

A compilation of judgments on "VICTIMOLOGY"

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Introduction :

In *Andrews v. DPP* (1937) 2 All ER 552, Lord Atkin observed : "There is an obvious difference in the law of man slaughter, between doing an unlawful act and doing a lawful act with a degree of carelessness which the legislature makes criminal".

Victimology came into focus on the International scene in the later decades of the Twentieth Century. The first International Symposium on victimology was held at Jerusalem in 1973 which suggested payment of compensation to Victims as an integral part of criminal justice system. Maguire and Corbett' noticed the changing trend, as much more than a symbolic assurance to the victim, that the community was sorry about what had happened to him. A. Gold Slier (Mississippi Law Journal 1982) felt the need for redefining the role of victims in criminal prosecutions. The need to accomplish attitudinal changes was highlighted by Joanne Shapland (Fiefs & Peasants-1988 it was felt in certain quarter that the victims should be heard on sentences (H. Rubel-victim participation in Sentence). But there are inherent and institutional limitations to active victim participation, as noticed in *R. Chief Constable for Kent and Grown Prosecution Services* (1991) Cr.L.R.841). The Paris Penal Congress, 1895 felt that a portion of the earnings of a prisoner during detention should be paid to the victim by way of reparation. Vim Hentig said : "Payment to injured party will have a stronger inner punishment value, than payment to a neutral State. Correctional restitution would be a correctional instrument through which the criminal would understand his social responsibility".

In India, Section 357 of the Cr.P.C. and Section 5 of the Probation of Offenders Act are powerful legislative devices to ensure justice to victims. S.357, Cr.P.C. enables the Court to award Compensation. In addition to fine, which in certain cases is limited Section 5 of the Probation of Offenders Act provides for atonement of his Wrong. In *Hart Kishan & State of Haryana v. Sukhbhir Singh* (AIR 1988 SC 2127), the Apex Court awarded a Compensation of Rs.50,000/- to the victim, whose power of speech was impaired as a result of the injury suffered by him. "....It is a measure of responding appropriately to crime as well as reconciling the victim with the Offender.... We therefore recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way".

Let us now go through 20 judgments of the Supreme Court and a Judgment of the High Court of Kerala, pertaining "Victimology" in a nutshell :

- 1) *Rattan Singh v. State of Punjab* (1979) 4 SCC 719 : AIR 1980 SC 84.

The Supreme Court of India as early as on 3.10.1979, through the words of Justices V.R. Krishna Iyer and P.N. Singhal in Para 6 of the judgment had touched upon the topic "Victimology", opining that Victims of the crime do not attract the attention of the law. Victims reparation is still the vanishing point of criminal law in India, the Court held.

2) State of Kerala v. Ashraf and others 1993(1) KLJ 511

On 1.3.1993, the High Court of Kerala speaking through Justice Chettur Sankaran Nair on the Concept of Victimology stressed the need of implementing the provisions of Section 357, Cr.P.C. and Section 5 of the Probation of Offenders Act, mentioning that in addition to Conviction, compensation is to be awarded.

Various legislations were enacted to translate this recognition into an operational Scheme. The creation of Fund will be an answer. How a Fund is to be created and operated and how the State and the Offender are to pool the fund are matters for the Executive and Legislature to consider.

3) Rattiram v. State of Madhya Pradesh (2012) 4 SCC 516 : 2012 CriLJ 1769 : 2012(2) KLT 498

On 17.2.2012, a three Judges Bench of the Supreme Court, speaking through Justice Dipak Misra held, it is not exclusive right of accused but is a collective requirement of society and victim is also entitled to it. One cannot afford to treat the victim as an alien or a total stranger to the criminal trial. Criminal jurisprudence with the passage of time has laid emphasis on victimology, which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context (Paras 60, 62 and 64).

4) Labh Singh v. State of Haryana (2012) 11 SCC 690 : (2013) 1 SCC (Cri) 1125

A1 was more than 82 years in age, A2 and A3 were 72 and 62 years in age respectively. They had already undergone part of Sentence. Incident was 27 years old. Thus sending them to jail after a lapse of about 27 years in the facts and circumstances of the case would not be justified. Each of the Appellants was directed to pay Rs.1 lakh to injured persons within two weeks. Sections 357 and 357-A gave Compensation to victims with reduced jail term; in this judgment dated 12.3.2012

5) Kunjumon v. State of Kerala (2012) 13 SCC 750

On 21.11.2012 a two judges Bench of the Apex Court identified the need for sensitivity of Courts towards issues of Victimology and treatment of Victims. Section 9 of the Evidence Act, 1872 had identified, "Delay when immaterial when traumatic events etched in memory".

