“MISUSE OF INVESTIGATIVE POWERS OF POLICE AND HUMAN RIGHTS OF VICTIMS OF CRIMES”

A SUMMARY OF THESIS

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SUMMARY

INTRODUCTION:

Referring to the justice due towards victims of crime, Justice Benjamin Cardozo set the dictum as,

“Justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.”¹

Human rights are the essential rights for the survival of any human being in a dignified way. These are the precious rights in the history of human being that cannot be sacrificed or abrogated for any cause. Victim of crime is equally entitled to these human rights. Traditional approach of human rights provide protection to individual liberties from being violated by State actions. Contrary to this approach, victim of crime also need this protection against the violations caused by Non-State actors. Human rights of Victims of personal violence crime got recognition and protection as a result of the developing concepts of positive approach of human rights that imposed certain corresponding positive obligations upon State agencies to perform proactive role in providing protection to human rights of victims of crime. State’s positive obligations theory imposes an obligation upon the State to do something to prevent Human Rights violations by Non-State actors and in case such a violation occurs then ensure Victims’ Human Right to Justice.

United Nations, evaluating the criminal justice system from victims’ points of view has laid down the criteria for a fair, effective and efficient criminal justice system as a system that takes care of Victims’ fundamental rights and ensures Victims’ access to justice.

It was recommended by the National Commission to Review the Working of the Constitution (2002) that Criminal Justice System is in need of a major

reform that seeks for ‘Victim Orientation to Criminal Justice Administration’. This victim orientation means greater respect and consideration towards victims, especially the victims of violent crimes and consideration of their rights during the criminal justice process including the investigation stage. This victim orientation cannot be achieved by addressing victims’ concerns only with a need based approach. This can be accomplished by adopting a right based approach instead of a need based sympathetic treatment.

Victims’ Rights impose corresponding obligations upon State to perform its duty to ensure justice to victims of crime. State has entrusted this role to its agency police to provide protection to victims of crime and to ensure their access to justice and fair investigation. A positive police role alleviates the pain and sufferings of victims whereas a negative police role may result into subverting the cause of justice. In this context, this research tries to find out what are the human rights of victims of personal violence crime? What role police as a State agency, is supposed to perform in ensuring these rights to victims of personal violence crime? Whether the police deviates from the mandate of law and misuse its powers? What happens when such a misuse of investigative powers occurs? Whether such misuse leaves its effect upon the human rights of victims of personal violence crime?

**STATEMENT OF THE PROBLEM:**

Under Indian Criminal Justice System, victims of personal violence crimes are facing a lot of harassment due to the manner in which the police as a State agencies, entrusted with providing protection and investigating crimes, is functioning. Victims face a lot of problems such as delayed police response, no immediate protection, lack of protection from intimidation and harassment from offenders, frequent denial of access to justice by non-registration of FIR or by manipulation of the first information, shoddy probe or lack of scientific investigation resulting into failure of prosecution case. Too many times Police itself is found falsely accusing innocent persons or fabricating the evidence either for shielding the actual accused or for some other reasons. Victims suffers secondary victimization due to these methods adopted by police in its working.
Courts time and again have emphasized that it is because of shoddy investigation that accused are going scot-free and people are suffering the scars of victimization. Courts are of the view that there is a need for improving investigation by the use of scientific tools of investigation.

Police as an agency of State has been entrusted with the task of providing protection, ensuring access to justice and fair investigation. Failure of police in its duties result into failure of State in performing of its positive obligations towards victims of personal violence crime. This failure of State obligation endangers the Human Rights of Victims of Crime.

**OBJECTIVES OF THE STUDY:**

Present research work has been carried out by the researcher keeping in mind the following objectives;

- To ascertain whether ‘right to justice’ is a human right of victims of personal violence crimes in international context.
- To ascertain the scope and recognition of human rights of victims of personal violence crimes in Indian context.
- To explore the relation of investigative role of police with the human rights (right to justice) of victims of personal violence crime under Indian Criminal Justice System.
- To identify the methodology of misuse of investigative powers by police.
- To find out the effects of such misuse of investigative powers on the human rights (right to justice) of victims of personal violence crime.
- To suggest measures for enhanced protection and better realisation of victims’ human rights by mandating efficient and effective role to be played by the police during investigation of the crime.

