

SPEECH DELIVERED BY
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ON
"LOCATING VICTIM UNDER THE CRIMINAL JUSTICE
SYSTEM"
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The Criminal Justice System consists of mainly three parts. They are:

1. Criminology
2. Penology
3. Victimology

Third branch i.e., Victimology is now a growing branch.

Criminology is a science which makes scientific study of cases and it finds the causes for crime. It investigates as to why the crime is being committed and it also finds preventive measures. The Criminology students study as to how the crime should be prevented as the study of crime. Criminology is Study of Crimes.

Penology: Penology is nothing but study of penal action consequent to the crime committed. The accused is put on

trial and he if he is found guilty, he is convicted and sentenced. That is penology.

While considering penology, the victim is virtually ignored. Therefore, new branch has emerged i.e. victimology.

Victimology:

Victimology is a scientific study of sufferance by victims due to crime. Students of Victimology study as to how justice should be provided to the victim of the crime. It formulates the methods to determine compensation for the crime victim. It also provides remedies to the victim if compensation is not paid. For the purpose of rehabilitation, reparation of the victim or his legal heirs as the case may be, the Courts have felt it necessary to pay compensation. Merely because the offender is convicted, the victim may not get full justice. To complete the wheel of criminal justice, the crime victim shall have to be compensated appropriately.

Victimology is a branch of Humane Criminal Justice System. Therefore, the study is now being made approximately since 1975 onwards in India.

2. For every crime committed, there are at least two victims, first is society, the second is the actual or primary victim.

“Society” is a victim, because Society suffers the violation of its laws. Society is bothered of law and order problem. Society wants to punish the wrong doers by taking care of innocent people. The Society has found out the method of punishing the accused as per law i.e. with the help of Penal Code, Cr.P.c. etc., The society as a victim gets justice by punishing wrong doer as per law.

3. The next victim is the actual victim. It is disturbing to note that the victim, though is a primarily affected person in terms of loss of life, limb, property, honor, dignity etc., he is

relegated to secondary position though he is primarily affected. He has got no say or very little say in the investigation process and criminal trials. Generally the criminal trials are being conducted by the Prosecution. During investigation he does not have any voice and he is at the mercy of investigating officer. During trial also, the victim is at the mercy of public prosecutor. State conducts the trial. So, he has got very little voice. Of course, nowadays, the law is amended, so as to enable the victim to file appeal. What is the use of filing the appeal by the victim, since the trial is already conducted by the third parties. At the most we can say the unreasonable acquittals are permitted to be appealed against by the victim. But, if the material is not collected in accordance with law by the investigation agency or during trial, the victim will be definitely affected. Simply speaking or generally speaking, the victim is a forgotten party in criminal justice system. Entire focus is on the offender, to protect his rights, his fundamental rights, human

rights, fair trial, the protection from custodial harassment, faced by the accused etc. All problems of the accused are taken care of by the Society/State ignoring the plight of the victim and the resources are spent by the State to protect the accused. Of course, accused will have to be treated with dignity as he is deemed to be innocent till he is convicted; but the victim, more often, is left to himself/herself without there being any assistance from any quarters including the State. Why should he be ignored? Ultimately, he is the person who is mainly affected. More often little or no assistance would be coming in his way. Take for example, a case of a murder. If the deceased is a sole bread earner, what should happen to the family? His entire family will be on streets. What should happen to the wife of the deceased? minor children of the deceased? On the contrary in our Society, accused is protected (if he is powerful). The people will back him and not the victim. If a person's limb is amputated in the crime or some grievous injuries are inflicted,

he will have to suffer all through. Take an example of acid burns case.

Generally the victims of acid burns are women. Looking to the present day conviction rate of about 15 to 20%, the victims of acid burns get hardly meager compensation. Generally the acid is thrown on the face of the victim. She may or may not know about the actual culprit. The victim's face will be disfigured permanently. She/he may even be incapacitated. Because of disfiguration of victim's face and other parts of her body, the marriage prospects of the victims of acid burns will be very remote. The victim may not be able to get job also. Nowadays, in a private sector, the appointments are made from among the candidates who are good looking and good speaking. In the present days of competition, the victims of such offences may not get any opportunity to earn their

livelihood also. Under such circumstances, the question to be asked as to what should happen to such victims ?

