

Rights of the victims of rape law general essay

Law



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CHAPTER 1

PERSPECTIVE

PROLOGUE

The criminal justice system aims to provide justice to the victim. However, this is hard psychological fact that no form of justice can compensate the sufferings of the victim. Punishment, to some extent satisfies the sentiment of victim and sometimes the punishment given to the offender may not always serve it. Our criminal justice system follows the adversarial system and thus the role of the victim of a crime is restricted to that of a witness, although, it's the victim who actually suffers the most in the whole process. Though some marginal action can be taken to help the victim to some extent, but it is indeed strange that the administration of justice is least bothered about this aspect. The entire focus of the criminal justice system as

well as Human Rights has remained on the offender; to punish him or to seek his reformation and rehabilitation with all resources and goodwill available through courts and other governmental and non-governmental agencies.

Victims of crime play a critical role in the criminal justice system.[1]The victim often provides eyewitness information to the police, which aids in the capture of suspects.[2]Furthermore, prosecutors and judges tend to rely heavily on a victim's testimony in court.[3]The neglected status of victim has been recognised by the Supreme Court of India in the case of Rattan Singh v. State of Punjab[4], the Court observed as follows-" It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system which must be rectified by the legislature." Although the principles of victimology have foundations in the Indian Constitution the observations made by Justice Krishna Iyer in the above lines have been duly acknowledged by the Legislature in the Criminal Procedure(Amendment) Act, 2008. Across the globe in different countries, victims of crime are protected, assisted, restituted and compensated by appropriate laws. But in India the law hardly cares and court rarely bothers for the role of victims of crime. This way their part of play is reduced as they have an insignificant role in the criminal justice process. In recent times, among the many reforms canvassed for improving the criminal justice system is the one that advocates a victim-orientation to criminal justice administration. Victim-orientation chiefly includes four things: greater respect and consideration towards victimstheir rights in the investigative and prosecution process, provisions for greater choices to victims in trial and disposition of the

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accused, and a scheme of reparation/compensation particularly for victims of violent crimes. Though there are some provisions under the Constitution of India and some sections in the Code of Criminal Procedure, 1973[5] to protect the rights of the victims and for providing compensation, the criminal courts at the subordinate level in India have ignored those provisions for a long time and not utilized them in course of trial. In comparison with foreign jurisdictions, in India, the rights of victims are still often overlooked. Unlike the accused, prior to 2008, victims in India have virtually no rights in criminal proceedings, supposedly conducted on their behalf by state agencies. This research paper has been written in relation to rights of the Victims of rape in India specifically. The researcher in the course of the paper has comprehended that the genesis of this problem lies in the statement that the Victims of crime under Indian Criminal Law are least supported than the accused in the present adversarial criminal administration and justice system. The status of victims of rape in criminal proceedings in India is dealt within a few provisions of the Criminal Procedure Code, which are also inadequate to be deliberated fair in dispensing equal justice under law. The complaints of victims of rape are many - that they are ill-treated or harassed and that the police do not truthfully record the information. Investigations are being done only by the police and only when the police find it necessary the victims play a role. The law has no exclusive provision for support to victims of rape to empower them to overcome the suffering and hurt. To analyse all these issues better the researcher had a detailed look of the Supreme Court Cases of 2012 on Rape victims.

LITERATURE REVIEW

Researcher has gone through various literatures available on the subject, such as various books and articles. In a preliminary survey of existing literature, the researcher has observed that mostly it is perceived that the purpose of criminal justice system, at present is confined to the simple object of ascertaining guilt or innocence and use the victim only as a witness. Even though many Reports by the Government, Law Commissions, various articles etc. refer to the point that a change in the law is necessary but till now the victim has not got its due rights under the criminal justice system.

OBJECTIVE OF THE STUDY

The specific objective of this research paper is to study the trend of judicial decisions relating to Rights of the Victims of the crime of Rape under the Criminal Justice System of India with emphasis on the Supreme Court decisions of 2012. Judiciary plays an important role in providing protection to such victims. But in reality the researcher during the research has realised that the victim is left more dejected when proper justice is not meted out to them. The treatment of this problem under the criminal jurisprudence has been the precise aim of this paper.

HYPOTHESIS

The hypothesis that the researcher has framed is: The victim of the offence of Rape does not receive enough protection in reality. Victim of Rape is just left to playing the role of a witness. The Apex Court of India has not shown much sensitivity towards the protection of victims.

RESEARCH QUESTIONS

For the purpose of these objectives the researcher has formulated the following research questions. 1. What are the legal safeguards available to the victims of crime in India? Are the Victims least supported and paid attention than the accused? 2. Does the Apex Court of India provide enough protection to the Victims of Rape in the Decisions of 2012? If yes, are the protections enough? 3. Is there a need to reform provisions relating to Compensatory Justice under the Indian Criminal Justice System? 4. What can be done to give a better deal to the victims of crime to make the proceedings equally fair to both sides? These research questions are not exhaustive. The researcher may add few more questions as and when new exploration is made during the course of research.

SCOPE OF THE STUDY

The scope of this topic is restricted to the study of protection of Victims of Rape. The researcher in order to make the study more specific would analyze the Apex Court decisions with special reference to the year 2012 to know in details what relief has been given to the victims. The research is intended to critically analyze the rights of victims under the relevant provisions of the United Nations Declaration for Victims on 1985, Indian Penal Code, Criminal Procedure Code and other laws and the interpretation by the Supreme Court of India with special regard to compensatory jurisprudence.

RESEARCH METHODOLOGY

The methodology which the researcher has adopted is doctrinal in nature. The emphasis was given on critically analysing the Supreme Court Cases, <https://assignbuster.com/rights-of-the-victims-of-rape-law-general-essay/>

legislative framework, including the laws, policies and the role of Indian Judiciary with reference to the compensatory jurisprudence and other rights available for the victims of crimes. The researcher has given its most emphasis on the fourth chapter by analysing the Supreme Court cases of 2012.