**CHAPTER SCHEME:**

The study comprises of the following six chapters inclusive of the chapters ‘Introduction’ and ‘Conclusion and Suggestions’.
CHAPTER 1. INTRODUCTION

CHAPTER 2. HUMAN RIGHTS OF VICTIMS OF PERSONAL VIOLENCE CRIMES IN INTERNATIONAL PERSPECTIVE:

Chapter 2 provides with an in-depth study of international measures to find out what are the human rights of victims of a personal violence crime. From an analysis of conventional, non-conventional instruments of human rights, analysis of findings, observations and case laws of various human rights monitoring bodies, it is clear that victims of personal violence crime do have a human right to justice that is further dependent upon three distinct ancillary rights that is right to protection, right to access to justice and right to fair investigation. Victim can enjoy his human right to justice if these three rights are satisfied. These rights can be satisfied if certain essential elements of these rights are fulfilled. Chapter 2 identifies these essential elements. In case of victims’ right to protection, these are identified as effective criminal laws, effective law enforcement machinery, before the event remedies, preventive operational measures and protection with due diligence. In case of victims’ right to access to justice, these are identified as effective substantive laws, initiation of criminal proceedings that are not unjustifiably or unreasonably obstructed by the acts or by the omissions of state authorities. In case of victims’ right to fair investigation, these essential requires that an investigation must be prompt, impartial, thorough and effective and result of any such investigation must be made known to the victims.

CHAPTER 3. HUMAN RIGHTS OF VICTIMS OF CRIME IN INDIA:

In the light of above mentioned identified essential elements and international best practices, Chapter 3 has tried to present the picture of victims’ human rights in Indian context. Through analysis of Constitutional provisions, statutory measures and judicial trend this chapter tries to ascertain as to what extent these international norms are well accepted under Indian Criminal Justice System. A thorough study of constitutional ideals, legislative enactments and judicial pronouncements makes it clear that victims’ human right to justice is well recognised under the Indian Criminal Justice System. It has all its three ancillary rights well recognised with recognition of their essential elements as well. Then the chapter tries to look into the reasons as to why victims are at the receiving
end despite there being constitutional and statutory measures for providing protection to their human rights, who owes the responsibility to look after the proper implementation of respective laws to ensure protection to Victims’ human rights and what are the positive obligation of State towards the victims of personal violence crime? Analysis of various Constitutional and Statutory provisions as well as of case laws throw light upon the positive obligation of State to ensure Victims’ Human Rights to Protection, to Access to Justice and to Fair Investigation.

CHAPTER 4. ROLE OF POLICE AND VICTIMS’ HUMAN RIGHTS:
State has entrusted the responsibility of ensuring protection, access to justice and fair investigation to its police agency. Police is the first agency in whose contact victim comes first after the incidence of victimization. Police plays an important role in ensuring Victims’ human right to justice. How well State discharges its positive obligations can be seen through the functioning of its agency i.e. police.
In this chapter, researcher has gone through various international and national measures that lay down certain ethical norms to be followed by police. United Nations code of conduct emphasizes upon police role to provide protection from illegal acts and to uphold the human rights of all persons. International measures suggest that victim should be treated in a sympathetic, constructive and reassuring manner; victims should be treated as a human being; their concerns should be given due attention and they should be informed with the outcome of the investigation. Code of conduct for the police in India makes it clear that it is the obligation of the police to give full respect to constitutional ideals including fundamental rights. An analysis of the Code of Criminal Procedure, 1973 with case laws presents the picture where the police is under obligation to ensure protection, access to justice and fair investigation.
The whole edifice of criminal justice system depends upon the functioning of police. An efficient police role may be helpful in ensuring victim justice and an inefficient functioning of police may cause secondary victimization to victims of personal violence crime.
CHAPTER 5. MISUSE OF INVESTIGATIVE POWERS BY POLICE: METHODS AND ITS EFFECTS UPON HUMAN RIGHTS OF VICTIMS OF CRIME:

Police is supposed to perform its duties strictly in accordance with law. It is the duty of the police to provide protection, to ensure access to justice and to fairly investigate the case so as to identify the real culprit and to collect the best clinching evidence that leads towards establishing the guilt of the offender. Too many times, police is found not performing its duties according to the mandate of law or is found misusing its powers. Misuse of investigative powers may result either from a deliberate act or from the irresponsible attitude of investigating officer during the investigation of an offence. In this research misuse has emerged in various forms such as delayed police response, not providing protection to victims or to their family members, delay or denial in registration of complaints, twisting facts to convert the nature of offence, not invoking appropriate Section of law, delay in arrest, leaking important details of investigation, neglect in preparation of sketch plan, not to record victim-witness statements, changing the statements or preparing false statements, not to conduct medical examination, not to send the valuable piece of evidence for forensic examination, not to investigate the matter with the help of advance scientific tools or not to place all relevant documents along with the charge-sheet. In Chapter 5, researcher has identified more than 40 such methods of police functioning that may affect the Victims’ Human Right to Justice. This chapter then has proceeded further to find out whether such misuse affects the human rights of victims of personal violence crimes? Analysis of prominent High Courts and Supreme Court judgments show that Victims’ right to protection, access to justice and fair investigation get jeopardized due to the misuse of investigative powers by police. Not even this, it also affects the perceptions of victims towards the Criminal Justice System and results into victims’ losing their trust in the justice delivery system.

CHAPTER 6. CONCLUSION AND SUGGESTIONS

HYPOTHESIS & RESEARCH QUESTIONS:
Researcher had formulated following hypothesis;

“Misuse of investigative powers by police results into violation of human rights of victims of personal violence crimes.”

To check the validity of this hypothesis, researcher had framed following research questions:

i) What are the human rights of victims of personal violence crimes?

ii) What role and positive obligation has been assigned to police as a state agency in relation to victims of personal violence crimes for protecting their human rights?

iii) How the investigative powers are misused by the police? and

iv) Whether the misuse of investigative powers by police affects the Victims’ Human Right to Justice?

MAJOR FINDINGS:

- An analysis of international instruments of Human Rights including conventional and non-conventional instruments, regional human rights treaties and findings, observations and case laws of their monitoring bodies make it clear that positive approach of Human Rights recognizes ‘Right to Justice’ as victims’ human right and further recognize State’s positive obligations to provide protection to Victims’ Human Rights.

- Study of Indian Constitutional measures and statutory measures make it clear that though the Constitutional ideals are in sync with international norms still there is need for some distinct and direct provisions to give a concrete shape to Victims’ Human Right to Justice. Also, there are certain areas in the statutory mechanism wherein gap between constitutional and human rights ideals vis-à-vis factual position of victims’ human rights need to be bridged by enacting effective provisions for regulating the investigating powers of the police.

- Police has wide discretionary powers during investigation providing with ample chances of their misuse. Proper checks are required to make them function within their legal bounds and in tune with widely recognized Victims’ Human Right to Justice. Analysis of the case laws
has shown that the Courts have time and again made it amply clear that until and unless there is an effective implementation machinery, normative measures cannot ensure better protection to Victims’ Human Right to Justice.

- There is sufficient judicial recognition of the fact that misuse of investigative powers are adversely affecting Victims’ Human Right to Justice and changing their perceptions about and trust upon the justice delivery system.

**TESTING OF HYPOTHESIS:**

The research questions have resulted in following outcome:

- **Study of international instruments on human rights and case laws of human rights monitoring bodies as well as positive approach of human rights make it clear that victims of personal violence crimes have ‘Right to Justice’ as a human right and this right further has three allied rights i.e., right to protection, right to access to justice and right to fair investigation.**

- **Positive approach of human rights imposes a positive obligation upon the State to provide protection to human rights of victims of personal violence crime in case of violation of their human rights by a Non-State actor. State has entrusted this obligation upon its agency police to ensure victims’ human rights to protection, access to justice and fair investigation.**

- **Police has wide discretion during the investigation of an offence. Though the judiciary supervises the investigation, it cannot decide a particular line of action to be followed by the investigating officer and cannot monitor investigation in a fool proof manner. There is ample scope for misuse of investigative powers by police. This research has identified more than 40 such methods of misuse of investigative powers by police.**

- **It has emerged from the analysis of case laws that misuse of investigative powers by police adversely affects Victims’ Human Right**
to justice inclusive of his right to protection, access to justice and fair investigation.