If the property of the victim is lost in the crime, if a poor man's hut is set on fire, his plight cannot be imagined at all. Of course, a notification is issued in Karnataka State for payment of about Rs.10,000/- or 20,000/- etc., to such victims, which is hardly sufficient. I do not know about other States. If the gold or other valuable ornaments are subject matter of the theft or robbery or dacoity, the fate of victim depends on recovery of property. If the recovery is only to an extent of 20% or 30% etc., (as it generally happens), then how to compensate the victim for that? We have to ponder our attention in that aspect. The violation of victims rights, invasion of his dignity, the actual losses incurred by him do not constitute matters of concern of any one, but of himself. Strange but true, justice fails to redress the wrong

perpetrated by the offender on the victim, on the contrary, it aggregates injustice by solely focusing on the offender.

4. In this context, there were serious of debates & Judgments of the Supreme Court and High Courts right from 1979 onwards are delivered. In the Judgment reported in AIR 1980 SC 2147 (Maru Ram's case), the Apex Court (Justice Krishna Iyer) has observed that while considering the problem of penology the Court should not look the plight of victimology and the suffering of the people who die, suffer or are maimed at the hands of the criminals. In the Judgment reported in (1998)7 SCC 392, it is observed that in our effort to look after and protect the humans rights of the accused or human rights of the convict we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the crime committed by the convict. Subsequently number of similar judgments are delivered by Apex Court and High Courts in India.

Without any fault of him the victim has to suffer all through his life. On the contrary accused who commits crime enjoys at the cost of State. He is taking advantage of his crime because the law provides the same to him. I am not saying that the law should not aid the accused but the same facility in the sense of rehabilitation, reparation or compensation at least to some extent in any form shall have to be provided to victim.

5. The law as it stands today, has the provisions relating to compensation of victims such as Section 357, 357A, 358 and 359 of Cr.P.C. Under Section 357(1) of Cr.P.C. if fine imposed is part of the sentence, then the entire fine or part of the fine may given to the victim. Kindly touch your heart and tell me as to how many of you have imposed fine more than Rs.5000/- or Rs.10,000/- in a murder case involving, rape or dacoity etc. With my little experience as a defense advocate, public prosecutor, as a

judge, I have not seen High Court imposing heavy fine. Supreme Court also has very rarely imposed heavy fine. The Courts simply after convicting and sentencing impose a fine of Rs.5,000/- to Rs.10,000/-. Can we call it as a compensation? Even if the entire fine amount is disbursed to victim, it does not help the victim. He may just throw such amount in the Court premises itself. We also do not know as to whether the compensation actually reaches the poor victim or not; but this is the fact situation. Section 357(3) Cr.P.C states that if fine does not form part of the sentence of imprisonment, then compensation can be levied. The Judges unfortunately are not taking advantage of that provision also. The Courts have not been imposing fine or compensation of more than Rs.1,000, Rs.2,000/- or Rs.5,000/- which will not be of any help to the victim. As said earlier if fine does not form part of the sentence of imprisonment the Court can impose compensation. There is no limit prescribed for compensation. It may be one lakh,

Two lakhs or three lakhs etc. But in majority of the cases we do not find the award of compensation.

5. In the year 2003, Gujarat High Court (2003(1) GLR 205) passed an order observing that it is high time that the State shall create the victim welfare fund on a statutory basis. Thereafter, the discussion started on all India basis, Ultimately the Section 357-A is enacted in the year 2009. It says the State shall frame Victim Compensation Scheme. Compensation shall be paid to the victim depending on the facts and circumstances of the case as per such scheme. Enquiry has to be held by the State Legal Services Authority or the District Legal Services Authority, as the case may be. Till this day, no fund is created in Karnataka State (though scheme is framed in 2012). I do not know about the other States. You should enlighten me.

