

Chapter-21

UNDERSTANDING VICTIMOLOGY IN TERMS OF JUVENILES AND WOMEN FALLING PREY TO CRIME AND VIOLENCE

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INTRODUCTION:

There is a need to see a victim differently that is to say there is a need to shift focus from criminology to victimology while dealing with juveniles and the women who are subject of crime or the children in conflict of Law. This can be very important and effective approach for reducing the cases of crime propensity among society especially among children and for maintaining the social ethos by ensuring gender justice in actual sense.

So, the first thing which is of crucial importance here is to understand the concept of "victimology". The scientific study of crime victims is called victimology. **Benjamin Mendelsohn** coined the term "Victimology" in 1947. The central idea of "Victimology" is the victim and the different phases of victimization while in "criminology", the offender plays a central role. Victimology is: "**the scientific study of the extent, nature, and causes of criminal victimization**, its consequences for the persons involved and the reactions hereto by society, in particular the police and the criminal justice system as well as voluntary workers and professional helpers". Generally, Crime victimization involves at least two persons, and the criminal event may be the result or outcome of a certain dynamic relations between these two persons. There are several points which needs consideration or which can be useful in analyzing the actual reason of commission of crime or What personal characteristics and what types of behaviors from victim's side influences the risk of falling victim to a crime? Victimological studies into the causes of victimization which tend to focus more on the concept of "victim facilitation" –which unintentionally actions on the part of a person facilitate in his victimization rather than the concepts of "victim precipitation" or "victim provocation". Modern-day studies have largely has shifted its approach or focus from investigating the degree to which the victim can be held responsible for his own victimization, to theories that explain victimization without necessarily placing blame upon the victim.

What personal characteristics and what types of behaviors from victim's side influence the risk of falling victim to a crime? Early "victimologists", such as Benjamin Mendelsohn, Stephen Schafer, Marvin Wolfgang and Menachem Amir, investigated which behavioral, biological and psychological factors which determines a person's propensity to crime victimization and how his behavior affects the degree of culpability in the criminal event ("victim precipitation").

Objectives behind Victimology: The Indian criminal justice system mainly focuses on criminals, whether it is their conviction, acquittal, treatment, rights, reformation or rehabilitation. In the present factual scenario, it seems like the main

purpose of Indian Criminal justice system is confined to the simple and basic object of ascertaining guilt or innocence of an accused. The role of the victim of a crime in the present criminal justice system is restricted to that of a witness for the prosecution despite of the fact that such victim is the main sufferer of the alleged crime who has suffered harm whether it is physical, mental, economical, bodily impairment, emotional, economical or violation of his/her fundamental rights. Main objective of the present Criminal Justice system is to ensure public confidence, trust and faith in the administrative system only, so, there is an urgent need for giving a well-defined status and recognition to the victim of crime under the criminal law.

That the fact that putting emphasis on victimology that is to say to emphasis on offender's perspective does not in any way means that state's interest in getting the offender punished can be ignored or completely subordinated to the social control by the State. Neither at the stage of the framing of a charge or passing of a judgement of discharge, are the views of the victim ascertained, let alone considered? To what extent and at what stage, victim can be consulted during the trial?

In Indian Criminal Justice system, even after the case ends up in a conviction, it is the State, which defends the judgment of the trial court in appeal, if any, filed against the conviction and sentence because as per Criminal Procedure Code 1973, it is the state which can appeal against acquittal of an accused and not the victim himself/herself. Does this need to be changed? Wouldn't this be fatal?

Shifting from Criminology to Victimology:

Caution is the prerequisite for the idea of inclusiveness of victimology approach in dealing with Juvenile delinquency or vulnerable subjects of crime like women. It cannot be denied that in the past, there was one sided focus on the criminal event and the criminals. For centuries, legal philosophers and lawyers have been preoccupied with the principles of criminal law, the criteria for criminalization, and the rights of the defendant that is to say the person accused; while criminologists typically concentrated on the traits of criminals, what caused their criminal propensity and how to prevent crime. After all, we all see a hero in a person who challenges the settled norms and shows some power. This happens in case of criminals also. Isn't it?

The main point-of-departure between different approaches of victimology and Criminology was always the offender and its never the person who suffered because of the crime. It was only recent times, around the 1940s, that academics also started to take an interest in victims of crime and their standing in criminal procedure. The reason for

Victim getting ignored is that victim is generally considered as weak and so, go ignored. All this suggests to shift focus/concern on victimization and all its aspects.