FRAMEWORK OF STUDY

The 1st Chapter is named as " Perspective" which deals with the broad introduction of the whole paper and covers the scope, hypothesis, research questions of the research paper. The researcher in the 2nd Chapter named as " Conceptual Contours" have tried to discuss in general the terms that need to be known properly to have an understanding of the whole research paper. The researcher has also tried to give an Indian perspective of the situation by including statistics of Rape victims of the country. In its 3rd Chapter i. e. " Laws on victims of Rape/Sexual Assault: A Critical Survey", the researcher has tried to deliberate in details the laws governing the above mentioned issues and has also cited relevant cases with judgements. In its 4th Chapter i. e. the most important Chapter according to the Researcher as a major portion of analysing cases of Rape lies here. For this chapter the researcher amongst a number of Supreme Court cases dealing with Rape Victims has chosen only particular cases for a detailed discussion and has seen how the Victim's rights get violated and tried analysing whether the Apex Court in reality takes steps to avoid such violation of rights. In the last chapters of Conclusion and Recommendations, the researcher has tried to answer the Research questions on the basis of the above chapters and has also tried to conclude with the Hypothesis the researcher had previously

framed. The researcher has tried to give some remarks so that the abuse of rights of the victims is reduced to a certain extent.

CHAPTER II

CONCEPTUAL CONTOURS

In order to have deep and comprehensive understanding of the subject matter the meanings of some terms have to be understood clearly: In criminal jurisprudence, every crime constitutes the following – the criminal or the offender, the crime and the victim of crime. The term "victim" is derived from the Latin word "victima". The concept victim was well known in the ancient civilization, especially in Babylonia, Palestine, Greece and Rome. The modern concept of victim of crime may be traced from the writings of "Mendelsohn" the criminologist, who is known as father of victimology.[6]The word "victim" lacks expressive correctness. It denotes more than the mere existence of an injured party, in that guiltlessness or virtuousness is advocated as well as an ethical claim to a sympathetic reaction from the fellow mates.[7]The legal definition of the word 'victim' has been defined in the following chapters. Here we discuss what the term in general means. The term "victim" is defined in English Oxford Dictionary as:"victim is a person who is put to death or subjected to misfortune by another; one who suffers severely in body or property through cruel or oppressive treatment: one who is destined to suffer under some oppressive or destructive agency: one who perishes or suffers in health etc., from some enterprise or pursuit voluntarily undertaken." As per Collins English Dictionary:"'victim' means a person or thing that suffers harm, death etc. from another or from some adverse act, circumstance etc." According to New Webster's Dictionary, 'victim' means""

A person destroyed, sacrificed, or injured by another, or by some condition or agency; one who is cheated or duped; a living being sacrificed to some deity, or in the performance of a religious right." In the context of criminal justice system, the term 'victim' is defined in Black's Law Dictionary as:" The person who is the object of a crime or tort, as the victim of a robbery is the person robbed." In a society, the phenomenon is such that a certain section of people will always indulge in criminal activities, accordingly some other group will always have a high probability of victimization. Von Hentig made the first ever study of the role of the victims in crime and found some general characteristics among them which may be summarized as follows[8]: The poor and ignorant immigrants and those who are requisite or greedy are the victim's offences involving frauds. Quite often, the victims of larceny (theft) are intoxicated or sleeping persons. The depressed or apathetic person is a victim because he is "deprived of warning posts" and is indifferent to harm or injury "in prospect". Wanton or sensual persons may become victims due to situations precipitated by themselves. A lonesome or heartbroken person may become especially vulnerable because of the loss of critical faculties in him. Among "general classes of victims", Von Hentig includes the young, females, the old, the mentally defective and deranged, the intoxicated, immigrants, members of minority groups and the "dull normal"[9]. Mendelsohn studied victims on basis of their contribution to crimes classified them into following categories[10]: Completely innocent victims, e. g., children, persons in sleep. Victims with minor guilt and victims of ignorance such as pregnant women who go to quacks for abortion. Voluntary victims, such as the ones who commit suicide or are killed by euthanasia. Victims who are more guilty than the offenders, such as person

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who provoke others to commit crimes, The criminal type of victims who commit offences against others and get killed or hurt by others in self-defence. Next coming to the concept of " Rape" - it is highly disgraceful and inexcusable, both, in a good way and in it being very closely complete contempt for the personal integrity and autonomy for the female victim. It is just short of homicide, as it is the " ultimate violation of self." It is also a violent crime because it normally involves force, or the threat of force or intimidation, to overcome the will and the capacity of the victim to resist. Rape is very often accompanied by physical injury to the female and can also inflict mental and psychological damage. In addition to that there is a public injury as well as it affects the community's sense of security.[11]But it is not even possible to measure the harm it causes on the victim's life and health even for the future times. Rape not only attacks the physical body but destructs the actual human personality as well. The remainder of the victim's life may be gravely affected, and this in turn may have a serious detrimental effect upon her husband and any children she may have.[12]There has been a constant rise in the crime against women in our country in the past few decades. Hardly a day passes without reports to the newspaper or magazine of a rape or an assault or molestation having taken place in the rural or urban areas. There was a 14% increase in cases of rape registered by the police in 2003. In 2002 there were 407 cases of rape while in 2003 the figure shot upto 466. There has still been a 9. 2% increase in the rape cases in the year 2010-2011.[13]Victimology seeks to study the relationship between victims and offenders; the persons especially vulnerable to crimes and the victim's placement in the criminal justice system. B. Mendelson is credited with being the first to study the relationship between victim and the offender <https://assignbuster.com/rights-of-the-victims-of-rape-law-general-essay/>

