that the courts adopt a progressive approach and protect the rights of the victims of custodial crimes. Of late the judiciary has been playing an active role in this regard, the Supreme Court on a complaint of custodial violence to women prisoners in jail, directed that legal assistance shall be provided to the helpless victims at State's cost to protect them against torture and maltreatment.²⁸ The court has also suggested that the prison authorities should change their attitudes towards prisoners and protect their human rights for the sake of humanity.²⁹ The Government and the legislature must bring about appropriate legislations not only to curb custodial crimes but also to see that such acts of inhumanity do not go unpunished.³⁰

RAPE VICTIMS

'While women's rights are being celebrated in all spheres, it is ironical how there is least or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crime....Rape is not merely a physical assault, it frequently destroys the whole personality of the victims. While a murderer may destroy the physical body of his victim, a rapist degrades the very soul of the helpless female. Therefore, there is an additional responsibility on the courts while trying an accused on charges of rape. Such cases must be dealt with utmost sensitivity.'³¹

Rape, sexual assault and verbal abuse of females of all ages have become common incidents in India. Such crimes distress innumerable women and challenge their welfare. Despite the fact that rape is regarded as heinous and cruel, the level of such inhumanity has been on a rise. Such incidents not solely distress the victims and hamper their development however, additionally fully distorts their social standing within the society. Rape isn't just a physical assault, rather it usually shakes the entire existence of the victim, such sexual violence aside from being a dehumanizing act, is associate unlawful intrusion into the correct to privacy and holiness of a female.³² The act of rape not only violates the victim's privacy and personal integrity, but causes serious psychological as well as physical harm in the process.³³

Rape victims are ill-treated by the society and their harassment begins with the way they are treated by the policemen and continues through a male dominated criminal justice system.³⁴ In *Vithal Tukaram More v. State of Maharashtra*³⁵, the court took a view that in a sound criminal justice system, such offences against women should not escape unpunished but it is equally desirable in social interest that members of the family of the victim are not made to

²⁵ Law Commission of India 152nd Report on Custodial Crimes, 1994.

²⁶ (2010) 11 SCC 208.

²⁷ *DBM Patnaik v State of Andhra Pradesh*, AIR 1974 SC 2092.

²⁸ *Sheela Basre v. State of Maharashtra*, AIR 1983 SC 378.

²⁹ *Sanjay Sun v Delhi Administration*, AIR 1988 SC 414.

³⁰ AIR 2005 SC 402.

³¹ *State of Punjab v Gurmit Singh & Ors*, 1996 CriLJ 4466.

³² *State of Orissa v. Thakara Besra and Anr* AIR 2002 SC 1963.

³³ *Rajinder @ Raju v. State of HP*, AIR 2009 SC 3022.

³⁴ *State of Madhya Pradesh v. Babulal* AIR 2008 SC 582.

³⁵ AIR 2002 SC 2715.

suffer punishment merely because of their relation with the deceased. It is the duty of the courts to see that the penal provisions intended to curb such crimes by bringing the offenders to book do not cause injustice to innocent people. The court must take into consideration the suffering of the victim in a case involving rape and the social stigma that may follow the victim to the and that may ruin all prospects of a normal life for the victim.

Earlier, there was a trend to take into consideration the character of the raped lady in deciding guilt of the defendant. In case of a lady of a loose character or associate fallen woman, the probabilities of punishing the defendant was bleak, in *Tukaram Ganpat v State of Maharashtra*³⁶, the hon'ble Supreme Court acquitted the accused assuming tacit consent of the victim, rejecting the contentions that she put up a stiff resistance and shouted for help. Nevertheless, in the later times, the courts began to adopt a more progressive view, addressing the need of a sensitive approach towards the rape victims. In *State of Punjab v Gurmit Singh & Ors*³⁷, the Supreme Court advised the lower judiciary to not describe the victim as a woman with a loose character if the girl is shown to be habituated to sex. Similarly, the Apex Court has in the case of *State of Maharashtra v. Madhukar N. Mardikar*³⁸, held that 'the unchastity of a woman does not make it open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore, merely because she is of easy virtue, her evidence cannot be thrown overboard.'

Furthermore, to preserve their rights and combat increasing rates of sexual offences against girls, the criminal justice system has to be self-addressed as a victim support service. there's a necessity to push proactive role of police likewise and the Trial courts to confirm efficient delivery of justice.³⁹. The courts cannot forget their duty to society and to the victim in applying the speculation of reformation as penalty⁴⁰

De Jure Nexus

COMPENSATION TO THE VICTIMS

Compensation is awarded to any person who suffers any loss or injury by reason of an act for which accused person is sentenced. The ancient Indian history is testament to the fact there have been sufficient provisions of restitution is lie of compensation to the injured persons. Author of the book, *The General Principle of Hindu Jurisprudence*⁴¹ Dr. Priyanath Sen observed, that it is the duty of the King to protect the property of his people. If the King failed to recover or restore the stolen articles, he was duty-bound to pay the price for the owner by apprehending the thief and pay the price to the owner out of his own treasury.

