

THE RIGHTS OF VICTIM AGAINST RELIGIOUS CRIME

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ABSTRACT

Victim's rights in India have been one of the major issues and challenges that the Legislature as well as the Indian Judiciary is facing today. Although the Judiciary has tried to deliver justice in ensuring that victims of any crime are being provided with proper care and assistance especially in terms of approaching the courts for justice and fair treatment however in most of the cases many victims till date are not only languishing outside the court rooms for justice but no proper mechanism has been initiated to address their grievances. In light of this, victims of religious crime are more heavily affected as they are not only subjected to prejudice but also most of the time ignored by the Government. In India victim's rights have only been addressed with regard to heinous crimes such as murder, rape or sexual offences however till date there has been no provision that has address the rights of the victims affected by a religious crime. Most of the time victims of religious crime are only availed the right to rehabilitation since most of the victims of religious crime go through trauma and so rehabilitating them is seen as a proper method of enabling them to become a part of the society again. However most of the time even this right is not properly administered to them. The objective of this paper is not only to highlight the main issues that victims of a religious crime have to face but also the need to implement effective laws in dealing with victims of religious crime as is not only necessary but also the need of the hour.

Key words: Victim, rights, religious crime, hate crime, communal violence

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INTRODUCTION

The concept of victim's rights in the criminal justice mechanism has been gaining a lot of momentum especially with regard to access to justice and the concept of fair trial. This notion was very much adopted by the United Nations in its Declaration of Basic Principles of Justice for Victims of Crime and abuse of power (hereafter referred to as the UN Declaration). The declaration was adopted to give recognition to the needs and importance of setting up standard norms and laws for the protection of victims of crime. Under the UN declaration, four major components are recognised- first, Access to justice and fair treatment, second, compensation, third, restitution and finally assistance.³ In India each of these components have been address separately under various laws of the provisions. In India, the concept of compensation was only restricted to imposition of fines however after the 152nd Law Commission Report, section 357-A was introduced which not only enhanced the amount of compensation but also provided a comprehensive scheme for compensation on the ground of any injury, loss or damage of property and while sustaining any injury and in case of death.⁴

In India laws have already been framed with regard to victim's rights in cases of heinous offences such as rape, domestic violence, sexual offences, etc however the State is yet to take any affirmative action in favour of victims of religious crime. Even though States have reluctantly stated that they are catering the need and necessity of the victims however this is not exactly the same in almost every case. It is only in a few cases that the State or the Centre for that matter of fact have stepped up to actually help and sympathise with the plight of the victims. As of today, only a few cases have actually received the government's attention while majority of them still remain overlooked. Most of the time victims of rape and violence are often over looked especially when they belong to the marginalised society, it is only when they approach the higher judiciary that their grievances are heard and addressed. However the capacity to approach the higher court is not possible for every victim, thus most of the time the victim loses his will to fight when he sees that there is no hope for him to achieve justice. A similar inference can also be drawn towards the plight of victims of religious crime. Most of the time victims of religious crime are not only over looked but also disregarded, the

³ S. Muralidhan, "Rights of Victims in the Indian Criminal Justice System", *International Environmental Law Research Centre* 1 (2005)

⁴ Law Commission of India, "One Hundred and Fifty fourth report on the Code of Criminal Procedure, 1973", 62 (1996).

compensatory benefits that they receive from the Government is not sufficient enough to cater the needs for their families especially when there is loss of life and property. Further, unlike a particular crime where the victim is only a single person, in a religious crime the victims are in group or a community hence the current laws which are in force for addressing the need of victims of crime may not be sufficient enough to deal with the victims of religious crime. It is for this reason that the researcher has decided to look into the concept of rights of victims in light of religious crime. The researcher believes that it will not only shed light upon the dark areas but will also bring a whole new aspect of how religious crime heavily affects its victims and how the laws are overlooking this aspect. The research will further show how victims of religious crime are not only overlooked but also most of the time forgotten by the Government.

WHO IS A VICTIM?