and taken together, he termed the two as the "penal couple". He identified four factors on the context of the crime of rape and other offences against morality which could be responsible for lessening of the resistance on the victim's part[14]: The familial, authoritative or hierarchical relations existing between the accused and the victim. The temperament of the victim, which may obscure the reasoning faculty. The liberative social surrounding of the victim. The superiority of the social milieu of the accused in relation to that of the victim. The laws on rape have ignored to reflect the reality of being a woman and this is the single largest reason for the legal system to be unfair to women. In several rape trials we see how the court have treated women complainants as accused, thus playing even a darker role as perpetrators in preserving their oppression. It has on many occasions condemned the unfortunate complainants, as being of 'questionable character' and of 'easy virtue' and the woman's version is not considered worthy of acceptance by the Judges[15]. In India the legal definition of Rape is contained in Section 375 of the Indian Penal Code which has been discussed in detail in the following chapters of the paper. Decades and centuries have passed but the life of the Indian woman still remains in peril. Even after five decades of our independence and constitutional guarantees a day shall not pass in India without finding a postscript in a newspaper about atrocities on women. When the society was staggering under these scalene conditions the Supreme Court of India had delivered judgement in Suman Rani Case[16]. This judgement had become a controversial one which was supposed to have deteriorated the position of women in India[17]. In the words of Justice Krishna Iyer, when a woman is ravished what is inflicted is not mere physical injury but the 'the deep sense of deathless shame'[18]. Every woman

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upkeeps her humility and virginity more than her life. Therefore the sin of rape must be treated as a very harsh crime and sentence must be provided with extra deterrent effect.

CHAPTER III

LAWS ON VICTIMS OF RAPE/SEXUAL ASSAULT: A CRITICAL SURVEY

It is necessary to give a central role to the victims of crime, as otherwise, the victim will remain discontented and may develop a tendency to take law into his own hands in order to seek revenge and pose a threat to the maintenance of Rule of Law, essential for sustaining a democracy. This observation has been noticed in many cases of the Supreme Court where the condition of the victims has been expressed as very important and if not taken proper care of they might resort to illegal means and result in increase of the number of crimes in the society.[19]

UNITED NATIONS DECLARATION

The United Nation General Assembly in 1985 adopted a declaration- " Basic Principles of Justice for Victims of Crime and Abuse of Power". The declaration treated as Magna Carta of Rights of victims globally. This declaration deals with certain important aspects of problems of victims of crime including victims of Abuse of Power. Accordingly the Declaration defines ' victim of crime' as follows:" Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing <https://assignbuster.com/rights-of-the-victims-of-rape-law-general-essay/>

criminal abuse of power." As per the International definition, the 'victim' also includes- 'a person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim.' Further, the term 'victim' also includes where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. In the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 12 also deals with compensation. It stipulates as follows: "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." Article 13 of the Declaration: "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." A comparative analysis of these provisions enable the researcher to infer that even prior to the international declaration there were several legislative measures taken by various nations in order to deal with the rights of the victims and the following are the important Acts: 1. In 1963, New Zealand enacts the first Criminal Compensation Act. 2. In 1965, California is the 1st State to start

victim compensation in the USA. 3. In 1973, 1st International Symposium on victimology is held in Jerusalem, Israel." [20]

2) CONSTITUTION OF INDIA

Under our Constitution, it is our primary responsibility of the State to maintain law and order so that the citizens can enjoy peace and security. The State discharges the obligation to protect life, liberty and property of the citizens by making suitable preventive and punitive measures, which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society. It, therefore, becomes an obligation of the State to identify and apprehend the offender, subject him to a fair trial and if found guilty to punish him. The right to a fair trial is, thus, a constitutional imperative [21]. Substantive penal laws prescribe punishment whenever there is an invasion of this right of the citizens. Thus, in the prevailing criminal justice system, whenever a crime is reported, it is the State, which gets the crime investigated by its agency, moves the Court for trial of the offender and prosecutes him in the Court of law. [22] Neither at the stage of the framing of a charge nor at the time of passing of an order of discharge, are the views of the victim ascertained, let alone considered. He is not to be consulted during the trial. Even after the case ends up in a conviction, it is the State, which defends the judgement of the trial court in appeal, if any, filed against the conviction and sentence. The system followed in India is the adversarial system of common law inherited from the British rulers. In this system, the accused is presumed to be innocent and the burden of proving his guilt beyond reasonable doubt lies

on the prosecution. The accused also enjoys " the right of silence" and he cannot be compelled to answer the queries.[23]

INDIAN PENAL CODE

The Indian Penal Code has categorized sexual offence falling under Section 375, 376A, 376B 376C, 376D and 377. According to Section 375 of IPC rape is an offensive act were in a man is said to have committed the rape who has sexual intercourse with a women falling under six following circumstance. Firstly, against her will; secondly, without her consent; thirdly, with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt; fourthly, with her consent when the man knows that he is not her husband that her consent is given because she believes he is another man to whom she is lawfully wedded; Fifthly, if she gives consent in the state of intoxication or if the women is unsound mind or the intoxication is administered by him personally or through another or any stupefying or unwholesome substance, she is unable to understand the nature or the consequence to which she has given consent. Sixthly, with or without her consent when she is less than sixteen years of age. Section 375 is followed by section 376 which specifies punishment for the rape with an imprisonment of either for the period of seven years or which may be extended to 10yrs taking into consideration the nature of the crime.[24]As per the above definition one can draw out the basic elements that constitute the offence as such in most of the crime either the consent is absent or the victim is under some kind of pressure no matter whether physical or emotional pressure. Consent is a defence under this section. But the consent as defence to an allegation of rape requires

voluntary participation not only after the exercise of intelligence based on the knowledge of the act but after having freely exercised the choice between the resistance and assent. It is no defence that the woman consented after the act. Any helpless resignation in the face of inevitable compulsion or passive giving is not consent.[25]In *State of Orissa v. Khudiram Sahu*, the Court held that the consent given by the victim must be voluntary and not the mere act of helpless resignation. In *Sushil Kumar Patil v. State of West Bengal* it was held that in case of rape if the victim is minor then the question of consent does not arise. In 1980 the Supreme Court held " the Court must bear in mind human psychology and behavioural probability when assigning credibility of the victim's version. In *Dhananjay Chatterjee and Dhanna v. State of West Bengal*, the Court in its effort to reform the deteriorating sexual behaviour of civilized society observed in this case that most heinous type of barbaric rape and murder was committed on a helpless and defenceless school going girl of 18 years. The offence was not only inhuman and barbaric but it was totally ruthless crime of rape followed by cold blooded murder. The savage nature of the crime has shocked our judicial conscious.[26]Victims have a right to testify as prosecution witness. However, victims often fall prey to intimidation and harassment by offenders which tend to dissuade them from testifying freely and truthfully. Though it is the duty of the State to prevent such things, the situation according to available evidence is disturbing. There is no victim protection law as such and police is not in a position to protect every victim. Such conduct, of course, is prohibited under the IPC (Section 504 IPC).