Presently there is no uniformity in awarding compensation to the victims of a crime. It is vital to discuss the legal position of compensation rights of the victims of the offence, post-independence criminal trial was overseen by Code of Criminal Procedure 1898 and then by 1973 code is now in its place. Till 2008, there existed provisions in the Code for the compensation rights of the victim of an offence, these included Section 545 in the old Code and Section 357 in the new Code. The Supreme Court has been taking an active and prominent role in shedding light of the compensation rights of the victims. The Apex Court has adopted the concept of recuperative justice and awarded compensation to the victims,

³⁶ AIR 1979 SC 185.

³⁷ State of AP v. CR Reddy, AIR 2000 SC 2083.

³⁸ 1996 AIR 1393.

³⁹ *Suo Motto v. State of Rajasthan*, 2000 AIR 988.

⁴⁰ *State of MP v. Bala @ Balaram*, AIR 2005 SC 3567.

⁴¹ Dr. Priyanath Sen: "General Principle of Hindu Jurisprudence", Page 335.

beginning from the 1980s⁴². Before 2008, section 357(3) of CrPC provided for compensation in form of fine. In *State Of Gujarat v Hon'ble Court of Gujarat*⁴³, it was observed that it would be the progressive thinking of the state and its legal system to make appropriate law for diverting some amount of income, earned by the prisoner and avert it to the deserving victims who are suffering. Victim compensation is made achievable under provision of CrPC; however, it does not place any burden on the criminal to provide that compensatory amount to the victims. The main point of consideration should be that the compensation provided to victims should be fair and reasonable and should prelude to the harm and damage they have suffered. Time and again there have been outrage about awarding fair and reasonable compensation to the victims and what shall be the perfect compensation to the victims. Faced by the same dilemma the Supreme Court in *Arvind Kumar Mishra v India Assurance Co Ltd*⁴⁴ observed that 'Perfect compensation is subjective and varies from case to case but one has to keep in mind that there is no fault of the victim and he has suffered from the wrongful act of the criminal and the court must take care of the victim in providing him fair and reasonable compensation. Each case has to be observed in its own merit and deciding a particular amount of compensation in each case would be unfair to the victims.'

The victim has a legal claim against the state for its inability to avoid the crime that created the unfair treatment. Since the government has limited authority in protecting the victims and delegates such power to concerned authorities to protect the victims and taxes the public for running of such authorities, the victim can hold government liable in case of failure to protect to victim. In the State of Goa, there is provision for awarding Rs. 10 lacs to the victim whereas in Delhi the compensation amounts to Rs. 3 lacs, in order to avoid disparities and bring uniformity to the system, Supreme Court in the landmark judgment of *Suresh v State Of Haryana*⁴⁵ observed that there is need to consider a raise in the compensation provided to the victims. Authorities are instructed to follow the scale adopted by state of Kerala, unless the compensation awarded by any other State or Union Territory is higher. It will therefore mean that if a victim compensation scheme of a State recommends lesser compensation for some offence, then in that event, the victim compensation structure of the State of Kerala has to be followed. This has an effect in providing compensation to the victims more uniformly throughout the country, in its right spirit.

Thus, it is needless to point out that the whole legislative standard coupled with lack of judicial interest has presented various legal flaws in lieu of providing compensation to the victims and there is a need for restructuring the whole scheme of providing compensation to the victims who have suffered damage.

DUTIES OF COURTS AND AUTHORITIES TO PROTECT VICTIMS

The Indian criminal justice system tends to take action in the field of the accused by focusing primarily on the prosecution procedure, gathering evidence and witnesses to fuel arguments and getting the perpetrator the punishment as prescribed by the law. However, the one aspect, which is neglected and pushed under the rug, is to take action to benefit the victims of the crime. By being perpetrator-oriented, the victims of the crime always get the shorter end of the stick and fail to address their rights in order to rehabilitate themselves from the effects of the crimes done to them. Nonetheless, over the years, the Indian Judiciary has been able to make amends to this situation.

⁴² *Sukhdev Singh v. State of Punjab* 1982 SCC (Cr) 467; *Balraj v. State of UP* 1994 SCC (Cr) 823; *Giani Ram v. State of Haryana* AIR 1995 SC 2452; *Baldev Singh v. State of Punjab* AIR 1996 SC 372.

⁴³ MANU/SC/0632/1998.

⁴⁴ (2010) 10 SCC 254.