There is need to measure the extent and other aspects of victimization. A more accurate and reliable manner to measure crime victimization is much needed, therefore to conduct national or international crime victimization surveys and ask a representative sample of the general population directly whether they have been victimized and to what extent or to which crime they have been victimized. It's rampant, prevalent in all ages and time and anyone can be the victim of crime. The first remarkable finding from the numerous crime victimization surveys that have been conducted since the 1960s is that crime victimization is widespread. Research has shown that almost everyone has become the victim of crime, at some point of time in their life span, whether of theft or property damage and that almost all men have suffered at least one incident of criminal bodily injury/assault. It turns out from the research conducted that property crimes are more prevalent than violent bodily crimes, with theft being the most common property crime and simple assault the most common violent crime.

Measuring propensity as a victim:

Risky Lifestyle: Crime victimization surveys or research also demonstrated that men have more/high risk of falling victim to a violent crime as compared to women. But in cases of rape and other crimes of sexual assault or violence, women are more likely to be victimized. It is demonstrated from the Research or surveys conducted that Females were more likely to be victimized by her intimate partner, while violence perpetrated by a stranger was typically targeted at male victims. Furthermore, teenagers and adolescents runs at higher risk of being victimized – which decreases throughout adulthood. It happens for inhabitants of urban areas and persons with a “risky” profession like police officers, prison guards, taxi drivers, prostitutes).

Does the crime select the victim, or the victim attracts criminality? It is important to understand to establish a strong justice delivery system because society can not afford to deep down the criminality in the core of its youth and let the social structure die. It can't be answered with certainty. It may be true for both. Sometime criminals find opportunity and victims contribute in finding. This is not always perpetrated by the victim, but criminal overpower the victim. There cannot be a straight jacket formula so as to ascertain whether victim has contributed in the commission of crime or the criminal has chosen such victim.

Three-Fold Mechanics in Victimology

Understanding/Settling over the mutual dynamics of Criminal and the Victim can help in reducing the Victimization of Individual, Crime Rate and in setting up Peaceful/Healthy societal dynamics. Now here the question arises that how the mutual dynamics between victim and the criminal can setup a peaceful societal scenario or effective justice delivery system. Harmony between victim and criminal or balancing of rights of victim and criminal is three fold:

- by avoiding chances of crime- avoid risks as much as we can.
- by involving victim in all stages of laid down criminal procedure
- by shifting focus on heroism of the Criminal to the Victim- It's a belief and perceptual shift.

Victimization gets doubled by the grief on common beliefs of Belief as to Victim's Participation: whether lesser or greater/ knowingly or unknowingly/ intentionally or unintentionally impacts victim and the justice delivery mechanism both. Usually victims are blamed for what happened to them; they are victimized for their characters and appearances, and it is often believed that they got what they deserved. For instance, in Rape cases or sexual assault cases, it is the common and prevalent belief that the crime has been committed because of the down character of the victim women or her appearance but if it is true then why sexual assault crimes are being committed against men as well. The underlying mechanism causing this negative reaction to crime victimization may be responsible for the sorry state of victims or it may be the prevalent belief in a just world.

If the belief is taken as true, what about the victimization of innocent people, who has no fault, who are totally stranger to the criminal but still they have been targeted by the criminal. This certainly impeaches and threatens "justice motive" and causes distress and shakes the general conscience of justice delivery system.

Consequences of Victimization:

The consequences of crime victimization also form part of the victimological canon. This torment the victim's faith in social and judicial system.

These consequences can broadly be categorized under three headings:

- i) **physical injury:** it can vary from simple bruises to permanent disfigurements and it might result into death as well.

- ii) **mental health consequences:** it includes the danger or loss to the sense of victim's personal integrity which may also include his or her reputation, depression, anxiety while severe forms of violence can even result into post-traumatic stress disorder (PYSD).
- iii) **and economic consequences:** Economic costs derive from direct property losses, costs for medical care, legal battle costs, a reduced ability to earn an income, or immaterial damages such as costs related to pain and suffering or loss of quality of life.

Crime/Criminality and criminal knows –no face- Caution and Be Aware:

It is a common belief of victimologists that as long as one acts in accordance to certain moral standards, nothing bad can happen to them.

But the victimization of innocent people, however, threatens this "justice motive" or this belief and causes distress. As per this belief "Bad" things can happen to "good" people too. One of the strategies to restore the belief in a just world is to attribute blame to a person who has suffered from a crime or to distance oneself psychologically from this person. People's suffering is rationalized on the grounds that they deserve it and it is because of their faulty behavior they have been subjected to crime.

The problem is that not only ordinary people share this delusional belief in a just world, but that criminal justice officials like investigating officers or other officers associated with crime investigation may (subconsciously) be guided by this principle as well.

Victim Justice From UN to India: At the International arena, for the first time in world history, the rights of victims of crime has been recognized by the General Assembly of the United Nations at its 96th Plenary on November 29, 1985, of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, hereinafter UN Declaration). The UN Declaration recognized four major components of the rights of victims of crime:

- (i) First and the foremost is access to justice and fair treatment;
- (ii) Secondly, Restitution;
- (iii) Thirdly, Compensation;
- (iv) And Rehabilitation.