CRIMINAL PROCEDURE CODE

Next, in the Criminal Procedure Code Amendment Act, 2008, in Section 2(wa) defines 'victim' as follows: 'Victim' means " 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 the expression 'victim' includes his or her guardian or legal heir." From this definition it is explicit that a victim of a crime has a right even from the commencement of the criminal trial. The word 'charged' has potent meaning. In traditional criminal jurisprudence, benefit of doubt is always given to the accused. But, a crime has been committed against a person and that has caused the initiation of a criminal procedure. For want of adequate evidence against the accused, he may not be convicted. However, such a crime has been actually committed against the person and such person and his dependents underwent sufferings. It is the liability of the state to compensate the loss done to the victim of crime because, as per the doctrine of sovereignty, the duty of the sovereign is to protect its people from external aggression as well as from internal disturbances. Internally the peace of the state may be disturbed by its fellow citizens through criminal activities. Failing to protect a citizen against fellow citizens is also dereliction of duty on the part of the state. When due to international pressure the state as well as the organs of the state as well as the organs of the state are providing human rights to the offender, it is necessary to protect the victims who are also the citizens of the same state. Having realized this situation, at the global level, the international and declaration stipulate that victims' rights are also to be protected. In this context, it is interesting to note that the recent criminal law amendment has incorporated the word 'charged' to mean that the victim of a crime has a

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right to be protected by the state whether the accused is acquitted or convicted.[27]The Criminal Procedure Code of India does not elaborately deal with the economic and the psychological aspects of the victim. However, in harmony with international declaration, India has taken some efforts in this line after two long decades. It is also relevant to note that the recent amendment does not deal with victims of abuse of power, which has been an embedded concept in the international declaration. Victim of abuse of power in " Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

[28]What is the present role that victim is assigned under the existing criminal law? When a person who has been the victim of a cognizable offence gives information to the police regarding the same, the police is required to reduce the information into writing and read it over to the informant. The informant is required to sign it and get a copy of the FIR (Section 154 (1) & (2) of Cr. P. C). If the police refuses to record the information, the victim - informant is allowed to send it in writing and by post to the S. P. concerned [Section 154 (3)]. If the police refuses to investigate the case for whatever reason, the police officer is required to notify the informant of that fact [Section 157 (2)]. Alternatively, victims are enabled by Section 190 of the Cr. P. C. to avoid going to the Police Station for redress and directly approach the Magistrate with his complaint. Complainants say that they are treated indifferently by police and sometimes harassed when they go to them with their grievances. There are <https://assignbuster.com/rights-of-the-victims-of-rape-law-general-essay/>

complaints that the police do not truthfully record the information but distort facts as found convenient to them. Cognizable cases are made non-cognizable and vice-versa. Complainants are sometimes made the accused and investigations initiated accordingly. Though these are unauthorized by the law and are rare, yet whenever it happens the victim gets disillusioned and alienated from the system itself.[29]The investigation process is exclusively a police function and the victim has a role only if the police consider it necessary. There are administrative instructions given by police departments of certain States to give information on progress of investigation to the victim when asked for. Otherwise till police report (charge sheet) is filed under Section 173 Cr. P. C., the victim's plight is pitiable. This is the time victims need assistance the most and the law is silent on it. After the police report is taken cognizance 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. The Court seems to have recognized a gap in the statutory provision and enjoined the court not to drop proceedings without giving an opportunity to the victim to ventilate his grievance.[30]The situation is alarming in respect of victim witnesses who belong to vulnerable sections of society. The adversarial trial built around cross-examination of witnesses often result in adding insult to injury against which even the Court may not be of much help. In several offences the experience may be a nightmare to victims acknowledging this predicament, Government has adopted recently an amendment preventing character assassination during trial of sexual offences. Interrogation of the victims in general and the victims of sexual offences in particular should be done by the police in a dignified manner and by following the procedure of law ie. without calling the <https://assignbuster.com/rights-of-the-victims-of-rape-law-general-essay/>

female victims and male victims below the age of 15 years to the police station for the purpose of any interrogation as laid down in Section 160(1) of the CrPC. The government should provide sufficient funds to the police and courts for payment of traveling allowance, pocket money allowance and professional loss to the victims appearing as witnesses whether in court or in the police station. The government should also set up sufficient number of courts so that the pending criminal cases are disposed of within a period of three years. The magistrates and judges should be trained in the art of court management and should be able to control lengthy cross-examination by way of rejecting irrelevant questions.[31]It is also relevant to note that the remedial measures including the compensation to be provided to the victim in India is distinct from the international declaration. In India, it is contemplated that the victim compensation is to be provided by the Legal Services Authority from a fund provided exclusively for this purpose. Section 357-A of the Criminal Procedure Code, which has been introduced by way of the amendment recently deals with this machinery. It stipulates as follows: "

Section 357-A (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 dependants who have suffered loss or injury as the 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