⁴⁵ Criminal Appeal NO. 420 of 2012.

The UN General Assembly adopted the Declaration of Basic Principles of the Justice of Victims and Abuse of Power⁴⁶. This provides the basic structure and guidelines which has been converted into various rights of the victims by several countries. These principles act like a set standard for making laws and regulations relating to victim rights in various countries including India. This Declaration, hence, came to be known as the Magna Carta for the victims. The main source of victim rights in India, arises from the provisions of the Indian Penal Code and the Code of Criminal Procedures. Section 357 of the CrPC⁴⁷ states that the affected people are entitled to a compensation irrespective of the fact that whether the perpetrator is sentenced to fine or the fine is a part of another sentence, inclusive of death. The fine paid as compensation depends on the nature and the seriousness of the crime. This concept of compensating the affected people is termed as 'Restitution to Victims.'

In August, 2016, Section 357A⁴⁸ was added which laid more emphasis on victim compensation. It stated that the State Government in accordance with the Central Government shall make schemes in order to compensate the victims affected by the crime and those people who were dependent on the victim and were affected by the injuries caused. The Malimath Committee⁴⁹ recognized the lack of justice towards the victims in the Indian criminal justice system and emphasized on the need for the protection of victim rights in India. In its report, there was a comparison made between the European Justice System and how victims played an active role in the court proceedings. The victims are made parties to the proceedings where they gathered their own evidences and were appointed lawyers thereby, they could also argue their stance in the court and the need for such a system in the India's criminal justice system has been emphasized. Furthermore, the committee stated the importance of the victim's constitutional rights and the need for appointing a lawyer.

In the case of serious offences like rape, victims of abuse of power etc., special steps had been taken by the higher authorities to rehabilitate the victims. In the landmark case of Bodhisattwa Gautham v. Subhra Chakraborty⁵⁰ the Supreme Court said that if the court gave victim compensation at the final stage then an interim compensation is also allowed. In this case, the Supreme Court ordered the accused to pay an interim compensation of Rs.1000 per month to the victim for the purpose of rehabilitation. The Supreme Court also issued certain guidelines⁵¹ in pursuance to that of the UN Declaration for all the rape victims who were unable to afford assistance for their mental, medical and psychological well-being. Some of these guidelines include:

- (i) Every victim to be given proper legal assistance during the process of questioning.
- (ii) The anonymity of the victims to be preserved.
- (iii) In order to make sure that there are no unnecessary delays in the process of questioning, advocates shall be appointed by the court for the victims.

It has been observed that often women are the most affected and targeted category of people and are often victims of various crimes like domestic violence, rape and other forms of sexual violence, dowry deaths and other gender-specific crimes. However, there are not enough committees or authorities established to protect and safeguard the rights of these women in the Indian justice system. Women in India have to struggle in order to get the justice that they are entitled to and have to overcome several obstacles, which are usually very discriminative and unfair.

⁴⁶ Adopted by General Assembly Resolution 40/34 of 29 November 1985.

⁴⁷ The Code of Criminal Procedure, 1973 (2 of 1974), S. 357.

⁴⁸ The Code of Criminal Procedure, 1973 (2 of 1974), S. 357A.

⁴⁹ Malimath Committee Report on Reforms in Criminal Justice System, 2003.

⁵⁰ AIR 1996 SC 922.

⁵¹ Guidelines and Protocols: Medico-legal care for survivors/victims of sexual violence.

The Ministry of Health and Family Welfare, in 2014⁵² brought about certain guidelines and protocols for the medico-legal care for women and children in India. Although it was centered towards the victims of rape, it also proved to be useful for victims of other sexual crimes. The guidelines provided emphasis on how the medical, psychological and other examinations need to be conducted and the precautions that should be taken by the doctors, lawyers and psychologists while dealing with such sensitive issues. It also emphasized on how child victims are to be treated. The report articulates the procedures by which the results of such medical, psychological examinations could be converted into evidence and can be used to argue in courts. Apart from these guidelines, various legislations have been introduced in India for the purpose of safeguarding the rights of victims.

CONCLUSION

The plight of victims has been recognized in our country for over thousands of years now. The old scriptures from the Rig Vedic period like the Manusmriti and Yajnavalkyas contain accounts and prompts highlighting the difficulty faced by the victims in the early ages and recognized the need for their rehabilitation as well. It gave the power of punishment to the victims and let them decide what penalty has to be given to the offender. The punishment was also based on which position in the social hierarchy, the victim belongs to i.e. his Varna. Higher his position, higher will be the penalty of the offender. Apart from this, compensation was also a way by which the victims were rehabilitated apart from paying huge amounts of fine to the king. In Islam, specifically Sharia Laws, the concept of providing justice to the victims was called as the 'Law of Retaliation'⁵³ also known as 'Qisas'. Like it was in the smritis from the Rig Vedic period, the victims were given the power to choose the penalty for the offenders. However, the punishments in these cases were far more severe and extreme. Punishments here would include stoning, death, compensation or it could be done away with altogether. Punishments varied based on the nature and the severity of the crime and how much it has affected the victim and those who were dependent on him/her etc.