6. Compensation is imposed by the Courts based on facts and circumstances and it is generally ordered to be

paid by the accused. If accused himself is not in a position to pay, what should happen to victim? If the accused himself not in a position to pay, there is no use imposing the compensation on the accused. Thus justice fails. Therefore, the State has to take ponder its attention and create a fund and implement the scheme. Unless the fund under Section 357A is created, the justice cannot be done to the victims.

It is relevant to note that the scheme as framed by the Karnataka State Government is called "Karnataka Victim Compensation Scheme, 2011" and the same has come into effect from the date of its publication in the official gazette. The said notification is dated 22nd February 2012 and the same is gazetted on 19th April 2012. Thus the Scheme has come into existence from 19.4.2012. Under the said Scheme, the Victim Compensation Fund shall be created. Further, the eligibility criteria and the procedure for grant of compensation is also prescribed in the notification. It also prescribes maximum limit of quantum of compensation to be paid to the victim or his dependants as the case may be. The Schedule is as under:

SCHEDULE

| Sl. No. | Particulars of Loss or Injury due to crime | Maximum Limit of quantum of compensation |
|---------|--|--|
| 1 | Loss of Life | Rs.2.00 Lacs |
| 2 | Loss of any limb or part of body resulting 80% or above handicap. | Rs.1.00 Lacs |
| 3 | Loss of any limb or part of body resulting 40% or below 80% handicap. | Rs.50,000/- |
| 4 | Rape of Minor | Rs.50,000/- |
| 5 | Rape | Rs.40,000/- |
| 6 | Rahabilitation necessitated due to damage to house, vehicle etc. | Rs.20,000/- |
| 7 | Loss of any limb or part of body resulting below 40% handicap | Rs.20,000/- |
| 8 | Grievous injuries other than the injuries mentioned above. | Rs.10,000/- |
| 9 | Women and Child victims in cases like human trafficking, who themselves or their dependents have suffered separation, dislocation and disturbance. | Rs.10,000/- |

From the aforementioned Schedule, it is clear that the compensation as provided under the Scheme is too meager. It is highly disproportionate to the gravity of the offence and the sufferings of the victim. For the offence of rape of minor, only Rs.50,000/- is provided ; for the offence of rape, only Rs.40,000/- is provided ; and for loss of life, a meager sum of Rs.2,00,000/- is provided to the victim. Be that as it may, I am yet to find out as to whether the fund is actually created by the State Government or not. The Courts till this date have not even tested the said provision by imposing compensation under

Section 357-A of Code of Criminal Procedure. Therefore till this date, in many cases the victims of the crime have suffered without single paise of compensation.

7. There is one more provision in Section 250 Cr.P.C. Under Sections 357, 357-A, 358, 359 etc., the actual victims will get compensation. So far as Section 250 Cr.P.C is concerned, that if the prosecution is launched based on false accusation, and ultimately after trial, if the person is acquitted and if the trial Court finds that absolutely false case is lodged, then, the compensation is to be levied on the complainant under Section 250. The Courts are not exercising Jurisdiction under Section 250 Cr.P.C also. In such matters, the alleged accused is the victim of the illegal prosecution. Because of the guilt of the complaint/State, the accused has suffered. Justice Nagamuthu has opined that even FIR attaches a stigma. Therefore, if accusation is made without unreasonable cause and if the Court feels that

absolutely false case is launched, then the Court may impose compensation under Section 250.

8. As said earlier, the provisions as of now available are mainly Section 357 or 357A. Under Section 357-A the victim will get some benefit; but till this day, the said provision also not utilized by Courts. In my opinion, Article 41 of the Constitution of India which comes under Part IV of the Constitution will take care of compensation also. Article 41 reads thus:

“Article 41. Right to work, to education and to public assistance in certain cases. – The State shall, within the limits of it’s economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

This provision can be taken assistance of by the State and to create a fund. Because of the murder, the legal representatives of the victims will become orphans and the victim who has suffered disablement also would be virtually orphan. In this context, it is relevant to note certain of the observations of the Justice Malimath Committee on the subject. The Malimath committee in its Report (paragraphs 6.9.1) has observed thus: (Relevant portion)