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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." In India, prior to the amendment of this Act, the provision relating to payment of the compensation is not very clear. In the Original Act, neither defined the concept 'victim' nor provision relating to compensation. The Act provided that the compensation may when passing the judgement order the accused person to pay a quantum of amount as compensation to the person who suffered loss or injury. But the amended Act includes the legal heirs and the dependants are also entitled to receive the compensation as victim. Further as per the Original Act, when an appeal is preferred before the Appellate Court, no payment shall be made to the victim; the victim may get benefit of compensation only after the appeal period has elapsed or after the decision of the appeal. But under this Amendment act, 2008, a separate mechanism is to be established for the compensation to the victim of crime, under the new provision in section 357-
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A.[32] 'Delay of justice is denial of justice' is equally applicable in the victim also. Therefore avoiding unnecessary delay in the disposition of cases, the victim won't be dragged. Hence the Court may give recommendation for compensation to the legal services authority for award of compensation. The new amendment introduced this provision so as to provide speedy remedy and compensation to the victim of crime.[33] The Supreme Court of India is known for its activism. In Compensatory jurisprudence, also the Apex Court has awarded compensation to the victims under writ jurisdiction. Through the judicial process, the Apex Court awarded compensation for illegal custody of the person detained in prison and also injury or loss suffered to a person. In *Rudal Shah V. Union of India*, the appellant received compensation by the way of filing writ of habeas corpus. In another case, *Chairman, Railway Board v. Chandrima Das*, the Supreme Court delivered a verdict in favour to the victim of crime, in rape case awarding for compensation. From the above analysis, it is found that the Indian Parliament enacted a law to protect the interests of the victim of crime. It is in tune with international declaration. However, the provisions that are incorporated in the Act are very narrow in scope when compared with the international declaration. Further, the effective remedy and compensation available to the victims depend on the functioning of the Legal Services Authority. In *Delhi Domestic Working Women's Forum v. Union of India* the Apex Court laid down parameters in assisting the victims of rape including the liability of the State to provide compensation to the victims and held as follows: "It is necessary, having regard to the directive principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incurred substantial financial loss. Some, for example

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were too traumatized to continue in employment. Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of the child but if it is occurred as a result of rape."

CHAPTER IV

JUDICIAL DELINEATION IN 2012

In this chapter, the researcher out of the many cases dealing with the crime of Rape by the Supreme Court in 2012, has selected only 4 cases and have dealt them in details. The researcher in order to very clearly specify all the intricate details have framed four tables for the four cases as can be seen below. All the tables are followed by comments made by the researcher in relation to the rights of victims and have also given recommendations wherever needed. The four selected cases are: 1) State of Rajasthan v. Vinod Kumar²) Radhakrishna Nagesh v. State of Andhra Pradesh³) O. M. Baby (Dead) by L. Rs. v. State of Kerala⁴) Ramnaresh and Ors. v. State of Chhattisgarh

CASE 1:

State of Rajasthan v. Vinod Kumar

Chronology of incidents

Date of incident 28. 08. 2002 F. I. R. Date 29. 08. 2002 1 day

delayed Chargesheet Date Not mentioned Date of JUDGEMENT/order of Trial court 22. 01. 2005 3 years Conviction, imprisonment , 7 years Comment The

conviction by trial court took place in just three years, though the court was not a Fast Track Court. Verdict of the High Court (Rajasthan)05. 04. 20072 yrsConviction, Sentence reduced to 5 years imprisonmentSupreme Court of IndiaName of the Hon'ble JudgesB. S. Chauhan and Dipak Misra, JJ. Division benchCounsels For Appellant/Petitioner/Plaintiff: Ram Naresh Yadav, Adv., for Milind Kumar, Adv. Counsels For Respondents/Defendant: Naresh K. Sharma, Vivek Raj Singh Bajwa, Chaudhary Shamsuddin Khan, Lal Pratap Singh, Ram Niwas, Advs. for N. Annapoorani, Adv. Verdict of the Supreme Court18. 05. 201210 yearsParties to the Case (Relationship)GuddiVictimBabulalBrother in Law of the VictimStation House OfficerAccusedLaws discussedScheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2) (5); Indian Penal Code, 1860 - Section 376, Section 376(1), Section 376(2); Facts of the case-On 28. 8. 2002 Guddi, the complainant attended a memorial function in respect of death of her relative. She left the place along with Babu Lal, her brother-in-law and stayed in the Jai Hotel. Two persons came there and one of them introduced himself to be the Station House Officer and wanted to check the room. Another person asked her relationship with other occupant BabuLal. She informed about her relationship but he raised the question as to why such a relationship has not been disclosed in the Hotel Register and thus, under this pretext, they entered into the room for holding enquiry. They took BabuLal, brother-in-law of the complainant outside. Thereafter, one of them came alone into the room, bolted the door from inside, and pushed her on the cot forcibly and committed rape upon her. She raised alarm but in vain. After commission of rape he fled away by opening the door of the room. She also gave the description of the said person. On 29. 8. 2002, the complainant filed an FIR in the police station.

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Judgement-" The Court further took note that awarding punishment lesser than the minimum sentence of 7 years was permissible only for adequate and special reasons.[34]However, no such reasons have been recorded by the court for doing so, and thus, the court failed to ensure compliance of such mandatory requirement but awarded the punishment lesser than the minimum prescribed under the Indian Penal Code. Such an order is violative of the mandatory requirement of law and has defeated the legislative mandate. Deciding the case in such a casual manner reduces the criminal justice delivery system to mockery. Thus, in the facts and circumstances of the case, the appeals are allowed i. e. Sentences awarded by the High Court are set aside and seven years R. I. awarded by the trial court is restored."

Comment-

Negative and positive element of judgement

Negative: In this case the judgement was finally delivered after 10 long years. This clearly indicates the delay in the judgment delivery system prevailing in India. The victim in a way along with all the other physical and mental pain has to wait long for a proper justice. All the rights of the victim are clearly violated when justice is denied for a long time. The delay in the Supreme Court level was the maximum i. e. 5 years. Positive: One thing that is appreciable is that the Supreme Court has restored the punishment to 7 years rigorous imprisonment and not reduced it.

Legal Errors

Moreover, it has also been observed that there have been legal errors by the judges in the lower courts which have been pointed out by the judges of the Supreme Court in the judgement itself. So when the Apex Court judges point <https://assignbuster.com/rights-of-the-victims-of-rape-law-general-essay/>

out such kind of grave mistakes in the understanding of law by the lower court judges, than why do they not conduct an inquiry against such judges or issue a show cause notice. Recommendations-When the delay is more in the level of the Apex Court, proper reasons must be given in writing. This can prove to be a better deterrence effect and in a way satisfy the victim's psychology and act as an example to the society. As already mentioned above a show-cause notice can be issued to the judges when the cases concerned are errors on legal reasons on record. Another option could be to make the Judicial Training Academy aware of such cases so that they can take proper steps in the training period to avoid such grave mistakes in the judgement delivery system.