At present, the role of victims in trial has been recognised by setting out that delay in trial causes suffering to the victim as much as much it does to the accused. It is the obligation of the court to consider the impact which the offence has had on the victim in determining the nature of the offence. The Supreme Court has laid down a foundation of victimological jurisprudence which also serves as the foundation for suitable law and policies on the issues relating to victims. It is pertinent to mention that the change in the approach of the courts is a positive sign however there is still a need for efforts to be made by the Legislature to consider the rights of the victims. The reorienting of the criminal justice system to address the needs of a victims of crime need not and perhaps, should not be exclusive of the need to enforce and protect the rights of suspects as well as the rights of the accused. It should be possible to accommodate both requirements as has been done in countries like United Kingdom and the United States of America.⁵⁴ Even though there are not any official laws in India about the rights of the victims and their rehabilitation, it is evident that the concept of victim rehabilitation is not new and that it has been a part of our legal system since the early ages. The struggle for recognition of rights of victims is a continuous process, though the courts in India have recognised the importance of sensitisation towards victims, the truth still remains

⁵²2003 CriLJ 2552 (SC).

⁵³Susan C Hascall, 'Restorative Justice in Islam: Should Qisas be Considered a Form of Restorative Justice?' (2012) Berkeley Journal of Middle Eastern & Islamic Law, Forthcoming ; Duquesne University School of Law Research Paper No. 2012-11 <<https://ssrn.com/abstract=2120726>> accessed 30 August 2019.

⁵⁴S. Muralidhan, 'Rights of victims in the Indian Criminal Justice system' <<http://www.ielrc.org/content/a0402.pdf>> accessed 13 August 2019.

that there exist no concrete legislation formulating and guaranteeing the rights of the victims as opposed to that of the accused which are protected under the Constitution of India. It seems that protection and preservation of the rights of victims have not been given due weightage by the legislature. There arises a need to protect victims of crimes and provide them with adequate opportunities to be actively informed of the proceedings to meet the ends of justice. For protection of victims, victim support services should be established that provide emotional support, direct assistance, information crisis intervention, counselling, advocacy, support during investigation and prosecution. All victims should have access to the justice system and support throughout the judicial process and the justice system should be designed to minimise obstacles that they may face.⁵⁵ However, such programmes to aid the victims are virtually non-existent. Our legal system is not equipped at present to effectively deal with mass crimes, including the crimes of genocide and crimes against humanity.⁵⁶ The setting up of a witness and victim protection unit under the control of an independent and accountable agency by suitably modifying the available models, e.g., the one provided by the Statute for the creation of the ICC, becomes imperative. In addition, the accused has been bestowed with a constitutional guarantee to be represented by a lawyer of his choice but no such provision has been made for the victims. There is no legal recognition accorded to a victim's right to have a lawyer of his/her choice. There is nothing to ensure that the victim gets ample opportunity and availability of a competent counsel of his/her choice. The only provision to this effect is enumerated under Section 24(8) of CrPC which says that court may permit the victim to engage an advocate of his choice to assist the prosecution. If the State can pay for the counsel of the accused, it shall also be obligated to provide assistance to the victim in the same manner.⁵⁷ For proceedings to be fair, just and reasonable, the law has to recognize the right of victim's participation in investigation, prosecution and trial. The limitation of the resources of the State in making adequate provision in the form of a victim assistance fund ought not to be countenanced any longer.⁵⁸

Thus, the need is to have a legislation for protection of victims and also enumeration of provisions such as choice of advocate, providing rights to involvement in proceedings so that a fair trial can be conducted, health and safety of the victims, providing full cooperation by the executive agencies and fair treatment etc. and various such other rights which would help victim to restore back in position.

⁵⁵ United Nations Office for Drugs and Crimes, 1999 Handbook on Justice for victims.

⁵⁶ Vrinda Grover, "Quest for Justice 1984 Massacre of Sikh Citizens in Delhi" (2002) (mimeo).

⁵⁷ Rakesh Bhatnagar, 'It Is Unfair To Deny Effective Legal Aid To Victims Of Crime' DNA (Mumbai, 16 January 2012) <<http://www.dnaindia.com/analysis/comment-it-is-unfair-to-deny-effective-legal-aid-to-victims-of-crime-1638060>> accessed 11 August 2016.

⁵⁸ State of Maharashtra v. M. P. Vashi (1995) 5 SCC 730.

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