“Victims of crime are important players in criminal justice administration both as complainant/informant and as witness for the police/prosecution. Despite the system being heavily dependent on the victim, criminal justice has been concerned with the offender and his interests almost subordinating are disregarding the interest of victim. In Civil Law systems generally, the victims enjoyed better status than in Administration of Criminal Justice”

9. Whenever an accident takes place, a crime is committed either under Section 304-A IPC or under Section 279 IPC. The victim of the accident approaches the Motor Accidents Claims Tribunal claiming compensation i.e. he takes the assistance of Civil law. There will be quantification of compensation in systematic method. Substantial amount of compensation would be paid to a victim under Civil law system whereas, in Criminal justice system, it is not so. Because the law provides for compensation under MV Act, the victim will get compensation though a crime is committed. But who will compensate for the life and liberty or loss of properties of victim suffered in other crimes? If the property is acquired by Government – compensation is paid under Land Acquisition Act. But if property is lost or damaged in crime, the compensation is hardly paid.

10. About three or four hundred years back i.e., in ancient times, there was no distinction between civil law and

criminal law. Panchayaths etc., were there. Whenever a crime is committed in those days, Panchas or the Judge or the decision making people used to direct the accused to compensate the victim in terms of money or property. They used to compensate victim by directing payment of money or agricultural land/house etc., etc., At that point of time, there was no provision for sending a person for jail for the offences committed. Thereafter civil law and criminal law were bifurcated. Even when the civil and criminal law were bifurcated, the victim did not get anything under Criminal law system because whenever the crime is committed, the criminal courts used to direct the victim to approach the civil court for initiating action for recovering damages, because evidence is needed for the said purpose. As it was the duty of the civil Court to quantify damages the criminal courts used to direct the victims to approach the Civil Courts. To avoid all those things, now the present trend is, to have the provision for compensation also in criminal justice system.

With that object, Sections 357, 357A etc., are enacted. But, they are not full-fledged according to me. According to me, a separate enactment should be enacted.

In developed countries like England, US, France, Canada, Newzealand, Ireland, there are separate laws for compensating the victims. England was the probably the first State to enact the law for grant of compensation to victims. The law was relating to victim compensation by the State under Criminal Injuries Compensation Scheme, 1964. Under Criminal Justice Act 1972, the idea of payment of compensation by the offender was introduced for the first time. The Apex Court in the case of Delhi Domestic Working Women's Forum vs. Union of India and others (1995) 1 SCC 14 has quoted the extract with approval from the "Oxford Handbook of Criminology". The relevant portion reads thus :

"These developments signified a major shift in penology thinking, reflecting the growing importance attached to restitution

and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act, 1982 furthered this shift. It required Courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, imposed a duty on the Court to give reasons for not doing so. It also extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must furnish reasons.”

As Justice N. Kumar put yesterday in his introductory remark, there should be some law to the effect that the court should record reasons for not paying compensation. This is the law already enacted in England. It says, the Court should consider in each and every criminal case as to whether the victim should be paid compensation or not, though it is discretionary. If the compensation is not to be paid to the

victim, the court shall record reasons for not paying compensation. So it is the duty of the court to apply its mind in each and every case to find out as to whether the compensation should be paid or not. The United States of America has enacted the Victim and Witness Protection Act, 1982. It authorizes the Federal Court to award restitution by means of monetary compensation as part of conviction and sentence. Section 3553(c) of Title 18 of the Act, read thus:

“If the Court does not order restitution or orders only the partial restitution, the Court shall include in the statement the reasons thereof.”

So, the Court in USA has to record reasons as to why there is no order for restitution or as to why there is order for partial restitution etc. So, in each and every case, again the compensation aspect has to be considered by the Court after giving conviction. In American law there will be an enquiry after conviction by the Court. Such enquiry is called

as “Presentation Investigation”. After conviction of the accused enquiry will be held to find as to whether compensation needs to be paid or to how much the accused is entitled to. Such enquiry will be completed within five weeks and on the basis of enquiry report, the compensation will be disbursed.

