



## Mainstreaming Victims of Crimes

(This editorial is based on the article “Mainstreaming Victims of Crimes” which appears in The Hindu on 1st January 2019.)

**When any crime occurs, inevitably, the unwanted-attention will always shift towards the survivor and not the perpetrator. But in doing so, society often engages in blaming the victim or the survivor. This phenomenon of victim blaming is seen worldwide.** In India, the Supreme Court has taken notice of this phenomenon and has upheld the rights of the victims. Therefore, victims of crime in India now has a right to speak and the nation has a responsibility to listen.

### What is Victim Blaming?

- Victim blaming is when the victim of a crime or any wrongful act is held entirely or partially responsible for the harm that befell them.
- Victim blaming occurs at a disproportionate rate in sexual assault, especially when compared to other crimes.
- **Example:**
  - **In a society** steeped in patriarchy, it's not uncommon for women to be blamed for inviting sexual assault and rape. Victims are often blamed for wearing short skirts or jeans, having boyfriends, being out late at night, or even talking on mobile phones.

Though the 'victim' plays an important role in the criminal justice system his/her welfare is not given due regard by the state instrumentality. **The term 'victim' came to be defined in criminal law only in 2009 in India. Moreover, the victim of a crime is never heard as a victim during the trial of a case, but as a witness.**

### Why a legal definition of 'victim' is important?

- **Crimes are registered in the form of sections of the Indian Penal Code (in numbers) which do not mean anything to the victims of crime in terms of their impact. Crimes do not impact all victims in the same manner.**
- **There is no way to assess the impact suffered by a victim.** And whatever little is tried in this direction is always through a third party, such as a prosecutor or judge, who is invariably incapable of registering the aftermath of victimization. (Only the victim of a crime may truly feel the impact of the crime, others can at best imagine and sympathize with it).

### Efforts of Judiciary

- **In Sakshi v. Union of India**, the Supreme Court mandated 'in-camera' trials particularly when the victim is a child or rape victim to maintain their privacy and dignity.
- **In Nirmal Singh Kahlon v. the State of Punjab**, the Apex Court observed that the right to a fair

investigation and trial is applicable to the accused as well as the victim and such a right to a victim is provided under Article 21 of the Constitution of India. Ergo, a victim of a crime is equally entitled to a fair investigation.

- **In Bodhisattwa Gautam v. Subhra Chakraborty**, the Supreme Court held that if the court trying an offense of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation.
- **Recently, the Supreme Court issued a slew of directions to protect the identity of victims of rape.** In Nipun Saxena vs Union of India, the SC ordered, among other things, that "In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge".
- **The UN 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** effectuated a movement for victim empowerment. That led to significant reforms in the criminal process. It enabled victims to have rights and reasonable protections, and assistance and participation in the system. It also made a powerful plea to provide a voice to the victims of crime during the trial stage.
- **In Mallikarjun Kodagil (Dead) v. State of Karnataka (2018)**, the Supreme Court stressed the need to have a victim impact statement\* "so that an appropriate punishment is awarded to the convict". This throws up many issues that are of interest to the victims of crimes.

### Victim impact statements:

- Are written or oral information from crime victims, in their own words, about how a crime has affected them.
- Many countries permit them at parole hearings, and victim impact information is generally included in the pre-sentencing report presented to the judge.
- The purpose of victim impact statements is to allow crime victims, during the decision-making process on sentencing or parole, to describe to the court the impact of the crime.
- Generally, a victim is assisted to submit a detailed form, which is standardized for this purpose, through a prosecutor.

### Shortcomings in Law

- The Criminal Procedure Code, in Section 235(2), places a mandatory duty on the court to hear the accused on the question of sentence. The idea is to collect personal information and consider it while specifying the quantum of punishment. **While this practice is laudable, it causes a huge disadvantage to the victim of the crime as the trial court is under no legal obligation to hear the victim. As the victim is represented by a prosecutor, her concerns, as well as the impact of her victimisation, remain unexpressed.**
- The trial process is organized in such a manner that the personal appearance of the victim at all the crucial stages is restricted.
- The victim is not present when charges are framed against the accused when the accused is discharged when bail is granted when parole is considered, and when punishment or compensation is decided.
- By and large, the police, prosecutors and courts do not have any substantive legal obligation towards crime victims.
- Often, the family members and friends of victims also make written and verbal statements and not the victim.
- Indifference to crime victims remains deep-rooted in the accused-centric criminal justice system. **As such 'Secondary victimization' also takes place when the agencies of the criminal justice system treat victims of crime unfavorably or marginalize them during the trial.**

### Way Forward

- **A victim impact statement is an answer to most of the above-mentioned concerns.** It has

the potential to alter the course of things for victims of crime in India.

- **Victim impact statements could provide information about the damage caused to victims by the crime, which is information that would otherwise not be available to the courts.**
- Details of the financial impact of the crime — lost wages, medical or counseling expenses, transportation costs and damage to property, including a request for compensation or restitution — can also be included in these statements.
- Hearing the victim during the sentencing will help the court decide the quantum of punishment as well as assess the amount of compensation to be ordered. **The U.S., Canada, Australia, and many countries in Europe have made victim impact statements mandatory. It is time for India to do so too.**
- **Providing timely assistance to victims of crime is of great significance because victims have suffered irreparable damages and harm as a result of a crime. The problems of victims and the impact of crime are long-lasting. Therefore, the agencies of the criminal justice system should be receptive to the needs of the victims of crime and address their issues sincerely and empathetically.**

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