6) Lakhan v. State of Madhya Pradesh (2013) 1 SCC 363 : (2013) 1 SCC (Cri) 497

On 5.12.2012, the Sentence awarded by Courts below for offence punishable u/S.308 r/w S.149 of the IPC was modified by reducing the same from three years RI to one year's RI and enhancing fine amount

from Rs.500/- to Rs.25,000/- each with default imprisonment for six months; all sentences to run concurrently.Amount of fine so deposited to be distributed equally to each one of the injured victims

7) Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770 : AIR 2013 SC 2454 :

2013 CriLJ 3044

On 3.5.2013,the Supreme Court held; Mandatory duty of criminal court to apply its mind to question of awarding compensation in every case.The power is not ancillary to other Sentences but in addition thereto.Use of word “may” in Section 357,Cr.P.C. held,does not mean that Court need not consider applicability of Section 357 in every criminal case.Court must also disclose that it has applied its mind to such question by recording reasons for awarding/refusing grant of compensation.

8) Mohd.Ishaque v. State of West Bengal (2013) 14 SCC 581

On 3.5.2013,another two judges Bench of the Supreme Court speaking through Justice K.S.Radhakrishnan on Section 357,Cr.P.C. held that half of the money recovered as fine is to be paid to wife of deceased as compensation (Para 20).

9) Swarn Kaur v. Gurmukh Singh (2013) 12 SCC 732 : AIR 2013 SC 3356

On 3.7.2013,the Supreme Court Ordered each of the Accused to deposit fine amount within three months failing which they would suffer imprisonment for a further period of one year.Out of the fine amount, Appellant Son and Wife of Victim shall be paid a sum of Rs.2 lakhs.

10) State v. Sanjiv Bhalla (2015) 13 SCC 444 : (2016) 1 SCC (Cri) 631

On 4.7.2014,the Apex Court on deciding this case held that while awarding compensation to victims,exercise of discretionary power by application of mind is necessary and reasons for decision must be recorded.

11) Mofil Khan v. State of Jharkhand (2015) 1 SCC 67 : (2015) 1 SCC (Cri) 556

On 9.10.2014 the Chief Justice’s Bench of three Judges observed; “On the consideration of rights of victims and incidental victims like family and co-sufferers,the Judiciary has a paramount duty to safeguard the right of the victims as diligently as those of the perpetrators and the society too is an incidental victim of crime”.

12) Satya Pal Singh v. State of Madhya Pradesh (2015) 15 SCC 613 : 2015 CriLJ 4929

On 6.10.2015,the Supreme Court held that u/S.372 proviso r/w S.378(3) and S.2(wa),Cr.P.C.,legal heirs of deceased falls within definition of “victim” and has locus standi to prefer appeal before High Court

against order acquitting accused, or convicting him/her of lesser offence or imposing inadequate compensation passed by trial court. The Court explained the object of Victim-oriented approach to the Statutory Right conferred upon victim.

13) Union of India v. V.Sriharan (2016) 7 SCC 1 : 2016 CriLJ 845

On 2.12.2015, a Five Judges Bench of the Apex Court, headed by then Chief Justice considered Article 21 of the Constitution of India's "Procedure established by law", and held that the punishment imposed in accordance with law does not in any way violate Article 21. Moreover, Cr.P.C. has sufficient guarantees and protection at Sentencing stage.

14) Nipun Saxena v. Union of India (2019) 13 SCC 719 : (2019) 4 SCC (Cri) 596

On 10.8.2018, a three Judges Bench of the Apex Court directed the Committee preparing Victim Compensation Scheme for Women to make similar Scheme for Compensation for Sexual Assault on Children.

15) Mallikarjun Kodagali v. State of Karnataka (2019) 2 SCC 752 : AIR 2018 SC 5206 : 2019 CriLJ 532 :

2018(4) KLT 682

On 12.10.2018, the Apex Court went into the scope of Articles 14 and 21 of the Constitution and the Victims' rights to Safety and Crime/ Cyber crimes/ Police protection/ Bodily integrity.

Steps like Victim impact statement, Victim impact assessment, must be given due recognition so that appropriate punishment is awarded to the convict. Right of Victim as per Section 372 proviso (introduced w.e.f. 31.12.2009) and Ss. 2(wa), 2(d) and 378, "Nature", "Scope" and "Applicability" being (1) A substantive right, (2) available against Orders of acquittal rendered after 31.12.2009, (3) for exercising which right, no leave is required to be sought.