Access to justice and fair treatment: This right of access to justice includes access to the mechanism of justice and redressal mechanism, right to be informed of victim's rights, right to proper assistance throughout the legal process/proceeding so as to ensure right to protection of victim's privacy and safety.

Restitution: including return of property or monetary compensation for the harm or loss suffered; and in a fateful case where public officials or other agents have violated criminal laws, the victims should receive restitution from the State.

Compensation: as per the UN Declaration that in cases where compensation is not fully available from the offender or other sources, State should provide financial compensation/aid at least in violent crimes, resulting into bodily injury for which national funds should be established. Historically speaking the victim's justice in India, the references are from the Manusmriti to compensation being paid to the victims of criminal offences. The first step towards providing compensation to crime's victim at state ends have been introduced in the year 2009 by inserting section 357A in the Code of Criminal Procedure, 1973.

Assistance: it is necessary for ensuring true justice that victims should receive the necessary medical, psychological, legal and social assistance through governmental, voluntary (NGOs), and community-based means. Police, justice, health, and social service personnel should receive training in this regard. Our Indian Constitution recognizes this Right of assistance to the victim, where victims of crime are not represented by any pleader then it is the duty of the state to ensure free legal Aid and Assistance to the victim as to ensure true justice delivery system to each and every citizen of its country. Legal assistance can be provided in both criminal as well as civil cases as both infringes victim's rights.

The court indicated the following "broad parameters for assisting the victims of rape":

- i) It was directed by Hon'ble Supreme Court that in sexual assault cases state should ensure that proper and adequate representation to be given to the victims. It is important to have someone well acquainted with the criminal justice system and who is adequately acquainted with the legal terminology and procedures.
- ii) That it is the duty of the victim's advocate to clearly explain the case to the victim and the procedure as well. It the duty of victim's advocate to prepare her for the case and to assist her in the police station and in court, to provide her with guidance as to how she might obtain help of different nature from different forum like expert counselling or legal assistance, medical assistance etc.

- iii) Assistance of Lawyer to the sexual assault victim at investigative stage is very useful and much needed as the victim at the time of approaching police station qua the alleged sexual assault is in great distress and guidance from an advocate at such a stage would be highly useful for imparting effective justice to the sexual assault victim.
- iv) It is the duty of police official to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed or not.

In Indian Criminal legal system, the victim has numerous rights like

- a victim a say in the grant of bail to an accused. S. 439 (2) Cr.PC, , recognizes the right of the complainant or any “aggrieved party” to move the High Court or the Court of Sessions for cancellation of a bail granted to the accused.
- A closure report by the investigating agencies cannot be accepted by the court without hearing the informant.
- If the investigating agencies had filed closure report, then the victim has a remedy of filing protest petition against such closure report to the concerned magistrate.
- If investigating agencies are not investigating properly then the victim or aggrieved party can file an application under section 156(3) Crpc to the Area Magistrate.
- Compounding of an offence cannot possibly happen without the participation of the complainant.
- Victim has a right of Fair Treatment which has to be there in every case but it is more expected in case of children, juveniles and women. In **S.A. Karim v. State of Karnataka** Hon’ble Supreme Court acted on the plea of the father of a policeman killed by a dreaded forest brigand and set aside the order of the trial judge that had allowed the prayer of the State for withdrawal of prosecution.
- The victim of a crime may move the government to appoint a special prosecutor for a given case, there is no scope under the Cr.PC for the victim or informant or her lawyer to directly participate in the trial.
- S. 301 (2) Cr.PC mandates that such lawyer of the private party “shall act under the directions of the Public Prosecutor...and may, with the permission of the court, submit written arguments after the evidence is closed in the case.”

- Further, there is no provision in the Cr.PC for providing legal aid to the victim of a crime rather there is provision in Crpc which provides for legal aid to the accused person who is unrepresented, S.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 of crime has a right to legal assistance at every stage of the case subject to the fulfillment of the means test and the ‘prima facie case’ criteria.

Now the main issue here is that If victim has all the Rights, then where lies the problem? we need Holistic approach to effectively deals with this issue but is it so easy? The compensation provision is appropriate or it need to be reviewed in case of women and children? Let us first discuss the common provisions.

