



**VICTIMOLOGY AND WOMEN'S ACCESS TO JUSTICE IN INDIA: AN ANALYSIS
IN CONTEXT OF THE VICTIMS OF RAPE, ACID ATTACKS, AND
WORKPLACE HARASSMENT****Ms. Chanchal Rani****LL.M., UGC- NET,****Jawahar Nagar, Patiala Chowk, Jind (Haryana).****ABSTRACT**

Victimology is the discipline that studies the link between victims of crime and the offenders or law breakers. Benjamin Mendelsohn has worked in this field and has become the first to coin the term VICTIMOLOGY in 1947. The relationship between victim and offender (doer) is termed as "penal couple". Thus, Victimology is the study of victimization, i.e., process of becoming a victim or being victimized and it consists of the correlation among the wrongdoer and the victim, the interface between the Criminal Justice System, i.e., the police, the courts and the correctional officials; and the victim. It exists within a network of relationships involving social groups, institutions, media, businesses, and social movements. The very purpose of a Criminal Justice System, is to punish the offender of crime. It is for the State to punish the wrong doer i.e., the offender for the maintenance of good order in society and people's welfare. Recently, Supreme Court of India quoted in the matter of Legal Representative vs. Navjot Singh Sidhu & Others, the discussion focuses on sentencing and victimology. The court said: "In a nutshell, the aspects of sentencing and victimology are reflected in an ancient wisdom which means: The person dispensing justice as per Dharma Shastra should prescribe a penance appropriate to the age, the time and strength of the sinner, the penance being such that he may not lose his life and yet he may be purified. A penance causing distress should not be prescribed." Thus, the interests and fundamental rights of both, the victim as well as the accused should not be considered and protected accordingly while justice is being delivered to the victims of crime, without causing any unnecessary delay and hindrances. But unfortunately, the Criminal Justice System, has primarily become offender oriented as it provides certain rights as well as privileges to the accused under the Constitution of India, 1950, Cr.P.C./ B.N.S.S., and the I.E.A./ B.S.A. etc. However, with the advent of doctrine of fair play and Human Rights of offenders of crime whereas the victims have become the victim at the hands of our Criminal Justice System, itself. Though the writers of the Constitution have introduced the principle of welfare state, but did not provide any specific provision for the welfare of the victims of crimes thus consequently, the victim has become the forgotten man of our Criminal Justice System, He is the one who initiates the criminal law process, yet soon fades into the background. Scholars and practitioners within the system of criminal justice law have become increasingly aware that the victim of a crime often suffers further victimization at the hands of the very system designed to protect them and the most disregarded participant of the proceedings of Criminal Justice System.

**KEYWORDS:** Criminal justice system, victimology, fundamental rights, CrP, BNSS.

INTRODUCTION:

In system of criminal justice law there has to be two parties namely offender and victim of the crime. In criminal law, Blackstone's ratio, created by the English lawyer William Blackstone in the 1760s, means that it's better for ten guilty people to go free than for one innocent person to be punished. Right from the beginning it has been tried to ensure that any innocent must not be punished which has introduced the concept of providing certain rights to the accused to defend themselves and prove their innocence before their condemnation so that the person is not harassed and subjected to oppression at the hands of the State. Such a tendency has resulted in the criminal justice law across the globe to be centered around "protection of rights of the accused" and several laws have been enacted towards this. This has left the rights of the victim in a crime practically unnoticed. 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.

Origin of the term 'victim'

Etymological originated from the word 'victim' (derived from a Latin word 'victima') describes it as any creature whose life is destined to be sacrificed to a god in order to please a deity. The definition of the word 'victim' has gone through lots of evolution. In the 19th century, the notion of victim referred to loss or harm of any form in general and in present day scenario its meaning covers the notion of a loss, harm or injury of any form whether material, physical or psychological. In 1860, the California Supreme Court of America objected the use of the term 'victim' by the jury as its use improperly prejudicing a defendant, since the word might put up an impression that the suffering party has been inflicted damage upon by the defendant and hence is morally unblameworthy. But in 1964, Maryland Supreme Court of America countered the previous stance on the word 'victim' by observing the definition of 'victim' as "a person or living creature injured, destroyed or sacrificed, in pursuit of an object, in the gratification of a passion, at the hands of another person, from disease, accident or the like." This can be marked as the first stepping stone towards formation of modern concept of victim.