CASE 2

Radhakrishna Nagesh v. State of Andhra Pradesh

Chronology of incidents

Date of incident 07. 09. 1997 F. I. R. Date 07. 09. 1997 Same day Chargesheet

Date Not mentioned Date of JUDGEMENT/order of Trial court Not

mentioned Verdict of the High Court (Andhra Pradesh) 23. 01. 2009 12

years Conviction, Imprisonment 10 years and Rs. 2000/- as fine Name of the

Hon'ble Judges: Swatanter Kumar and Gyan Sudha Misra, JJJudgement by J.

Swatanter Kumar Counsels For Appellant/Petitioner/Plaintiff: Ch. Leela

Sarveswar, V. Sridhar Reddy and V. N. Raghupathy, Advs. Counsels for For

Respondents/Defendant: D. Mahesh Babu, Suchitra, Amit, Balashivdu and D.

Bharathi Reddy, Advs. Verdict of the Supreme Court of India 13. 12. 2012 15

years Appeal dismissed, Imprisonment 10 years and Rs. 2000/- as fine Parties

to the Case A. Haritha Victim Narayanaswamy Rickshawpuller (Informant to the

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Police)Laws discussedSection 375, 376(2) of IPC, Sec. 114 of IEA, Section 3(2)(v) of the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989Facts of the caseThe accused/Appellant was working as a ball picker in S. V. University tennis court, Tirupati, and in that capacity he was having the custody of the key to the storeroom situated on the south-east of the tennis court. On 7th September, 1997 at about 7. 00 p. m., the accused saw a girl named A. Haritha, who was about 11year, was standing alone outside the red building and that the mother of the victim girl, namely Sampuramma, was working as a maid-servant in the red building attached to the University. The accused enticed her on the pretext of purchasing gold colour plastic bangles and took the victim inside the room and committed rape on her against her will. In fact, he even threatened to assault her. One Narayanaswamy, PW3, a rickshaw puller, noticed the accused taking the victim into the store room and thus, became suspicious. He went to the store room and tapped the door several times. He bolted the door from outside and ran to inform the authorities and/or the police. A complaint was registered, based upon which FIR, was registered under Sections 363 and 376 of the Indian Penal Code 1860 and Section 3(2)(v) of the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989.

Judgement" The learned Trial Court has failed to appreciate the evidence on record cumulatively and in its correct perspective by ignoring the material piece of evidence and improper appreciation of evidence. It has recorded findings which are on the face of it unsustainable. This error was rightly corrected by the High Court, and there is no reason to interfere with the judgment of conviction recorded by the High Court. So the appeal was

dismissed and the 10 years imprisonment and Rs. 2000/- fine was restored."

Comments

Negative and positive element of judgement

Negative: The judgement delivered after 15 years is another case of violation of the rights of victim. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his/her self-respect gets gradually atrophied. So the rights of the victim should be assured in time as in the criminal courts the victims are only at the mercy of the judges and the lawyers. Positive: The point of appreciation is that the judgement delivered by the Supreme Court is within a time period of only three years whereas the High court had delivered in 12years.

Legal Error

What can be noted here is that the trial court judges had not properly appreciated the evidence and on the basis of which they had given a wrong decision. So in such cases according to me proper action should be taken or atleast an enquiry as to why such mistakes happen in such cases.

CASE 3

O. M. Baby (Dead) by L. Rs. v. State of Kerala

Chronology of incidents

Date of incident	25. 12. 1993	F. I. R Date	Not mentioned	Charge sheet date	Not mentioned
Date of Judgment/ order of trial court	Not mentioned	Conviction	Imprisonment, 7 years and fine of Rs. 50000	Verdict of the High Court (Kerala)	13. 01. 2005
	12 years	Appeal dismissed	Reduced to 3		

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Years of imprisonment
Name of the Hon'ble Judges: Swatanter Kumar and Ranjan Gogoi, JJ. Judgement by J. Ranjan Gogoi
Counsel For Appellant/Petitioner/Plaintiff: Wills Mathews, D. K. Tiwari, Ginesh P. and P. George Giri, Adv. Counsel for For Respondents/Defendant: Liz Mathew, Adv.
Verdict of the Supreme court of India
03. 07. 2012
19 years delayed
Appeal dismissed
3 Years of imprisonment
Parties to the case
12 year old girl
Victim
Shopkeeper
Accused
Laws discussed
Section 376, 506 and 342 Of IPC
Section 114 of IEA
Brief Facts of the Case: The family of the victim was maintaining an account with the Appellant, who was running a provision shop in the locality. Different articles were purchased from the shop of the accused on credit which was adjusted from time to time by payments made as well as by the amount due to the family of the victim who used to supply milk to the accused. The prosecution has alleged that on 25. 12. 1993 at about 8 AM, the victim who, was then aged about 12 years, went to the shop of the accused with milk and also to make a few purchases. As 25. 12. 1993 happened to be Christmas day, the shop was closed from the front. After the victim handed over milk to the accused she wanted some articles from the shop on credit. The accused, asked the victim to go inside the shop. Thereafter, the accused supplied the articles as demanded by the victim; however, soon thereafter, the accused came from behind, put a cloth on the face of victim, took her to adjacent room and closed the same. He then committed rape on her after putting her into fear of death. Consequently, the victim did not offer any resistance and also did not raise any alarm.