The term victim has been defined under Section 2 (wa) on the Code of Criminal Procedure, 1973 (herein referred to as CrPC) as, “a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression ‘victim’ also includes his or her guardian or legal heir”.⁵ Hence the term victim means any person upon whom any harm or injury has been afflicted due to the result of a crime or accident or any event which leads the perpetrator to cause harm or injury or even death to the victim. The definition has also been wide enough to cover the legal heirs or guardians for the purpose of seeking compensation in case of victim’s demise. However this definition is subject to certain limitations. The definition provided by the UN Declaration on victim has been regarded as a more comprehensive and detailed one. According to the definition provided by the UN Declaration, “victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of the fundamental rights, through acts or omissions that violate criminal laws operative within the member states, including those laws prescribing criminal abuse of power”.⁶ This definition not only provides a wider connotation but also bring in the other members of the family who might have suffered as a result of victimization. Unlike the definition provided by the Code of criminal Procedure, the definition given by the UN Declaration holds deeper meaning and weightage when it comes

⁵ The Code of Criminal Procedure, 1973 (Act no 2 of 1974), s. 2(wa)

⁶ Victims, United Nations Office on Drugs and Crime, available at: https://www.unodc.org/pdf/compendium/compendium_2006_part_03_02.pdf, (last visited on February 15 2023)

to victim's right to seek redressal and justice. Further, the definition provided by the Code is subject to interpretation by the High Courts and Supreme Court; hence what may be complete justice to one victim may not be complete justice to another. Also, the concept of loss and injury has not been clearly defined and hence victim right to seek compensation may differ depending upon the veracity of the crime.

VICTIM'S ACCESS TO JUSTICE AND FAIR TREATMENT

In India, this has been a given fact that victims of any crime are always overlooked especially those belonging to the marginalised society. With only a few of the cases making their way to the High Court or the Supreme Court, the Indian Judicial system needs to reform itself so that people of every section of the community are provided access to justice and fair treatment. Today people from the marginalised section are given an opportunity to place their matter before the Court by way of Legal Aid services. Legal aid services are usually given to people who are unable to afford the legal expenses which is usually incurred in filing the case. This right has not only helped in uplifting their grievances but also in redressing their problems. Although the intention with which the judiciary came up in assisting the deprived section with legal aid services is a commendable action but most of the time this right is never exercised to its true potential.

Many at times the victims even with the assistance of legal aid services, have hardly succeeded in attaining justice. This may not be much prevalent in the High Court but in the lower courts most of the legal aid cases are reduced to dust with no scope of achieving justice for the victim. One reason may be due to lack of interest on the part of the lawyer and sometimes it is also the amount of time taken to finally dispose of a case. Sometimes the amount of time consumption takes a heavy toll on the victim that at the end of the day he/she just wishes to end the matter thereby even willing to compromise. This not only degrades the victims trust in Judiciary but also in the society.

The Malimath Committee has also made various suggestions with regard to victims right on achieving complete justice. The report lays emphasis on two major rights, i.e., the victims's right to participate in criminal proceedings which includes the right to be impleaded, right to know, right to be heard and right to assist the court in pursuit of truth and second the victim right to seek compensation from the Court for the injuries suffered as well as any such

interim relief during the course of the proceedings.⁷ The report further suggest the need for appointing a probation officer to cater for the interest of the victim especially during the investigation and trial stage since most of the time victims are often overlooked during the investigation process. According to the report the investigation process is one such stage wherein the victim needs support the most hence it is very much necessary to ensure that victims are not just given right but also be made aware to make use of them otherwise it will be just another failure on the part of the Judicial system.

IMPACT OF RELIGIOUS CRIME ON THE VICTIM

Religious crime in India is not just a growing concern for a particular state but also for the entire nation. It has not only thrown the entire judicial system under a bus but has also created anomalies in law which is necessary to be addressed at this juncture. Religion and crime although are two separate entity but when an offence is committed with a motive or an intention to harm or hurt the religious sentiment of a particular community it constitutes a religious crime.

In India every citizen has the right to freedom of thought, conscience and belief however when it comes to criminal acts committed in the name of religion most of the laws are often silent and it seems that the State mostly choose to take a back seat and not act upon it. This has been heavily criticised in many occasions, the Gujarat riots for instance have been considered as one of the major incident that occurred due to failure of the state government to take appropriate precautionary measures. In some of the interviews many victims have not only expressed their plight and helplessness but have also approached various authorities to look into their grievances to much avail just to find their request overlooked and discarded.

