

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 3 | Issue 1 [2025] | Page 272 - 280

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THE NOTION OF VICTIMOLOGY AND ITS IMPLICATION IN THE NEW CRIMINAL LAW.

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ABSTRACT

Important elements in a crime includes the offender, the offence committed and the victim. Very often criminal laws linchpin the offender and the offence committed. Does mere punishing of the offender, stabilise the mental torment undergone by the victim due to the felony committed is the major concern which is addressed in this research article.

The societal notion of justice revolves around the sanctions imposed on the wrong doer. But it is pertinent to note that Justice is a canopy which covers the society as a whole. Victimology is intertwined with psychology. Not only physical wellbeing of the victim is to be ensured but the persona also matters in order to enable such person to carry out their conventional lives after such incidents.

When offences like rape, attempt to murder, dacoity, kidnap, extortion, etc are committed they leave the victims with a long-term psychological impact. The catechize here is how criminal laws deal with the after effect of such horrifying incidents.

Theories of punishment also emphasises on the offender and the societal impact caused incidentally. Reformatory theory for instance, has its major spotlight on the reformation of the offender. The onus of Victim support mechanism lies only with the state or also with the individuals in a society is a significant concern to explore. This paper centres on the balance between the fathom of psychology of the victim in order to revivify the same and understanding the psychology of the offender in order to reform such person.

The consequence of inadequate or no support to the victims is a pressing concern which this paper delves into. A brief comparison of assistance provided to the victim in the western countries and in India is explored in this paper. The devotion of the new criminal law (Bharatiya Nyaya Sanhita, 2023) in upholding justice is thereby examined.

KEY WORDS: Victim, support mechanism, psychology, criminal law.

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INTRODUCTION

Section 2(x) of the Bharatiya Nagarik Suraksha Sanhita, 2023 defines "victim" as a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and includes the guardian or legal heir of such victim; The Constitution of India in its basic principles also highlights significance of victimology.

Victim aid is an essential component of legal and humanitarian remedies meant to support those who have been harmed by accidents, natural catastrophes, human rights violations, or other types of violence. For individuals impacted, it entails offering prompt, sustained, and all-encompassing assistance with an emphasis on their social, psychological, and physical healing.

A wide range of services are included in victim help, such as advocacy, social support, legal aid, medical attention, and psychiatric counselling. Accessibility, decency, and empowerment are given top priority in successful victim assistance programs, guaranteeing that victims get respectful treatment and actively participate in choices that impact their rehabilitation.

In general, victim support fosters the long-term rights, dignity, and well-being of individuals who have been harmed rather than only offering emergency treatment. Victim Assistance can be strictly enforced through legal implementation.

PREVENTION OF CRIME AND ASSISTANCE PROVIDED TO THE VICTIM

Crime prevention strategies implemented throughout the world has shown a positive result on the reduction of crime. For instance, New Zealand police commissioner claimed that “By working on the cause of crime and approaching a new way of reducing offending and victimisation, 90,000 fewer crime were reported. This equated to tens of thousands fewer victims and less pressure consecutively over the criminal justice system”

Crime prevention will result in crime reduction thereby has a positive impact on victimisation. There are different approaches towards crime prevention.

Wolfgang conceptualised crime prevention model to have had similarity to the public healthcare model. Accordingly, it was divided into three levels namely

Primary: Which includes general deterrence through educational programs by the police, exceptional judgements by the courts and effective execution by the prison authorities.

Secondary: Includes peace keeping programs, out of court settlements, etc

Tertiary: Includes Arrest and prosecution, sentencing and punishment, Rehabilitation and reform.

The crime prevention model primarily focuses on the inception stage and thereby reducing the victims. When effective methods are used from the onset at households, schools, community and society as a whole, it will result in much lesser crime rate and more compassion towards another fellow mate. However, it is arduous to implement such strategies at every level in a society, which thereby result in having deviants.

EMOTIONAL REACTIONS OF VICTIMS

The primary emotional reactions of the victims include shock, fear, anger, confusion, shame, guilt and grief. Multiple emotions striking a person at the same time makes one weaker and disables him from making an objective decision. For instance, victims of sexual abuse very often fail to report the incident fearing public judgement, shame, etc.

“The one permanent emotion...is fear of the unknown, the complex, the inexplicable. What [man] wants above everything else is safety” - H.L. Mencken

Victims of crime are very often anxious due to the horrifying incident they had to witness. Some also deal with such fear for lifetime without having access to proper assistance. Victims are required to reconstruct their understanding of the world and rebuild their ability to meet their needs. Legal remedy available for the victims of horrifying incidents such as war, terrorism, etc are very often not sufficient to meet their cognitive and emotional well-being.

