“Everything has been said already, but as no one listens, we must always begin again.”

Andre Gide - French thinker and writer

Chapter Six
RECOMMENDATIONS AND SUGGESTIONS

6.0.0. INTRODUCTION

In India too, we have a long way to go in ensuring the rights of victims. Unlike the accused, victims in India have virtually no rights in criminal proceedings, which are supposedly conducted on their behalf by the state agencies. The victim is conspicuous by his/her absence. When the state agencies fail to successfully prosecute offenders, as is sadly the case in many cases, victims are left to either suffer in silence the injustice meted out to them or seek personal retribution by taking the law into their hands. In modern criminal justice systems, victims of crime and abuse of power can even be called the “forgotten persons”. Considerable attention has been paid to ensure due process for the defendant. It is the defendant who is threatened with the State-imposed punishment. He or she, therefore, is allowed all possibilities of establishing his or her innocence. However, commensurate importance has not been given to the rights and interests of the victims. It has been assumed that the State represented the best interests of the society, including those of victims. Accordingly, there did not seem to be a need for special provisions for the role of the victim in judicial proceedings. While the human rights activists shout hoarse to uphold the rights of the accused, the rights of the victims, who actually had suffered damages, because of the criminal act of the accused, are left to fend for themselves, thereby victimized once again by the system. It is pertinent to recall what Justice V.R.Krishna Iyer said about victims. In the words of Justice V.R.Krishna Iyer, “Victims are the gate-keepers of the criminal justice system”. But the Indian justice system leaves the gate-keepers to wait as mute spectators, outside the property. An
unguarded property is the den of all criminal activities. Our society, especially the criminal justice system, is like such a property that is misused by unscrupulous elements. Such a neglect of the victims has resulted in efforts to highlight the need to give due importance to victims too.

6.1.0. VICTIMS OF THE LAW BY JUSTICE A.S. ANAND

The pathetic plight of the victim is critically viewed by an eminent legal luminary, Justice A.S. Anand.

“The criminal justice system today is basically concerned with tackling criminals, and it appears to be confined to ascertaining the guilt or innocence of an accused. And, the role of the victim is restricted to that of a witness for the prosecution, even though he/she has suffered harm and impairment of his/her fundamental rights”.

The central objective of the legal process is to maintain the public’s confidence in the administration of justice. So, there is an urgent need for giving a well-defined status to the victim, under the criminal law. His/her interest in getting the offender punished cannot be ignored. A discontented victim may take the law into his hands to seek revenge, posing a threat to the rule of law, which is essential for sustaining a democracy. This challenge was noticed by the Supreme Court in P. Ramachandra Rao vs State of Karnataka.

Viewed from the perspective of the victim, the system is heavily in favour of the accused. We find that the rights of an accused have been safeguarded in the criminal justice delivery system, but there is hardly any reference to the rights of the victim. There are some rights available to the victim, but even those are grossly inadequate. The law fails to address even the need of the victim to be treated with dignity and the need for protection from intimidation, inside or outside the courtroom.

The lukewarm response to the rights of the victim is fast eroding the faith of the society and the victim in the criminal justice system. According to the Code of Criminal Procedure and the Evidence Act, gaps or faults in the investigation, generally, benefit the accused. This is because the rights of an accused take precedence over the rights of the victim.
It humiliates and frustrates the victim when the offender goes unpunished or is let off with a minor punishment. Imposition of appropriate punishment for the criminal is society’s cry for justice. In recent years, the offenders are let off with the minimum punishment, even when the evidences are loaded against them.

Dealing with the object of sentencing, in the case of Bheru Singh vs State of Rajasthan, wherein the appellant had murdered his wife and five children, the Supreme Court observed: “The object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it”

6.2.0. CHALLENGES AND PROPOSAL FOR MEASURES TO PROTECT VICTIMS IN INDIA

In the process of prevention of victimization and the protection of victims, criminal justice system faces many challenges. These challenges are to be tackled through positive measures. Some of the challenges and the counter measures include:

A. No Separate Law for Crime Victims Yet

Continuous efforts are going on to enact a national law for victims. The Indian Society for Victims has drafted a model Victim Bill. The methods adopted by other countries can be suitably modified and then adopted.

B. Corruption in the Indian Criminal Justice System

Corruption by public officials erodes the health of the entire society and victimizes people of all sections of the population. Many steps to reduce the level of corruption and accumulation of illegal wealth have been taken by the Government. The recently introduced declaration of assets and wealth by judges of the higher judiciary is an example.