Till date there are no specific laws in relation to crime committed under the pretence of religion. Further, there has been no attempt to even define this crime, in many cases in India whenever a crime against religion is committed, the perpetrators in most of the cases are always booked under Indian Penal Code, 1860. Further the sections under which most of the offender are booked was with regard to defiling a religious place or insulting the religious sentiments of the minorities' people. There are many grey areas dealing with religious crime; however this paper will only be focusing on the rights of the victims who were affected due to religious crime. One of the most challenging aspect of victims rights especially with regard

⁷ Government of India, "Justice V.S. Malimath Committee on Reforms of Criminal Justice System", 76 (Ministry of home Affairs, 2013)

to religious crime is the after effect that most victims have to go through. Most of the time the victims of religious crime are not provided with the proper assistance, care and support system that is required for any victim of a crime. Although there are instances when the Court steps in to provide relief to such victims however till date the government has done little to ease the pain that they have suffered. Although monetary relief (i.e., in the form of compensation) may help in dealing with physical injuries but the mental, emotional and psychological trauma that they have to go through as a result is quite incomprehensible. Thus it is not only enough to provide restitutive rights to these victims, the Government must also ensure they are rehabilitated and provided due support in order to have access to justice.

HATE CRIME AS ONE OF THE MAIN PERPETRATOR WHY VICTIMS OF RELIGIOUS CRIME FACE IDENTITY ISSUES

Today, Hate Crime is considered not just a crime against a particular group or a community but against the religious identity of a person itself. It is also regarded as one of the most heinous crime as the victims of such crimes are affected not only physically but also emotionally and psychologically. They are not just embedded with the concept of fear in the minds but are most of the times living under the garb of terror or violence. The victims of hate crime are usually targeted due to their identity or their belongingness to a particular community.⁸

In India, every since the concept of Hate crime started emerging it has always found itself intertwined with religion, although this may not be true in all the cases but in most of the cases this has proven to be true. For example, the infamous Bengal riots in 1946 which lead to the death of thousands of Muslims and Hindus was a result of the growing tension between the Hindus and Muslim community in India. Further, the 2002 Godhra riots in Gujarat was another scenario that flamed the conscious of people wherein some 59 Hindu pilgrims who were returning from their pilgrimage were set ablaze along with the train by a Muslim mob. After the incident the whole country went on a rampage of communal violence especially in the state of Gujarat which lasted over seven days accounting for the death or over 1,000 Muslims dead and lakhs of them homeless. Another incident that perfectly encapsulated the nature of crime which is caused by prejudice against a particular religion was the murder of Graham Stuart Staines. The individual in this case was a Christian missionary from Australia

⁸ S.Hasthisha Desikan, "Legal Regulation of Hate Crime in India: A look at the current regime and its shortcomings", 4 *International Journal of Law Management & Humanities*, 1234 (2021)

who came to India with his two children and his wife. He was later charred to death with his two children while they were sleeping in a car. The responsibility was later on taken by a group of people who identified themselves as members of a fundamentalist group called Bajrang Dal. Apart from the above incidents there are several incidents which motivated hate crime in the name of religion such as the exodus of Kashmiri Pandits from Kashmir which is also considered as a form of genocide against Kashmiri Hindus, the rampant cow vigilantism which resulted in the death of several Muslims as well as Hindus⁹ and several other cases of Mob lynching which is a testimony that depicts that hate crime and religion go hand in hand most of the time.¹⁰

Thus from the above given examples one can assume that victims of religious crime are not just targeted based on their religious identity but also to the community they belong hence in most of the cases we can see that the victims is either from a Muslim community background or from a Christian community background. Although this may not be true in all the States however in states where the Hindu community is a majority, the Muslim community as well as the Christian community are bound to have identity issues as they are mostly targeted due to their religious identity. Although most of the State Government on the other hand have tried to deny this statement and have ensured in almost each of those cases mentioned above that justice will be served to the victims however the reality check is that till date neither the Government nor the Judiciary has enabled to effectively deal with the issues and challenges faced by the victims of religious crime.

RECOGNITION OF VICTIM'S RIGHT UNDER RELIGIOUS CRIME IN INDIA

The victims of religious crime in India are regarded as one of the most vulnerable groups in the society. Most of the time these victims are very much traumatised and incapable of seeing past their trauma, hence there is a need and necessity to rehabilitate such victims. Further, the victims of religious crime are very much different from the victims of any other crime this is because the main contention behind religious crime is the identity of the victim. In any other offence, the identity is never regarded as an issue when a crime such as murder or rape or domestic violence is committed. Hence the byproduct of a religious crime is mostly the community that the person belongs to, hence most of the time there offence are committed upon the minority groups mostly.