Judgement of the SC" Under Sections 376, 506(ii) and 342 Indian Penal Code the accused was sentenced to undergo rigorous imprisonment for seven years for the offence under Section 376 Indian Penal Code; two years for the

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offence under Section 506 (ii) Indian Penal Code and for a period of one year for the offence under Section 342 Indian Penal Code. Additionally, for the offence under Section 376 Indian Penal Code, a fine of Rs. 50, 000/-, in default, further imprisonment for two years was imposed on the Appellant. The learned trial court had also directed that the sentences are to run consecutively. Aggrieved, the deceased-Appellant filed appeal before the High Court of Kerala. By the judgment and order dated 13. 01. 2005, the appeal was dismissed by the High Court. However, the sentence imposed under Section 376 Indian Penal Code was reduced to three years. The sentences imposed under Sections 506 (ii) and 342 Indian Penal Code were maintained but were directed to run concurrently. Aggrieved by the aforesaid, this appeal has been filed. But here even in the Supreme Court, the judges could not find any merit in this appeal. It is accordingly dismissed and the judgment and order of the High Court is affirmed." Comments

Negative and positive element of judgement

Negative: The judgement was delivered after 19 years of the incident. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. It is always the rights of the accused that is given importance, the rights of the victims are only reduced to the role of a witness in the court.

CASE 4

Ramnaresh and Ors. v. State of Chhattisgarh

Chronology of incidents

Date of incident: 9. 08. 2006, 11PMF. I. R. Date: 10. 08. 2006

Chargesheet Date: Not mentioned Date of Judgement/order of Trial

court Not mentioned Conviction /acquittal Verdict of High Court [Chhattisgarh

at Bilaspur] 24. 07. 2009 3 years Conviction, Capital Punishment Name of the

Hon'ble Judges: A. K. Patnaik and Swatanter Kumar, JJ. Judgement by J.

Swatanter Kumar Counsels For Appellant/Petitioner/Plaintiff: Vikas Upadhyay,

Vikram Patralekh and B. S. Banthia, Advs. Counsels for For

Respondents/Defendant: Atul Jha, Sandeep Jha and Dharmendra Kumar

Sinha, Advs. Verdict of the Supreme Court 2012 3 years Conviction, Reduced

to Life Imprisonment Parties to the case Laws discussed Evidence Act - Section

134 Indian Penal Code, 1860 - Section 34, Section 302, Section 376, Section

376(2) Brief facts of the case: Rajkumari (the deceased) was residing with her

husband Indrajeet and two infant children. On 8th August, 2006, her

husband had gone to the house of his father at Rajnagar. Rajkumari was at

her residence with her children. On 9th August, 2006, Rajkumari had called

Dhaniram, their domestic servant, to sleep in their house in the night.

Ranjeet Kewat, is the brother of Indrajeet and brother-in-law of Rajkumari.

He had a house near the house of Indrajeet. Vishwanath, Amar Singh,

Kamlesh and Ramnaresh, who used to reside at the house of Ranjeet came

to his house, sat there for some time and then went away. At about 11. 30 p.

m., they are stated to have again come to the house of Ranjeet and

consumed alcohol. Thereafter, at about 12 o'clock in the night, when

Rajkumari had gone to sleep in her room and the servant, Dhaniram, was watching television in the verandah, the accused persons, Ranjeet, Vishwanath, Amar Singh and Ramnaresh came into the house of Rajkumari and told Dhaniram that they would have illicit relations with Rajkumari and if he disclosed anything to anybody, he would be eliminated. Ramnaresh and Amar Singh sat down along with Dhaniram while Ranjeet and Vishwanath went into the room of Rajkumari and committed rape on her. After committing the offence, they came out and took Dhaniram into the courtyard. Then Ramnaresh and Amar Singh entered the room of Rajkumari. They also committed rape on her and came out after some time. Then, the accused asked Dhaniram to go away to which he objected. Upon his objection, he was threatened of elimination. Thereafter, Dhaniram went to the room of Rajkumari and saw that she was breathing heavily, was not able to speak and blood was oozing from her mouth and nose. Dhaniram came out of the room and was again threatened by all the accused. Ranjeet asked him to go to the house of his aunt, mother of Rajkumari and tell her that Rajkumari is not waking up. Before leaving, they extended the threat again and told him to act as per their directions. Dhaniram went to the house of Sugaribai, mother of Rajkumari, and narrated the incident as he was directed by the accused. Sugaribai asked him to stay at her house while she went to the house of Rajkumari. There she noticed that Rajkumari was lying dead. She called the neighbours and thereafter, the information was given to Indrajeet, husband of the deceased, who came in the morning. Indrajeet then visited the Police Station Marwahi and informed about the death of Rajkumari. Judgement" The Court has to consider various parameters afore-stated and balance the mitigating circumstances against the need for

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imposition of capital punishment. The factors to be considered could be different than the mitigating circumstances. While we cumulatively examine the various principles and apply them to the facts of the present case, it appears to us that the age of the accused, possibility of the death of the deceased occurring accidentally and the possibility of the accused reforming themselves, they cannot be termed as 'social menace'. It is unfortunate but a hard fact that all these accused have committed a heinous and inhumane crime for satisfaction of their lust, but it cannot be held with certainty that this case falls in the 'rarest of rare' cases. On appreciation of the evidence on record and keeping the facts and circumstances of the case in mind, we are unable to hold that any other sentence but death would be inadequate. Accordingly, while commuting the sentence of death to that for life imprisonment (21 years), partially allowed their appeals only with regard to the quantum of sentence." Comments This has been comparatively a case where justice was delivered in a lesser time in 6 years than the other cases I have analysed. The Supreme Court taking only 3 years' time to deliver the judgement is a highly appreciable point. Moreover, this is another case where the punishment is reduced from capital punishment to life imprisonment and the doctrine of 'rarest of the rare case' properly analysed in the Apex Court. The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal

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but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