Hypothesis is tested as:

Since all the research questions are answered in a positive and affirmative manner, thus the hypothesis stands validated and it is established that misuse of investigative powers by police results into violation of human rights of victims of personal violence crimes.

SUGGESTIONS:

To make the system more victim-sensitive, this research proposes following suggestions:

1. There should be a review of police acts, police manuals and relevant provisions of the Code of Criminal Procedure every three years to make it in tune with international best practices in relation to police role.
2. Constitutional amendment to recognize and incorporate Victims’ Human Right to Justice.
3. Enactment of a Victim specific legislation elaborating on victims’ rights, remedies in case of violation, prescribed procedure and authorities to be contacted.
4. Enactment of a specific legislation to provide with Victim-Witness protection mechanism.
5. Provision of ‘before the event remedies’ such as ‘restrain order’ should be incorporated into legislative framework.
6. Alternative modes of filing of FIR should be devised to minimise the interaction of victim with the police.
7. Victim should be provided with the information of steps taken during investigation until and unless the information is of such nature that it requires to be withheld and in that case this fact should be communicated to the magistrate with the reasons for doing so.
8. An amendment should be made in Section 173 (2) (ii) of the Code of Criminal Procedure, 1973 to insert the words ‘victim and his family members and informant’ instead of the ‘informant’ only so that police is
made obliged to provide information to victim and his family members too.

9. Similar to the provision under Section 207 of CrPC that makes accused entitle for copies of all relevant documents, victim should also be made entitle to get all the relevant documents at the time of submission of the Charge-Sheet.

10. There should be an effective ‘Review mechanism’ in case of police decision about not investigating the case.

11. There should be Separation of investigation wing from law and order police. This separated investigation wing should be a unified wing of police in the sense that victim of crime would not be required to approach different channels to get their concerns resolved. This unified wing of investigation may have sub-wings consisting of ‘victim-officer’, ‘assistance and service wing’, ‘protection wing’ and ‘main investigation wing’ with their role designed so as to provide better protection to Victims’ Human Right to Justice.

12. Periodically conducting police training programmes with a victim-sensitive approach with training curriculum focusing upon incorporating international best practices, awareness towards human rights of victims of crime, police duties in protecting these human rights and the ways to deal with victims of crime.

13. Continuous and recurring training courses for scientific methods of investigation to be made mandatory for promotion.

14. Early and speedy promotion scheme based on case solving skills through scientific methods and on performance based on ‘due diligence’.

15. Creation of a separate ‘analysis wing’ comprising of retired judicial and senior police officers to study cases resulting into acquittal on the basis of benefit of doubt to find out the police lapses. Victims’ written representation should be taken on record.

16. Such Analysis Wing should come out with specific finding as to whether the lapses were the outcome of dereliction of duty simpliciter or were the result of malice, deliberate act or wilful omission.

17. On the basis of the report of the Analysis wing, mandatory penal sanctions in case of misuse of investigative powers arising out of malice,
deliberate act or wilful omission by police and compulsory departmental action in cases of dereliction of duty simpliciter should be provided for. Punishment provided under Section 166 A (b) of Indian Penal Code, 1860 should be enhanced and this provision should be invoked frequently.

18. Findings of the Analysis Wing pertaining to the reasons of lapses should be incorporated in training programmes meant for skills development.

**SCOPE FOR FURTHER RESEARCH:**

If proper funding is available then empirical research can be conducted to find out the status of ‘Victims’ human right to justice’ within Indian criminal justice system. The stages within criminal justice administration, where there are maximum violations of victim’s right to justice can be identified. Regarding police role, a victimological survey can be undertaken to have an idea about the expectations that victim have from the justice delivery system. The difficulties being faced by police in completing the investigation in a scientific manner can be empirically studied that can give an insight into all statutory, institutional and technical support they need while discharging their duties of fair investigation in a better way to meet victim’s expectations and needs.