



CRITICAL ANALYSIS OF THE ROLE OF INDIAN FAMILIES IN ENSURING RESTORATIVE JUSTICE TO VICTIMS OF CRIME IN INDIA¹

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Abstract--The role of State has been prominent in the criminal justice system in the present scenario. Hitherto the criminal justice was more concerned with punishing the offender. Fortunately now the focus is more on meeting the needs of victims of crime. A state, community and an offender are all having an obligation to fulfill the loss suffered by a victim of crime. So far the role of Indian families can play in ensuring restorative justice to victims of crime has not been explored. The theme of this paper would be finding how the Indian family system can work as parallel system of restorative justice to victim of crime. Family group conferencing is one method that has been tried in some western countries to realize the justice for victim of crime. In India the traditional rural background attempts to make sure that the demands of victim are met and the feeling of victim of being ignored is minimized to certain extent. With the help of some case studies this paper attempts to study the role Indian families can play in ensuring restorative justice to victims of crime in India.

Key words: Restorative justice, Victims of Crime, Criminal Justice System

INTRODUCTION

From the dawn of civilization to the present day, legal systems have been experimenting in refining the justice delivery system to make it more popularly accessible, prompt and effective.² The institutions of *nyaya panchayat*, guild courts and people's courts are some of their manifestations in the past.³ Even institution of family has played a vital role in ensuring justice to the parties affected by the crime. The "top down" model of justice administration through modernized techniques does not yield satisfactory result was realized in the post internal emergency period with the experience of gross human rights violations by the system itself because of delay, formalism, expenses, and lack of communitarian participation.⁴ In reaction to this state of affairs, Art.39-A was incorporated into Part-IV of the Constitution for promoting equal justice for all. Rights of the parties affected by the crime got streamlined as a feature of justice delivery system. Some attempts were made for strengthening the rights of victims of crime. As a mechanism of rendering to each person his or her due, the system had to evolve just and fair procedure to protect life, personal liberty and other interests. In spite of its best efforts, legal system could not mould litigation as a satisfactory method of resolving the disputes nor has its search for appropriate model reached final destination.⁵ All legal systems must have the goal of promoting justice to victims. This goal is the other side of the criminal justice system's spectrum because every crime has simultaneously the offender/s and victim/s. Balance of justice can ill-afford to ignore any of the sides. The very genesis of criminal law is traceable to a set of principles that primarily aimed at compensating the victim. A duty had been prescribed upon wrongdoers to compensate the victims of offences against property in addition to undergoing a process of purification under ancient Indian Law. The Muslim Law also recognizes the rights of victims to participate in criminal trial and exercise his option of punishment or compensation. This is another historical factor that evinces the significant role of the victim.

¹ Paper presented at International Conference on Victimology held at Institute of Law, Nirma University, Ahmedabad, from 23rd to 25th Feb. 2017.

² P.Ishwar Bhat, Law and Social Transformation (Lucknow, Esatern Book Company, 2009) at p.820

³ *Id.*

⁴ *Id.*

⁵ *Id.*



The state's assumption of responsibility to control crimes, and modernization's increased focus on reform of prisons and prisoner and comforts to the accused, relegated the position of victim into insignificance and vanishing point of criminal law.⁶ According to V. R. Krishna Iyer, J. "It is a weakness of our jurisprudence that the victims of crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law".⁷ D. P. Wadhwa, J. observed that in our efforts to look after and protect the human rights of the convict we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguards of his rights. Criminal justice would look hollow if justice is not done to the victim of the crime. A victim of crime cannot be a 'forgotten man' in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc.. An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.⁸

As against these developments, two integrated factors that try to help in restoring the right balance by focusing on justice to victims are human rights approach and post-modernist search for traditional solution. The important factors that are guiding the growth of the law in this sphere are International human rights instruments, legislative and judicial contributions and reports of Law Commission and Committees. According to P. Ishwar Bhat, the extent of development in this sphere falls short of the social expectations, and thus disappointing the justice-demanding minds.⁹