C. Empowerment of Women to Prevent Victimization of Women

Serious efforts, to change the traditional submissive and victimized role of women, have been taken by NGOs and the Government. One attempt is the consistent struggle and active efforts by women’s organizations, to get more political power for women, in the form of representation in the Parliament, state legislatures and local bodies, through a 33% reservation of seats for women in these bodies.
D. Empowerment of Children

Making primary education a fundamental right under the constitution is a giant leap to empower children, as education is the tool for development. The implementation of this right will have a positive bearing on other kinds of victimization such as child labour.

E. Major Challenge is Implementation

Transparency and honesty among the law makers and the commitment of government officials who are charged with the responsibility for implementation are a big challenge. The status of victims has not been satisfactory in India. Developed countries, including the United Kingdom, have gone far ahead to render victim justice; but the expectations and aspirations of victims remain so high that even in those countries there are still demands that have to be met. In a way, such high expectations reflect the level of awareness of human rights. The UK enacted the Criminal Injuries Compensation Act in 1995. The Home Office in the UK, in its report “Criminal Justice: The Way Ahead”, in 2001, found that “many victims felt that the rights of the accused of a crime take precedence over theirs in criminal proceedings”. During the long proceedings of investigation and trial, victims are not kept informed or provided with a sense of security. Very often, victims are expected to appear in courts for cases, which are adjourned even without prior notice, or they are subjected to unnecessary stressful courtroom experiences. The agencies meant to help victims do not always understand and respond effectively to their needs. This revelation has made the UK recommend some measures to balance its system of justice. Evidently, victim justice has not been achieved in full, even in developed countries. However, we have to pursue the matter vigorously with the governments and with the civil society to realize the basic provisions envisioned in the UN Declaration of Victims in the majority of developing countries (Chockalingam.K, 2010)

6.3.0. RECOMMENDATIONS OF THE RESEARCHER

The investigator suggests the following recommendations in the light of the research findings.
6.3.1. To the Prosecution-

- Prompt and proper registration of the case on information / complaint
- Investigation of the cases- proceeding to the spot - before the material evidences get destroyed.
- The investigating agency should make it a point to examine the neighboring witnesses as the legal maxim says. *Lax imdendit vicinum vicinum fecta scire* which means the law presumes that one neighbor knows the act of another.
- Submission of the final report u/s 173 Cr.P.C. within the prescribed time frame.
- The Police department may have an exclusive wing for the investigation of homicide cases, as in the western countries, which should be given additional training during the basic training itself. Selected personnel should be given the option of joining this wing as in Andhra Pradesh, which selects police officers for exclusive intelligence work.
- Emphasis should be given to the scientific method of investigation as in the European countries. The criminals have adapted to modern techniques and possess modern equipment. Hence, the investigating team should be adequately equipped and technically trained. Updating on a regular basis will ensure awareness about the latest technology.
- Victim impact statements to be made mandatory.
- Production of witnesses without any delay.
- Examination of the witnesses by the court during the investigation stage itself.
- Protection to the witnesses – this will lead to deposition by witnesses without any fear.
- Prompt disbursal of investigation charge claims.
- Police should be sensitized on the plight and state of the victims.

6.3.2. To the Judiciary

★ The cases brought to the court by the prosecution side may be taken on file at the earliest and charges framed.
★ Frequent adjournments to be avoided.
Examination of witnesses produced in the court to be ensured. Delays in examination can lead to second thoughts on the part of the witness, and might turn hostile.

The court boycotts should not affect the disposal of the case.

The court working hour, vacations may be reconsidered.

As the legal maxim says, *Judicia est Judicare secundum allegata at probala* which means it is the duty of the judge to decide according to the nature of allegation and the proof, while delivering judgment, the merits of the case and the reliability of the deposition too should be taken into consideration.

Victim compensation should be made mandatory in the judgment in tune with Cr.P.C sections 357, 358 and 359.

The prosecution and the Judiciary to be sensitized on the victim’s plight and the need to support them.

Victims should be given fair treatment, both at the investigation stage and the trial stage. Instead of seeing them only as witnesses, they should be seen as the affected party, who suffered harm. Utmost care should be taken to avoid subjecting them to secondary victimization.