UNITED STATES

It was the 1970s when the movement for victim rights emerged in the USA. It observed that the criminal justice system had become very focused towards accused/offenders and hence sought "to make the justice system more sensitive to victims, needs and concerns." Presently the federal government and all the 50 states of US have victims' rights statutes and about 32 of them have constitutional provisions for the protection of the same. Below is the list of a few federal laws for the purpose:

i. The Victim Witness Protection Act of 1982: Also known as VWPA, it was top legislation in the field of victim rights as after this restitution became part of standard procedure in federal sentencing structure. Prior to VWPA, restitution could only be ordered along with probation but this greatly encouraged the courts to order restitution on its discretion.

ii. The Crime Control Act & Victims' Rights and Restitution Act of 1990: The Act was a big move as it formally established certain set of new responsibilities for the federal officials involved in investigation, detection and prosecution towards the victims in question hence ensuring minimum possible hassle for them. The victims' Rights and Restitution Act only took a step forward and granted several codified rights to the victims in order to mitigate their suffering.

iii. The Mandatory Victims Restitution Act of 1996: The MVRA, it completely took the discretion of courts from the cases involving restitution orders and the offenders had to pay for losses of the victim in full amount. It also forbade judges from passing custom restitution order based on the offender's capability to pay but it did consider the financial capability of the offender while devising schedules for restitution.

iv. Violence against Women Act 2000: It was signed into law in 2000 as part of the Victims of Trafficking and Violence Prevention Act. This law provides funding for programs to prevent rape, helps

shelters for women, and addresses issues like violence against elderly and disabled women. It also includes rules against online stalking.

APPROACH OF INTERNATIONAL LAWS AND NORMS

The concept of victim in international regime came into lights during the second world war as norms and legislations begun to form to empower the “victims” by providing rights to be part of the criminal proceeding. International laws are structured in a way that it focuses on predominantly protecting the interests of states in the international community. Due to this victim are not paid much attention traditionally. There are only particular fields of international law where attention is paid to the individual by the state like in case of human rights, international humanitarian law and international criminal law. But the way, these handle victims vary a lot. For example, in Human rights law, victims are recognized only when there is a breach of international obligations and are done by the state but in case breach is done by any nonstate actors, victim is not acknowledged. Similarly, for the international criminal and humanitarian laws, individuals are recognized as victims even if perpetrator is a non-state actor. Afore-mentioned approach does seem unjust for the victims but the panorama is seeing a shift with formation of several international norms around victims. These are institutional norms of a regional/general frame and it observed all the victims’ categories:

- a) crime
- b) abuse of power
- c) gross violations of international human rights law
- d) enforced disappearance,
- e) violations of international criminal law
- f) terrorism

All these types of victims have been provided certain rights to the victim based on the situation and has mandated states towards certain obligations in order to protect those rights. In past few the United Nations has been pointing out the issue of non-participation of victims in criminal justice system and is trying to layout suggestions to improve this situation in several of its conventions and declarations. A significant improvement that happened due to approval of Declarations of Basic Principles of Justice for crime victims and misusing powers was the extension of scope of victim from only first person suffering the harm to immediate family dependents and also any third person intervening to assist the victim during distress or in process of victimization.

Woman victim of rape

Rape is unarguably the most heinous act and it is regarded as the most serious offence in legal world because of the magnitude of impact it has on the victim and society in general. The roots of this evil have existed in human society since a very long time and had been observed in many ancient civilizations as well. WHO has reported that more than 39% of women worldwide have experienced sexual violence in their lives. The problem isn’t just with embryonic societies (developing nations), even the highly developed western nations are deeply infected with this evil. Reports say that nations like UK, US, Sweden, Germany etc. have a high ratio of rape to overall crime ratio regardless of high level of education in those nations.⁶³ In India, in the year 2020, total of 28046 cases of rape were recorded according to NCRB’s data on crime against women. In the view of experts, this number quite underreported and the actual number must be very high because most of the sexual assault cases go unreported in India as a result of the social stigma against rape victims prevailed in our society, due to which most victims prefer to keep silence about the act. This reverse logic can be applied in order to deduce why developed nations have a greater number of reported rape cases than developing ones. Rape as a crime is both legally and morally reprehensible in a society as it attacks the body, mind and sanctity of the victim. Besides violating the victim’s integrity, rape cause serious psychological harm which ultimately strikes a blow on the victim’s dignity and personality for the rest of their lives. The biggest damage rape causes is to the family of the victim as it initiates a chain of nightmares making them suffer mentally, socially and economically for almost their whole lives and even time fails to heal

that pain in majority of the cases. If such a suffering family is present in a society, it creates an incurable dent in the very fabric of the social milieu. Because of such a mark it leaves, rape is said to be the worst outcome of discriminatory violence against women and creates a whole lot of problems in the world:

- a. It is the biggest hurdle in realizing Human rights of Women.
- b. In Indian context, it is in direct violation of rights guaranteed under Article 21 of the Constitution of India.
- c. It stops women from leading a life full of dignity and peace and violates standards set under the Universal Declaration of Human Rights, 1948 and Human rights Covenant.

MAGNITUDE OF CRIME

It is essential that we measure what is being analyzed. In order to study the crime of rape, one must look at magnitude and rate of crime since it is reflective of existing socio-economic condition and functioning of criminal justice system in the society. Reporting of crime essential as it help tracking the accused to take necessary action and gives a more accurate picture of the crime rate, ensuring the two can get the victim proper justice as guaranteed by the law. Despite the need of reporting, crime against women is highly under-reported in India for numerous reasons. Since crimes against women is unfortunately the most common crime in almost every society, it won't be wrong to assume that states with high crime rates but with abnormally low incidence of crimes against women reflects that the state has social stigma and terror associated with the crime. Generalizing the above state it can be said that states with high crime rate are supposed to have high incidence of CAW (crimes against women) and vice-versa hence any deviation from this trend could mean that there has possibly been an under-reporting of the crimes against women. Let's take a look at different dimensions of crimes against women.

UNDER-REPORTING OF CRIME

As per American Medical Association in 1995, sexual violence (specifically rape) is the most under-reported violent crime and it states the reasons behind such trend could be fear of not being believed, insecurity and fear of getting into trouble. Sankalp Women's Support Alliance : an Indian organization focused on rehabilitation of rape victims in India points that such a massive under-reporting of rapes in India could mean that the perpetrators of crime are closely related to victim and the victim isn't able to gather that much courage to report the crime because the victim could be emotionally or financially dependent on the perpetrator. Hence in order to discourage non-reporting of rape, general public should be sensitized on the social stigma by showing support and facilitate rehabilitation of the victims of rape. This can in turn encourage reporting of rape crime in a more accurate way.

INCIDENCE OF CRIME

NCRB has reported that incidence of rape crime in India has skyrocketed in the last 5 decades with a rise of 930% from 2487 cases in 1971 to 28,456 cases in 2020 which is much more when compared to 260% rise in murder over that period. These numbers are underestimated as most of the rape cases go unreported in India due to reasons mentioned in previous sections. We can investigate further by looking at the demography of the incidence data.

a. Age-wise distribution

In terms of age distribution of rape victims in India, data shows that the most vulnerable group is of women of age 19-30 years. Also, in terms of magnitude, age group of 31-50 years is considered be the next most vulnerable target for the criminals in India. The least incidence of rape in India had occurred in the age group of 50 years and above as per NCRB data. But in recent decade the number of 50 years and above victims are increasing since the advent of 21st century. A correlation could be drawn between the routine of the most vulnerable women category. The age group of 19-30 is the one in which women go out of their house for education or work.

b. Distribution on victim's relation with offenders NCRB data shows that in Indian context, more than 85% of rape victims knew the offenders and identified them either as their relative or a family member who they shouldn't have any fear from. This horrific fact indicates that the crime can happen in the most unimaginable setting like school, offices or even in the family setting. In 2020, out of a total 28,468 rape victims, around 24,567 identified the perpetrator as their known people such as neighbors, relatives, employer, live-in partners or even close family. There was very interesting trend that took place since 2001 to 2020 that no. of unidentified rape offenders declined and percentage of offenders identified as victim's known has increased.