LEGAL JUSTICE AND MORAL JUSTICE

Legal justice and moral justice are two different concepts. Legal justice is achieved through law, orders, bye-laws, ordinances, etc. Moral Justice is achieved through the general acceptance of the society. Moral Justice is a much wider concept, when compared to legal justice. As observed in the society, legal transformations are obtuse to the social transformations. Justice is a concept which is perceptive.



“The victims know that individual therapeutic intervention is not enough. They need to know that their society as a whole acknowledges what has happened to them... Truth means the end of denial and silence... Truth will be achieved only when literally everyone knows and acknowledges what happened...”

In General, justice can be achieved when the victims to a considerable degree are able to carry out their day-to-day functions, as if they did before the incident. But social acceptance cannot be achieved in a short span of time. It requires constant cue.

Laws are made on the basis of the prevailing morality. If laws made are in combat with the largely accepted morality, the decision taken by the courts on the basis of such laws will be largely frowned upon.

Practically, Justice refers to fairness to both the wrong-doers and their victims. In a country like India, Rape Victims are often shamed and are frowned upon on their past behaviour. Members close to the victim such as family members, friends, etc also fail to accept them.

But this notion in the country is changing in a lackadaisical manner. Shaming of victims also adds guilt to their emotional trauma they are already suffering. Shame and grief erode self-esteem.

RELATION BETWEEN THE BHARATIYA NYAYA SANHITA, 2023 AND VICTIM ASSISTANCE

The new criminal law employs legal justice to the victims by factoring the emotional trauma, undergone by the victim. The below provisions highlight the said concept.

Section 65: It prescribes punishment of rigorous imprisonment for a minimum term of 20 years which may extend to imprisonment for life and fine for rape on women below the age of 16 years

and the same punishment with an option of death sentence is prescribed if the victim is below the age of 12 years. The fine so prescribed shall be reasonable to meet the medical expenses and rehabilitation of the victim which shall be paid to the victim.

Section 70: This section provides punishment for gang rape. The fine prescribed shall be reasonable to meet the medical expenses and rehabilitation of the victim which shall be paid to the victim.

Section 124: This section prescribes punishment for voluntarily causing grievous hurt by use of acid. The fine prescribed includes the medical expenses and rehabilitation of the victim which shall be paid to the victim.

Section 200: This section prescribes punishment for non-treatment of victim as per section 397 off the Bharatiya Nagarik Suraksha Sanhita, 2023.

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

Section 396: This provision deals with the responsibility of the central government, state government, court, State legal Service Authority, District legal Service Authority towards rehabilitation and victim compensation scheme.

Section 397: This section enunciates all hospitals, public or private to provide first-aid or medical treatment immediately at free of cost, to victims of any offence covered under sections 64-68, 70, 71, 124(1) or under sections 4, 6, 8, 10 of The Protection of Children from Sexual Offences Act, 2012 (32 of 2012). These sections mentioned mainly covers sexual offenses against women and children.

Section 399: This section prescribes compensation to persons arrested without sufficient grounds.

Section 18 prescribes that the appropriate government shall provide legal assistance to the victim, by appointing Public Prosecutor, only if he has been in practice as an advocate for not less than seven years.

Section 176 prescribes procedure for investigation in relation to an offence of rape, in which the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

By analysing the above provisions, it can be observed that the new criminal law has sound principles regarding legal assistance to provide to the victims of sexual offences. It also has scattered mentions of victim rehabilitation imbibed in its provisions.

VICTIM ASSISTANCE PROVIDED IN DEVELOPED COUNTRIES

THE UNITED STATES

In 1974, the U.S. Department of Justice's Office of Justice Programs (OJP) set its focus on how to meet the needs of crime victims. The U.S. Department of Justice's research, evaluation, and technology department, the National Institute of Justice (NIJ or the Institute), is committed to using science to advance our understanding of crime and justice issues. The Institute's goal is to develop and share information and resources based on impartial, thorough scientific research in order to support initiatives that increase justice and safety.

“Since its founding, NIJ has been committed to supporting important research on crime victims,” said Thomas Feucht, former senior science advisor at NIJ. “For example, in the 1970s NIJ conducted foundational research to assess state victim compensation programs,⁶ and in the 1990s NIJ supported a pivotal research program to calculate the total costs of crime to victims and communities.”