There is victimization of Victim of crime both prior to trial and during trial. There is a need to balance rights of victim with rights of Accused. Both Legislature and Judiciary have addressed Rights of Victim. But a lot still remains to be done. What follows in a trial is often Secondary Victimisation through repeated appearances in Court in a hostile or semi-hostile environment in the Courtroom. Today, the rights of an accused far outweigh the rights of the Victim of an Offence in many respects. The Court have provided solace to the victim with monetary compensation. But that is not enough. The Courts have done and are continuing to do their best for the Victim of Crime (Para 3).

REPORTS AND RECOMMENDATIONS OF LAW COMMISSION AND AMENDMENT TO Section 372 :

In recent times, four Reports have dealt with the rights of crime and the remedies available to them. The 1st Report discusses issues of Victims of Crime, Compensation to be paid to the Victim and rehabilitation of the Victim including the establishment of a Victim Assistance Fund (Para 14). The 2nd Report recommended that a victim or his representative who is a party to the trial should have a right to prefer an appeal against any adverse order passed by the trial Court. In the substantive Chapter on Justice to Victims, it is noted that victims of Crime, in many jurisdictions, have the right to participate in the proceedings and to receive compensation for injury suffered (Paras 15 and 16). The 3rd Report suggested that a victim should be impleaded in the trial proceedings (Para 19). The 4th Report recommended that against an Order of Acquittal passed by a Magistrate, a Victim should be entitled to file an appeal before

the Revisional Court. It was also recommended that in Complaint Cases also an Appeal should be provided in the Sessions Court instead of the High Courts (Para 20). It is apparently, on the basis of the Four Reports and other material that Section 372, Cr.P.C. was amended on 30.12.2009, w.e.f. 31.12.2009 (Para 21).

16) State of Himachal Pradesh v. Vijay Kumar (2019) 5 SCC 373 : AIR 2019 SC 1543.

On 15.3.2019, adequacy of Sentence and Compensation to victim of Acid attack was dealt with by the Supreme Court, in this case. Both accused were directed to pay Rs.1.5 lakhs each as additional compensation to the victim in addition to Rs.25,000/-, already paid by each of them. State was Ordered to pay further compensation as admissible under the Victim Compensation Scheme.

17) Kumar Ghimirey v. State of Sikkim (2019) 6 SCC 166 : AIR 2019 SC 2011 : 2019 CriLJ 3141

On 22.4.2019, while delivering the judgment in this POCSO Act case, the Apex Court dealt with the Sustainability of plea in reduction of Sentence u/Ss.9/10 and 5(m)/6, holding that the offence committed against minor girl child of 7 years in age cannot be viewed lightly.

18) Naval Kishore Mishra v. State of Uttar Pradesh (2019) 13 SCC 182 : AIR 2019 SC 3352

On 5.7.2019, the Court under S.2(wa) of the Cr.P.C. held the plight of the deceased being unmarried and victim being real brother and thus would fall under the category of Legal Heir of deceased (Paras 6 and 7). Under S.372 proviso r/w S.378, the appeal against acquittal by victim, held, has to be dealt with as a regular Appeal after insertion of S.372 proviso (w.e.f.31.12.2009). Rejection of leave to file appeal is irrelevant for maintainability of appeal of victim, after the said amendment.

19) In re, Alarming Rise in the Number of Reported Child Rape incidents (2019) 8 SCC 300

On 1.8.2019, while dealing with this Suo motu Writ Petition in Child Rape cases under Articles 21 and 32 of the Constitution, the Apex Court directed appropriate medical treatment, interim compensation of Rs.25 lakhs and security to victim and family members. Frontiers of this Suo motu action was expanded to include Victim Compensation, Victim Protection, Witness Protection and other connected issues.

20) Ravi v. State of Maharashtra (2019) 9 SCC 622 : (2019) 3 SCC (Cri) 723

On 3.10.2019, a three Judges Bench of the Apex Court u/Article 21 of the Constitution observed that in imposition of the Sentence of great importance is the standpoint of a "Victim" which includes his/her guardian or Legal Heirs as defined in Section 2(wa), Cr.P.C.

21) Rekha Murarka v. State of West Bengal (2020) 2 SCC 474 : AIR 2020 SC 100 : 2020 CriLJ 1322

On 20.11.2019, the Supreme Court while clarifying the law u/Ss.301 and 225 r/w S.24(8) proviso and S.311, Cr.P.C. on the extent of right of victim's counsel to assist the prosecution, held, the same is not

restricted only to assisting Special Public Prosecutors rather, assistance given by the Victim's Counsel is meant to be given to the prosecution in general, regardless of who exactly is leading it and further held that extent of assistance of Victim's counsel to the Public Prosecutor and manner of giving it would depend on the facts and circumstances of each case (Paras 7 to 12).