The following recommendations will help the law enforcement:-

- Ensure that investigators and their managers are aware of the problems through case - study- based training (Cory. 2001).
- Encourage an atmosphere of open inquiry, and ensure investigative managers remain impartial and neutral.
- If possible, defer conclusions until sufficient data has been collected.
- Avoid tunnel vision. Consider different perspectives and encourage cross-fertilization of ideas.
- Organize brain-storming sessions and seek creativity rather than consensus.
- Ensure that investigative managers are willing to accept objections, doubts, and criticisms from team members.
- Encourage investigators to express alternative, even unpopular, points of view. Assign the role of *devil’s advocate* to a strong team member.
Consider using subgroups for different tasks and facilitate parallel but independent decision-making.

- Recognize and delineate assumptions, inference chains, and points of uncertainty. The question “How do we know what we think we know?” should be asked to avoid assumptions and foregone conclusions.

- When appropriate, obtain expert opinions and external reviews, and give them proper consideration.

- Conduct routine systematic debriefings after major crime investigations. Organize a full-scale “autopsy” after an investigative failure.

- Encourage and facilitate research into criminal investigation failures to avoid such failures (Stelfox & Pease, 2005)

- Establish and fund, through legislative action, a crime victims’ rights ombudsman to facilitate the following:
  a. Investigate claims that an entity has violated a crime victim’s rights.
  b. Document findings in a report to the subject entity and the victim. In cases in which rights are violated, the report will include recommendations to correct errors and suggest suitable responses to victims. Recommended remedies may include development of policies and procedures and other measures necessary to prevent future violations.
  c. When necessary and appropriate, in cases in which a victim’s rights have been violated, bring complaints to the entity responsible for those violating and issue suitable reprimands for rights violations.
  d. Ensure ombudsman immunity.

- Conduct a comprehensive, statewide needs-assessment to document crime victims’ rights violations and to further assess the experiences of crime victims’ interactions with the criminal justice system and service providers.

- Request all criminal justice programs in institutions of higher learning and criminal law and criminal procedure classes in law schools to include education about crime victims’ constitutional and statutory rights.
Request the court to: A) create a rule of criminal procedure that requires the restitution amount to appear on the Judgment and Sentence (J&S) or to explain why the restitution amount is not on the face of the order; and B) create prose forms and guidelines to facilitate victim enforcement of restitution.

- Develop and implement, through continuing education programmes and other professional training opportunities, standardized curricula for the judiciary, prosecutors, and law enforcement about:
  a) Victims’ constitutional and statutory rights.
  b) Impact of crime on victims that necessitates those rights.

Criminal justice system and victim service providers.

- Tribunals need to be brought closer to the people (courts can be decentralized and made accessible to all).

- Mechanisms for interfacing existing laws and institutions with local community initiatives are vital (integrating community-based systems, empowering poor people, NGO or government interventions, providing education).

- A network of accountability mechanisms (independent and effective court systems, ombudsman systems, parliamentary committees) should be created gradually in each state.

- To combat corruption at different levels of investigation -- establishment of a special network to address crimes of corruption.

- Judiciary must be independent.

- Legal systems must be transparent.

6.4.0. RECOMMENDATIONS TO IMPROVE ACCESS TO JUSTICE FOR CRIME VICTIMS

- Develop, implement and maintain a statewide website and toll-free number as tools for crime victims to learn about victims’ rights and services.

- Develop and implement an ongoing, statewide media campaign to increase public awareness of victims’ rights and services.
Prohibit the sharing of location and contact information of crime victims of enumerated crimes without the prior approval from the victim.

Provide additional funding to entities that receive state funding, to work with local community members and advocates translating and editing outreach and awareness raising materials into languages and formats most appropriate and effective for diverse communities.

Provide funding to help agencies, both public and nonprofit, to come into compliance with the Indians with Disabilities Act to accommodate victims with disabilities.

Provide funding to state and tribal prosecutors earmarked for expert testimony in order to support victim statements.

Request ongoing training for victim service providers receiving state funding. The provisions in the adversarial system should be fair to both victim and accused.

Awareness should be created in the society to support the law enforcers and the prosecution to ensure justice.

- The property lost by the victim when recovered may be handed over to the victim without much delay and through simplified procedures.
- The delay in dispensation of justice leading to secondary victimization should be addressed.