INVESTIGATION AND DISPOSAL OF RAPE CASES

Police and Judiciary are the two components that form criminal justice system where investigations are carried out by police and trials and decisions are taken up by the judiciary.

a. Police

Police considers most of the crimes against women as cognizable offence in which they can jump on to investigating without any magistrate's approval yet there is huge no. of rape cases where the case is disposed off before the trial begins. In a survey conducted by Saheli: a Delhi based women's group it concluded that 95 out of 100 rape victims don't want to report the crime to police due to lack of confidence in police or in fear of negative publicity leading to unwanted complications. There are states in India where police go an extra mile to ensure women safety like in Mumbai, via unit of police keeps an eye on public transportation places to rehabilitate run-away kids before criminals get hold of them. Women cell have been of great importance to women safety by providing fast remedies violence against women which is mostly domestic in nature. They help the victim's case registered to the police too. The level of confidence of victims of crime against women has reduced in police due to their inefficiency, delays, vexing behavior of police procedures and their indifference to the victim's grievances.

b. Judiciary

Justice delayed is justice denied. This is true in case of crimes against women Justice delayed is justice denied. This is true in case of crimes against women since there is a very long list of cases pending at judiciary and the victims have no scope of hope left in that regard. Faster turnaround times of cases also denotes the quality of the CJDS and in turn reflects the care of Justice system towards victims. The delay in question isn't favorable to any party related to the case and it manifolds miseries on the part of victim, prosecution and the offenders as well. Human are being of the sort whose memories fade with time and this happens in case of witnesses who was once about to speak up for the victim but due to faded memories they might not even be concerned with the victim which ultimately leads to acquittals. Even political influences also come to play leading to acquittals. In many cases the victim gets married and settled by the time trials come into action and hence hesitate to go ahead with the case. Besides eroding faith of victims in CJS, such acquittals also give boost to criminality.

Woman victim of acid attacks

Technology is a boon to the world but criminals have found ways to misuse it to commit crimes. Acid became a common household in urban areas but at the same time it caught attention of criminals who began to use it as a means to destroy life of fellow beings. Even India has recorded numerous acid attack cases and majority of those are targeted towards women as a gender-based violence. The term 'Acid attack' is defined as throwing acid/corrosive substance on a living person's body/body parts with a motive of disfiguring, torturing or killing them. In case of women, these attacks are usually directed at their faces as in common conception, face is supposedly the most cherished part of her body. These crimes are so inhumane that the survivors of acid attack consider themselves unluckier than those who succumbed to death due to acid because for acid attack survivors all they are left with is 'half a face and half a life'. Such victims 'live' a terrified life throughout along with severe mental, physical and financial suffering. Most of them have to lead a life that is secluded from the rest of society as they don't see themselves a fit for the society. These are now recognized as a worldwide crime as their occurrence

have been found in nations like UK and USA along with Sub-Saharan, Middle-East and South-East Asian nations. But these are prevalent in majority in nations like Pakistan, Bangladesh, Cambodia and India because of factors like gender-discrimination, easy access to acids for attacks and impunity for acid-attack perpetrators. Acid attacks are usually carried out using commercially available strong acids such as Hydrochloric and Sulphuric acid which are highly corrosive in nature and can deform the body parts like skin and muscles upon contact. It carries social stigma against the victim along with it as nobody would love a acid attacked face other than the mother. The victims are left with no legal recourse and for financially weaker victims cannot even get access to medical and psychological treatment required to support themselves.

FACTORS AND CONSEQUENCES OF ACID ATTACK Acid maliciously used against a person (mostly women) in order to inflict harm, seek revenge or disfigure her body, mostly her face since the offender is aware that face of a woman is abode to a significant amount of her self-worth and self-esteem which are integral part of her personality. Hence, apart from bodily harm, acid attacks destroy the complete personality of a woman and renders her helpless in the society. The reasons behind such attacks are usually one or more from the following:

- a. Revenge for refusal of love
- b. Revenge for refusal of marriage proposal
- c. Revenge for refusal of any romantic advances
- d. Refusal to pay dowry
- e. Land disputes
- f. Perceived dishonor and jealousy.¹⁶¹

A very interesting observation can be made from the above pointers that women get to face the consequential rage of unfulfilled desires arising either to an individual or a group of individuals even in a civilized society as India through acid attacks. It rarely causes death of the victim but acid attacks surely destroy their lives and leaves long-term impact causing lifelong suffering on them. Since these acids contain highly concentrated strong acids, application of acids on body causes severe burns causing face to decompose and become ugly. It causes skin to sag and bones to melt. In case the acid particulates enter the eyes, the victim loses eyesight permanently. There are scenarios where acid attacks lead to disease like ulcer in case it enters esophagus and in other severe cases it leaves the victim to die a long painful death.