SCHEME FOR VICTIM PROTECTION

As per the UN Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985 the term "victim" includes any person who, individually or collectively, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his Fundamental Rights, through acts or omissions that are in violation of criminal laws. It is very much essential to render justice to victims of crime which consists in recognition and protection of their several rights. They are entitled to the mechanisms of justice and prompt redress for the harm suffered; right to information about such mechanisms; right to treatment and assistance; right to fair restitution by the offender; and in the alternative, right to be compensated by the state.¹⁰ Under the Constitution of India support to victim oriented reforms got crystallized by extending the logic that procedure established by law under Article 21 should be just, fair and reasonable, and should result in protection of dignified life and personal liberty not only of the accused persons but also of the victims of offences and wrongful acts. The justifications for victim-orientation are several: (i) victim is the unfortunate recipient of harm, loss or injury, especially when crimes arise from deep-seated economic dissatisfaction and social maladjustment; (ii) state has the responsibility of protecting the life, limb and property of the subjects, and its failure should be made good by a compensatory system; (iii) victim needs protection against retaliation by the accused; and (iv) his role in helping investigation and prosecution is crucial, and to be used with adequate opportunity for participation, and should not be an object of harassment and privacy encroachment.¹¹ There has been only a belated realization about the need to equip the legal system with sufficient victim-orientation. The relevant legislative provisions, human right principle, Law Commission report and Justice V. S. Malimath Committee report have oriented towards rendering justice to victims.

Restorative Justice is one form of social justice. Restorative justice is a humanistic form of settling disputes that

⁶ *Id.* at 846.

⁷ *Rattan Singh v. State of Punjab*, (1979) 4SCC 719

⁸ *State of Gujarat v. Hon'ble High Court of Gujarat*, (1998) 7SCC 392

⁹ P. Ishwar Bhat, *Op-cit.*, at p.846.

¹⁰ UN Resolution Number 40/34 November 1985. Principles 4to8.

¹¹ P. Ishwar Bhat, *op.cit.*, at 847.



strives to reconcile the needs of victims and offenders with the needs of the community.¹² It focuses on repairing the harm of the injury. Two models of restorative justice used particularly in situations involving youths and their families are victim-offender mediation and family group conferencing. Throughout history, local families and communities and traditional cultures have developed ways of managing conflict and of bringing an offender to accountability to the community.¹³ These forms of righting wrongs were ritualized but based on communication among members of the community and families of both parties. These forms of justice were found in all cultures.¹⁴ In the Navajo tradition, for example, peacemaking is a form of communal response to help people who have been harmed by another (Sullivan & Tift 2001).

Restorative justice suggests that the most important fact about crime is that it causes harm to individuals, their families and communities (Bazemore, 1999). The most salient question thus becomes “How can we best repair that harm?” not, “How can we punish crime?” Instead of focusing on a past wrong, what is needed is a form of justice that helps orient offenders toward the present and future state of affairs, toward membership in the community rather than removal from it. What is needed is a three pronged system of justice; justice for the individual offender, the victim, and the community.

INDIAN FAMILIES

The family system in India is playing its role in ensuring justice to the victims of offence and wrongful acts. Some of the experiences the authors wish to share in this article which may help in bringing some improvements the legal system.

One incident involving theft of golden ornament:

The author himself came across one theft incident in one family. A married woman allowed her own sister's son to stay with her family for education purpose. All the family members showed love and affection on that boy. But unfortunately that boy was not interested in pursuing his education. That boy was in the company of bad friends. The boy decided to discontinue his education and while leaving the home of his relatives, he committed the theft of golden ornaments when no other member of the family was present. It was a shocking incident for that family. They did not lodge police complaint against that boy. They took this issue with the family members of that boy. The family members of both the parties sat together and decided to allow that boy to continue his education. But that boy did not participate in any family functions and he started avoiding the members of his relative families. The family members of both parties succeeded in making that boy to realize the consequences of his offence. The members of family of that boy were asked to make good the loss suffered to the relative family. This incident brings home the fact that punishment is not the only solution in the form of justice to the victims of the offence and wrongful acts. The punishment would have removed that boy from the community. Even the members of victims' family were not interested in sending that boy to the prison which would have spoiled the life of that boy. This incident shows that if the culture of the family is good, it can bring youth on the right path which is very much required for preserving the health of community and the Nation.

CONCLUSION

A restorative family justice model can help in healing victims and helping offenders to repair the damage they have done. In terms of its ability to incorporate native rituals in healing meetings and in inclusion of religious concepts those are culturally specific to the participants, this model has special appeal for the people. The perceived need is

¹² Katherine Van Wormer, Restorative Justice: A Model for Social Work Practice with Families in Vol.84 No.03 Families in Society, at 441.

¹³ *Id.*

¹⁴ *Id.*



for a new system of restorative justice based on social and economic justice and on concern and respect for all victims and victimizers, a new system based on remedies and restoration rather than on prison punishment and victim neglect, a new system rooted in the concept of a caring community... [where] power and equality of all social primary goods—liberty, opportunity, income, wealth, and the bases of self-respect—are institutionally structured and distributed to all members of the community and where the spirit of reconciliation prevails.¹⁵

14. (Last accessed on 30 Jan.2017 available at www.personal.kent.edu/~RESTORATIVE%20JUSTICE%20THE%20ROLE%20OF.)