CHAPTER V

CONCLUDING REMARKS

Even today there is a high level increase in the crime rates in the country. Recognizing the rights of the victims of crime can in some way in the coming times help in curbing the rise in the level of crime such as rape and also bring some sort of credibility to the criminal justice system. One of the ways could be granting a fair and reasonable compensation to the rape victims which may in some way pacify the wound and scar inflicted on the mind and body and such caution may also deter the people from committing such crimes in the future. Under Clause 12 of the U. N. Declaration of 1985," The onus is on the state to endeavour to provide financial compensation to victims who have suffered either bodily injury or impairment or physical or mental health as a result of serious crimes as well as the family of those who have died as a result of victimization." One must always keep in mind that an emotional support has always a very limited perspective. Till the time a mandatory mode of repaying the victim is not found out the real issue would never be solved. One can moot the question as to why the state which fails to protect its own citizens should not be mandated with the duty to pay compensation to the victims of crime. In many foreign jurisdictions like Canada, Australia, New Zealand, United Kingdom under the control of a Board have set up a separate fund for payment of compensation to the victim of crime to assure the victims that their own State cares for them. So to sum up the principles relating to the victims of crime can be as follows:

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Victims ought to be treated with politeness, kindness and with respect for their dignity and privacy and should not be made to feel any kind of inconvenience within the criminal justice system. Victims should be given quick and effective remedy, both for disposal of case and importantly in order not to torture the victim further. In most cases the victim is ignorant of the rights available to them and what safeguards are actually available, and hence it is the duty of the State to make the victim aware and make proper mechanisms available to them. In addition to all the above which can just go on and on, enough measures should be taken for the safety of the victims because in most cases they fear intimidation and retaliation by the offender party. Improved training should be made accessible to sensitize criminal justice personnel to the desires and apprehensions of victims and strategies framed, wherever required. Thus, the fundamental purpose of the legal procedure is to encourage and preserve public confidence in the administration of justice, and thus a new outlook of the criminal justice in this issue is the cry of the hour. Deterrent theory as part of punitive approach should be adopted so as to deter not only the offender but also to others in the community to level down the crime. If a crucial role is not given to the victim even at this hour, the result in a way would not be good and might develop an inclination to take law into his own hands in order to seek vengeance and pose a threat to the maintenance of Rule of Law, indispensable for sustaining a democracy. Rape is a bodily crime and the fear is not about the death of the victim but the fear is that the victim will cease to be or never become a self. Neither the legal system nor the attitude of society helps the rape victim in any way. It just leaves the victim to suffer her humiliation in silence and tears. What the researcher has observed from <https://assignbuster.com/rights-of-the-victims-of-rape-law-general-essay/>

analysing the case is that there is inordinate delay in the justice delivery not only in the trial courts but many a time at the level of the Supreme Court too. So in the researcher's opinion when everywhere there is a debate of delay of justice everywhere, than why not justice is delivered in a faster pace where such a heinous crime is involved. Thus, in a way the researcher seems to have given an answer to all the research questions that had cropped up in the initial part of the study. The entire three hypotheses that were framed by the researcher seem to be mostly in the affirmative form. Only the fact that the Apex Court is completely insensitive towards the rights of the victim cannot be completely true. In many cases the Court seems to have taken steps to give some rights to the victim and also put emphasis that they are compensated for the pain and sufferings. Still according to the researcher there is an urgent need to plug the loopholes that exist to see the justice system more responsive. After all violating the victim's rights cannot be justice according to law.

CHAPTER VI

RECOMMENDATIONS AND AMENDMENTS PROPOSED

There are a number of issues, which have to be addressed and included in our Criminal Justice System to emphasize and reinforce the rights of the victims. The Law Commission of India in its 154th report on the Code of Criminal Procedure, 1973 in the year and the Malimath Committee on Reforms on Criminal Justice System, 2003 had also highlighted some valuable points which are absent in our Criminal Justice System as discussed under:-Right to participate in the Proceedings: In the existing criminal

system, a crime victim does not have any noteworthy role to play except only when the police find it necessary. This is the most crucial period when the victim needs assistance but the laws are silent about it. This is the time victim needs assistance the most and the law is silent on it.

[35]Rehabilitation: The law fails to address the needs of the victim to be treated with dignity, to sustain protection from intimidation, to readily access the justice mechanisms, to legal aid and to rehabilitation. There is also no statutory scheme recognizing the rehabilitative needs of the rape victims. The object of providing this is to avoid secondary victimization and provide hope in the justice system.[36]Legal Aid to The Victims: There is no provision in the Criminal Procedure Code to provide legal aid legal aid to the victims of crime. Legal aid is only available to the accused.[37]A victim of crime has right to legal assistance at every stage of the case to the fulfilment of the means test and the prima facie case criteria.[38]The right of representation is a constitutional right of the accused[39]and there is no reason why it should not be available to the victim as well. The above recommendations have hardly since the light of the day since then. In its 154th Report, the Law Commission of India also recommended incorporation of a provision for a comprehensive scheme of compensation for all victims fairly and adequately by the Courts. The recommendation, however, has not so far been acted by the government. Centred on the U. N. Declaration of 1985 and taking a cue from different foreign jurisdictions model legislation can be framed by setting up an independent Board and also a fund for payment of compensation for conferring compensation to the victims of crime. As has already been discussed above the State will compensate the victim as it has a duty to protect the victims, and the manner of repaying the victim can be in cash or <https://assignbuster.com/rights-of-the-victims-of-rape-law-general-essay/>

in kind which the State itself will decide. It is very much important that the victim needs to feel that the society cares for him and thus paying compensation to the victim is the utmost necessity. Justice denied is violation of the victim's rights and thus the society very practically needs to give him justice and thus not make it only a paper work. Hence, a start is all the more necessary now. Victims of crime, at least today, in the awakening of the Human Rights movement in all spheres should not be left to tears and justice be hence meted out. There is a pressing necessity, consequently to take a renewed look and clearly distinguish the rights of the victims of crime in the provisions of the criminal justice delivery system. Another recommendation would be to follow the Restorative Justice system and follow a victim-centred criminal justice system. In Restorative Justice System which is more like arbitration or mediation the 'victim' is given the most importance unlike the prevailing justice system where the victim just is left to play the role of a witness and most time silent. This new system if implemented in the country can also help the clogging of cases in courts. Moreover, the best part is that not only the victim but the whole family/community is involved in the whole process. In addition, in this process the sum of compensation can be fixed in a better way rather than in the formal justice delivery system. This is because here there is a very clear way to negotiate between both the parties and come to a logical solution.