These provisions have given a legitimate space to the victims in the Criminal Justice System like:

A. “Section 357A.

1. Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).
3. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
5. On receipt of such recommendations or on the application under sub-section (4) the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

6. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”
- B. According to Section 5 of Probation of Offenders Act, 1958, a court directing the release of an offender under Section 3 or under Section 4 of the Act may, if it thinks fit, at the same time, a further order directing him to pay such compensation as the court thinks reasonable for the loss or injury caused to any person due to the commission of the offence by him.
- C. Compensation Under POCSO- CLAUSE 12 'INTERIM RELIEF TO THE VICTIM'
Provided that the, interim relief so granted shall not be less than 25 per cent of the maximum compensation awardable as per schedule applicable to this Part, which shall be paid to the victim in totality.
- D. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It provides the monetary relief to the victims of crime ranging from Rs 25,000 to 2,00,000 depends on the nature of offence and circumstances of the case. Generally, 25 per cent of the monetary support is provided at the time of submission of charge sheet, 75 per cent at the time of conviction by the lower court but in case of heinous crimes as murder, the victims are provided 75 per cent relief after the post-mortem and 25 per cent at the time of conviction by the lower court. In case assault on the women with intention to dishonor or outrage her modesty and exploit her sexually, 50 per cent of the monetary relief is given at the time of medical examination and the remaining 50 per cent of the relief is given at the end of trial respective of the outcome thereof. However, the field reality is that majority of cases registered under SC/ST Act are not reaching to the logical conclusion. As the matter of fact in 70 per cent cases the accused are not punished by the court due to procedure lapses.
- E. Domestic Violence Act: This Act provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. In this context, Sections 20 to 24 are relevant in protection of victims of domestic violence through compensatory justice. At the time of information given the police official or protection officer, such officer should inform the victim that she has right to sought protection order, residence order, monetary relief and has a right to sought interim compensation as well. The

trial court may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

It is important to have the knowledge of other legislative enactments also to ensure justice to women and children.

The Custodial Crimes (Prevention, Protection and Compensation) Bill, 2006 The proposed bill aims to prevention and protection against custodial crimes and also provides compensation to the victims of custodial offences.

The Prevention of Torture Bill (passed by Lok Sabha without any debate on 6 May 2010 and Rajya Sabha referred the Bill to a select committee on August 31, 2010), in its present form, is being dubbed by the commentators as the “Sanction of Torture Bill”. The critique of the proposed bill is made on mainly on two aspects-definition of torture and weak redressal mechanism; and lack of compensatory provisions for the survivors of torture and their families.

Administrative Measures:

During last decade, the Government of India has framed various legislation and schemes to ensure effective justice to victim, however their implementation at grassroots level has always been questioned due to procedural lapses and dereliction of duties on the part of the concerned officials. Among others, the following schemes are worth mentioning;

- a) Scheme for relief and rehabilitation of victims of rape like Nirbhaya Fund, Manodhairya Scheme, one stop centre scheme also known as Sakhi scheme.
- b) Scheme for compensation to the victims of violence by left wing extremists
- c) Central Schemes for Assistance to victims of terrorist and communal violence
- d) Ujjawala Scheme for prevention of trafficking and rescue, rehabilitation and re-integration of victims of trafficking for commercial and sexual exploitation of women and child victims IN India. It was launched in 2007 by the Ministry of Women and Child Development. It consists of certain mechanisms for the reintegration and repatriation of victims including cross border victims. This scheme is being implemented by various NGOs to provide direct aid and benefit to victims of trafficking. Broadly, this scheme contents five components-

prevention, rescue, rehabilitation, re-integration and repatriation to the victims of trafficking.

Judicial Powers for Victim's Right:

Right to Victims" Compensation (Supreme Court U/A-32, High Court U/A-226) In the scheme of the Constitution of our country, the judiciary works as guardian of the Constitution and as also custodian of the fundamental rights of the people. Article 32 and Article 226 of the Constitution have conferred powers on the Supreme Court and High Courts to pass appropriate orders which include to ensure the rights of the victims as well.

In the absence of statutory provision in any other law, for the first time the Supreme Court of the country recognized right of compensation to the victim for violation of human rights in the landmark judgment in **Rudal Shah v. State of Bihar (1983 4 SCC 141)**, in this case petitioner was illegally detained in Ranchi Jail for 14 years ever after his acquittal by the court after trial. The Supreme Court while directing releasing the petitioner and awarded a total sum of 35,000/- by way of compensation.

Recently, Calcutta High Court in case titled **Maleka Khatun versus The State of West Bengal and others (W.P.A 4 of 2022)** came down heavily on the state legal services Authority (SLSA) for not having enough funds to provide compensation as per the West Bengal Victim Compensation Scheme, 2017 and directed the State Government to ensure disbursement of adequate funds within 6 weeks.

After the critical analysis of the criminal justice system to impart and to make it more women friendly and juvenile oriented.

Although the Malimath Committee has recommended that "the victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the state if the victim is not in a position to afford a lawyer".

Given -Right of Being Heard, Right of Representation, Right to be informed, Right of Free and Fair Treatment, Compensation but Is it enough to control crime?

It is suggested to keep women and children in focus and redefine the perspectives and theories of criminal justice system in the backdrop of social practices, cultures, and beliefs.