Even the UN general assembly has recognized the right of victims to receive compensation by passing a resolution titled ‘Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985’. The UN general assembly resolution contains the provision relating to restitution and compensation as under :

Restitution :

“The offenders are 3rd parties responsible for their behavior should where appropriate, make fair restitution to victims their families or dependents such restitution should include the return of property or payment for the horn of lost caused reimbursement of

expenses incurred as a result of victimization, the provision of services and restoration of rights.” The government should review the practices, resolutions and laws to consider restitution as an available sentencing option in criminal cases in addition to other criminal sanctions.

Compensation :

“12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to :

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for

compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.”

11. One more resolution is passed by UN general assembly with regard to the victims of international crimes called as “Basic Principles and Guidelines on the right to remedy and Reparation of Victims of Gross Violations of International Human Rights law and Serious Violations of International Humanitarian Law 2005”. In respect of victims of international crimes, the UN General Assembly passed the said resolution for compensating the victim. So, Dear Friends, all the developed countries as well as UN general assembly have passed either Acts or resolutions. Some of the States have already enacted law to the effect that the

victim should be paid compensation and imposing the duty on the Court to verify in each and every case to find out as to whether the compensation is to be paid to the victim or not.

Most important aspect is that the State should create victim compensation fund generously, I am pressing this point because in a country like India, the crimes are committed by poor people. I have seen so many cases wherein crime is committed for two idlies, crime is committed for one cigarette. If it is so, how do you expect the accused to compensate the victim's family? It is impossible for the accused to compensate in such cases. Ultimately it is the duty of the State to compensate the victim.

12. Dear friends, an interesting case came before the Supreme Court (AIR 1984 SC 1029). It was a case of Section 302 IPC. The trial Court convicted and sentenced the accused to undergo imprisonment for life. The matter

came up before the High Court. The High Court probably on verifying with the accused as well as the victim reduced the gravity of the offence by convicting the accused for the offence under Section 304 part II and imposed sentence of imprisonment for two years (probably because by then the accused had already undergone two years of imprisonment) and as compensation, three acres of land was directed to be paid by accused to victim. Most importantly, in that matter, the reduction of sentence was not on merits. But only with a view to compensate the victim, the sentence was reduced probably with the consent of the accused as well as victim. Ultimately the matter went up to Supreme court. The Supreme Court set aside the order of the High Court and said that if the judgment of the High Court is accepted then the entire system of Administration of Criminal Justice would be reduced to mockery. Therefore, dear friends, in our anxiety to award compensation, we should not reduce the sentence or we should not reduce the gravity of the

punishment. The power of court to award compensation is not ancillary to other sentences but it is in addition thereto. On merits, the Court will have to impose punishment and in addition thereto may award compensation.

Recently, the Apex Court in the case of Ankush Shivaji Gaikwad V/s State of Maharashtra (Criminal Appeal No.689/2013 disposed of 03.05.2013) in its very detailed judgment authored by Justice T.S. Thakur has considered the same question relating to victim compensation. In that judgment, the Supreme Court has discussed all the previous judgments on the point and has referred to the different laws of the different countries & UN General Assembly resolutions etc., Ultimately it is held that, it is the duty of the Court to consider payment of compensation in each and every case and the Court will have to record reasons, as to why Court is not granting compensation, if the Court has not granted

compensation. The conclusion of the Apex Court reads thus :

“62. To sum up : While the award or refusal of compensation in a particular case may be within the Court’s discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court

considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.”

So Dear friends, as the thing stand, it is for the Courts to provide relief to the victims based on the available law. As on this day the available law is only in the form of Sections 357, 357-A etc. While recording the evidence itself generally in about 50% of the cases we would be knowing about the capacity of the accused to pay and know as to whether he is well off or not etc. If he is in a position to pay then the courts may impose compensation depending as the facts of the case. If he is not in a position to pay then you make use of section 357-A Cr.P.C. and direct the State to pay the compensation. With this I conclude.

Thank you.