In **Lakshmi vs union of India**, the apex court for primitive measures for acid attack victim and their compensation by considering the fact that the victim would need to undergo multiple plastic surgery and medical treatment. Hence it directed the state government to compensate the victim with the sum of 3,00,000 out of which rate 1,00,000 must be paid to the victim within 15 days of occurrence of the incidence and facilitate medical attention she requires.

Woman victim of sexual harassment at work place

The legal origin of the term 'Sexual harassment' can be traced back to 1970s in United State of America where it was first used in public and media and was subsequently 'exported' to numerous industrialized nations like West European nations, Canada, New Zealand and even to Eastern industrial hub: Japan. It was only after at least a decade later (1980s) that these nations where the term propagated started to provide a legal sense to sexual assault. The initial descriptions about it can be observed in feminist activist Lin Farley's definition of sexual assault at Cornell University (1970) "Unsolicited nonreciprocal behavior that asserts a woman's sex role over her functions as professional worker. The degree of assertion can vary from commenting or touching a woman employee's body as starter to requests for acquiescence in sexual behavior to repeated nonreciprocal propositions for dates, demands for sexual intercourse and even rape."

LEGAL FRAMEWORK IN INDIA

In Indian context, sexual assault at workplace is violative of a woman's most Fundamental rights i.e., right of gender equality and right to life with dignity as Given under Article 14, 15 and 21 of the Constitution of India. Though India Didn't have any dedicated legal framework for tackling sexual assault at Workplace prior to Vishaka guidelines, some provisions were there in place in Legislations like IPC and other special laws.

CONCLUSION

The status of women in Indian society has been going through series of changes since the beginning. Women have a history of glorified socio economic status in the ancient and medieval India; after that during Manu period it degraded with the advent of the idea that "women should never be independent" and were started to be seen as a forever minor who always require someone to look after her; in modern India several reformers promoted equal rights and in contemporary India presence of gender discrimination and victimization to multiple crimes have resulted a very eventful journey of history of women in India. Women were once making significant contributions to development of society in every aspect but didn't have to be fearful of facing targeted crime in an amplitude as poisonous as today. This was in many regards an outcome of justice system of respective times. In the ancient past victims had a lot of say in the trial and punishment procedures and even the judiciary was focused on retribution-based remedies with provision of apt compensation to the victim in regard with her losses and injuries (material and non-material). The medieval age brought foreign invaders and their gender-discriminatory barbaric practices like child marriage, pardah system etc., sowed the seeds of supporting and confined roles of women in India and no light of emancipation was there for women up until the coming of British rule and the idea of democracy and liberalism in the 18th century across the world.

REFERENCES

Books and Academic Works

- Walklate, Sandra. *Imagining the Victim of Crime*. Open University Press, 2007.
- Provides foundational insights into victimology with a focus on gender.
- Nayar, Pramod, *The Trial of Woman: Feminism and the Occurrence of Rape*. Penguin, 2000.
- Kabeer, Naila. *Gender & Social Protection Strategies in the Informal Economy*. Routledge, 2008.

Journal Articles

- *Baxi, Pratiksha. "Justice is a Secret: Compromise in Rape Trials." **Contributions to Indian Sociology*, vol. 46, no. 3, 2012, pp. 331-355.
- Naqvi, Yasmin. "Acid Violence and the Limitations of International Human Rights Law." **International Criminal Law Review**, vol. 13, 2013, pp. 641-666.
- Dhanda, Amita, "Legal Reform and Gender Justice in India." **Indian Journal of Gender Studies**, vol. 8, no. 2, 2001, pp. 211-220.
- Chakrabarti, Nandini.** "Workplace Sexual Harassment in India: Reviewing Implementation and Compliance of the Law." **South Asia Research**, vol. 40, no. 3, 2020, pp. 276-292.

Legal and Policy Reports

- Justice Verma Committee Report (2013).
- Landmark report post-Delhi gang rape case, proposing sweeping reforms in laws related to rape and sexual violence.
- National Crime Records Bureau (NCRB). *Crime in India** Reports (latest edition 2023).
- Official statistics on crimes including rape, acid attacks, and harassment.
- Law Commission of India, Report No. 226, *Legal Framework for Preventing Sexual Harassment of Women at Workplace*. 2009.
- National Commission for Women (NCW) Reports on gender violence and access to justice in India.