In order to help victims navigate the criminal justice system and the aftermath of crime with dignity and resiliency, the Victim Services Division (VSD) provides information, support, and assistance. As mandated by federal law and the Attorney General Guidelines on Victim and Witness Assistance, VSD is in charge of making sure that victims of crimes that the FBI investigates have the chance to obtain assistance and notice. More than 2 million victims have benefited from the FBI's victim support program since it began in 2001. Services include crisis intervention, emergency travel help, and local referrals for counselling, housing, and other services.

The US Department of Justice, Federal Bureau of Investigation, Victim Services Division provides victim assistance to Violent Crime, Crimes Against Children, Indian Country Crime, Domestic and International Terrorism, Civil Rights Violations, Hate Crimes, Human Trafficking, White-Collar Crime, Health Care Fraud, Identity Theft, Mortgage Fraud, Telemarketing Fraud, Cyber Crime, Child Sexual Exploitation, Computer Intrusion, Internet Fraud

THE UNITED KINGDOM

Code of Practice for Victims of Crime in England and Wales is a separate legislation in the UK which specifically deals with victim assistance. There are 12 Rights prescribed under this code. Few of which are as follows:

Right 1: To be able to understand and to be understood- This is concerned with right to understand information provided including translation services

Right 2: To have the details of the crime recorded without unjustified delay- It includes the right to get the details recorded by the police about the crime and assistance in providing witness statement.

Right 4: To be referred to services that support victims and have services and support tailored to the victim's needs.

Right 5: To be provided with information about compensation.

Right 11: To be given information about the offender following a conviction- The Victim Contact Scheme, will provide the information about the offender and their progress in prison, and if/when they become eligible for consideration of parole or release. Where applicable, the victim has the right to make a new Victim Personal Statement, in which the victim can say how the crime continues to affect him/her.

Right 12: To make a complaint about your Rights not being met- If the victim's right has been curbed due to some reason, he can make an application for redressal to the Parliamentary and Health Service Ombudsman.

RECOMMENDATION

1. A separate organisation at each state, for providing assistance to the victims of crimes such as dacoity, rape, domestic abuse, attempt to murder, war, terrorism, hate crime, cyber-crime etc may be established through statutory enactment. This statutory enactment may provide for the rights of the victims, procedure to avail such assistance, etc.
2. If a separate organisation is formed, the composition of the same may include legal members, technical members i.e., specialists in psychology, psycho therapists, etc and

people who have been victims. This enables a balanced working of the said organisation, thereby fulfilling the required objective.

3. The current provisions mainly provide for immediate medical assistance in case of sexual offences. Inclusivity of assistance to victims of other crimes such as war, terrorism, hate crime, cyber-crime, dacoity etc may be inserted in into the provisions of the legislature. Victims may be provided assistance, even after the sentencing of the accused if required or requested at any time by the victim. This ensures a sense of belonging and upliftment of the self-esteem of the victim.
4. Victims reluctant to file application before the courts also may be given free counselling and required aid.
5. The legislation relating to victim assistance in the UK may be adopted by the Indian legislature with required modifications.
6. A 24/7 victim assistance helpline maybe created to provide round the clock service.
7. Training may by given to the required people to provide victim assistance.

LIMITATION OF THE STUDY

This study mainly focuses on the victims of crime mentioned in the criminal law. But it also covers a wide spectrum of victims of natural disaster, asylum seekers, marital rape, etc. Therefore, inclusivity in study of all kinds of victims may help in attaining justice

CONCLUSION

It may be deduced that the available assistance to victims through the existing legal enactments are insufficient. As the name of the new criminal law suggests, 'Nyaya' means justice. Justice can be achieved only when all the spheres of a case is considered.

The Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Nagarik Suraksha Sanhita mentions about victim assistance and compensation to be paid to the victim. But very often monetary compensation alone cannot equate the mental trauma undergone by the victim.

Therefore, the inclusion of prescription of procedure to provide psychotherapy to the victims may aid in achieving the objective of justice.

Victimology is a crucial area in criminal justice system since it aids in comprehending the effects of crime on victims and the wider implications for society. By concentrating on the experiences,

needs, and rights of victims, victimology offers critical insights that can influence policies, practices, and legislation aimed at assisting those impacted by crime.

It highlights the significance of empathy and justice, ensuring that victims receive attention within the criminal justice system.

In summary, victimology is significant because it cultivates a more compassionate, knowledgeable, and effective approach to crime, advocating for justice not just for perpetrators but also for victims.