6.5.0. SUPERVISOR OF VARIOUS BODIES AND ORGANIZATIONS IN PROVIDING VICTIM SERVICES

Various bodies and organizations are involved at different junctures and levels in victim assistance. Selective and credible NGOs may be entrusted with victim support / service responsibility on behalf of the court utilizing the Government funds. The funds allotted to the Revenue to address the victim’s redress should be channelized through the earmarked service providers of the area under proper vigilance.
6.5.1. To the Judiciary

- The present concept of crime - society dichotomy should move towards the concept of victim - crime - society tracheotomy. That way, if crime hurts, justice heals.

6.5.2. To the Government

- In line with Article 51 of the Constitution of India, special care must be bestowed to implement the provisions of the U.N Declaration of Justice for Victims of Crime and Abuse of Power.
- Surveys to be carried out to ensure dispensation of justice to victims.
- Devise effective measures to identify authentic NGOs to serve the deserving; Monitor the NGOs’ way handling these issues to ensure a speedy and satisfactory deliverance.
- Make policies to ensure that the Governmental provisions reach the relatively vulnerable victims such as women, children, scheduled castes and scheduled tribes; the same can be extended to all types of victims in concurrence with Article 14 of the Constitution of India.

6.5.3. To the NGOs

- Impress upon the Government of India the need to enact a legislation to safeguard victims and their rights by conducting surveys related to the same.
- Provide emotional and legal support to the victims of crime to recover from the trauma and shock and lead a normal healthy life. In short, take every effort towards coping with the trauma the victims are undergoing.
- Cater to even those who fear to report the crime for various reasons to reduce the dark figure and improve the access to justice.
6.6.0. SCOPE FOR FURTHER RESEARCH

The findings of this study may serve as a basis for further research on access to justice. Hence, a few suggestions for the same are given below.

- The study can be extended to the acquittals of all other cognizable offences.
- A study can be conducted by having primary data collected directly from the victims.
- A study can be conducted taking other factors as reasons for acquittal and access to justice.
- The study can be extended to more number of districts in Tamil Nadu.
- The same study can be extended to a larger population of acquittals.
- The study can be extended to other States.
- The study can be extended to find out the relationship of the acquitted with the victim.
- The study can be simplified by studying the acquittals of one district alone; such a study is likely to bring to light other variables that contribute to the condition.
- The study can be extended by going through the contradictions of the witnesses in the chief examinations and cross examinations during the trial.
- The study can be extended to scrutinize the reason for the witnesses turning hostile.
- The study can be extended to analyse the possible threat perception faced by the witnesses.
- The reasons behind the trend to award the minimum punishments even when the guilt of the accused has been firmly established need to be studied in depth. Such a study will throw light on where the gaping holes are. Once these have been identified, steps can be initiated to plug the loopholes.
Conclusion

Victim service providers consider the right to attend criminal justice proceedings is one of the fundamental rights of crime victims. Although its application, especially at criminal trials, has been restricted in practice, some statutes and the limited case law suggest that the right can be applied more broadly without placing an undue burden on the criminal justice system or interfering with the constitutional rights of the accused.

To sum up, the study reveals that the constitutional rights of the accused are taken care of. But unfortunately, those guaranteed by the constitution to the victim are not ensured. As a result, the victim becomes a marginalized person with no visibility or voice. The existing law only envisages the prosecutor appointed by the State to be the proper authority to plead on behalf of the victim. However, the Code does not completely prohibit a victim from participating in the prosecution. A counsel engaged by the victim may be given a limited role in the conduct of prosecution, that too only with the permission of the court. The counsel so engaged is to act under the directions of the public prosecutor. The only other privilege a victim might exercise is to submit again, with the permission of the court, a written argument after the closure of evidence in the trial. This requires change on the lines proposed earlier.

It is ironical to learn that the denial of access to justice to victims, leads to the non-cooperation of the victims. Such non-co-operation will result in increased non-reporting of crime, which will result in a plethora of dark figure. The road ahead would be to carry out studies to find out the ways and means to ensure cooperation on the part of the victims. The study was started on the premise of the denial of justice to the victims due to the lack of victim assistance. And this denial in turn resulted in the hostile witnesses and became the main reason for the large number of acquittals.

That means, if justice is to be ensured, victims are to be appropriately assisted. Such assistance will encourage them to come forward to depose, which would go a long way to ensure convictions as well as waning of dark figures.
The personal victim impact statement, wherein the victim is in a position to record his or her version of the damages done to him or her should be made mandatory, so that lawyer-oriented presentation does not deter or distort justice. The victim has to be given both visibility and voice in the trials, their rights respected, thereby enhancing their access to justice. Such an inclusive approach and procedure is the ultimate endeavor of the criminal justice system.