⁹ Anuparna Chatterjee and Sadiya Afreen, "The Subversive tendencies of religious majoritarianism: The Rubric for Hate Crime in India", *Social Science Research Network*, 5,6 (2020)

¹⁰ Akshita Tandon, "Mob Lynching- A recurring phenomenon in India", *Manupatra* (2022)

In India victims rights are recognised under Section 357A¹¹ of the Code of Criminal Procedure, 1973 (herein referred to as CrPC) specifically with regard to compensation scheme. According to this section, the State Government in co-ordination with the central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. Section 357A not only granted the victims compensation but also gave them the right to approach the Legal Service Authorities to grant them or their dependents the compensatory rights for the loss or injury suffered by him/her. Further in order to alleviate the sufferings of the victim, the State or District Legal Service Authority may provide medical benefits free of cost to the victims on being issued a certificate by the police officer of the concern area. Although the victims' rights have been recognised in India and there many Supreme Court judgements with regard to this however there are many areas where victims are still over-looked.¹² Section 357A although has widen the scope of compensation for victims however this section was mostly introduced for the victims of custodial violence.¹³ Other provisions which provide compensation to victims include Section 265B of the Code which deals with plea bargaining wherein the Court may provide compensation to the victim during the proceeding of the case or thereafter if required¹⁴ and 265E¹⁵ which basically deals with awarding of compensation while disposal of a case. Section 357¹⁶ relates to the general provision of providing compensation to victims after completion of trial, it was due to this that Section 357A was introduced with the objective of providing early relief and compensatory benefits to victims without waiting for the trial to complete. While Section 357B¹⁷ of the Code provides for addition fine to be paid along with compensation to victims under section 326A¹⁸ and 376D¹⁹ of IPC. Apart from this, while Section 357C of CrPC provides treatment for victims in any private or public hospitals free of cost, Section 358 of the Code on the other hand provides for compensation to be paid to the victim in case of any groundless arrest made by the police officer on account of any person.²⁰

¹¹ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 357A

¹² Sumanta Meher and Gaurav Shuka, "The Restorative Justice to the Victims of Terrorist attack in India", 59 *JSTOR* 394-396, (2017)

¹³ Ibid.

¹⁴ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s 265B

¹⁵ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s 265E

¹⁶ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s357

¹⁸ The Indian Penal Code, 1860 (Act no. 45 of 1860), s 326A deals with voluntarily causing grievous hurt by use of Acid, etc.

¹⁹ The Indian Penal Code, 1860 (Act no. 45 of 1860), s376D deals with Gang Rape

²⁰ The Code of Criminal Procedure, 1973, (Act 2 of 1974), ss 357C and 358

Apart from the Code of Criminal Procedure, some of the acts that provides provisions for victim compensation include the Probation of Offenders At 1958, the Motor Vehicle Act of 1988, the Consumer Protection Act of 1986, the Protection of Women from Domestic Violence Act 2005, the Sexual Harassment (Preventions, Protection and Redressal) Act 2013 and also the Fatal Accidents Act 1855. All of these Acts provides certain relief in some manner towards the victims of various offences.

Although the State has made all these provision for the benefit of the victims however most of these provisions are not applicable when it comes to victims of religious crime. The victims of religious crime are not only regarded as vulnerable but also an easy target, further the provisions given above are only useful when the person affected is only one or two but in a religious crime the people who are affected is usually a community or a group as a whole hence the above provision may not provide much relief towards their apathy and grief. While Section 357A may to some extent provides some relief but that also is limited, thus it is every much necessary that the Government understands that clubbing victims of religious crime with victims of other crime will not solve the problem in empowering victims.

Apart from the above, The Government of India has also introduced a Central Victim Compensation Scheme wherein a certain set of guidelines have been laid down to support the victim compensation scheme. Under the said scheme victims mostly of crime against Sexual offences such as rape, acid attacks, human trafficking, physical abuse of minor etc are provided compensation depending upon the nature of crime.²¹ The Scheme however remains silent when it comes to providing restitutive rights to victims of religious crime. Although there are instances wherein the State and the Central Government have provided compensation to victims of communal violence however it is subject to the State's failure in maintaining law and order. Hence it is only when the State is unable to perform its duty in maintaining peace and harmony that the Centre is subjected to provide restitutive benefits to victims of communal riots. There have been end number of instances when the State Government have also step up to provide compensatory benefits to victims of communal violence such as the Northeast Delhi Riots incidents (2020), Godhra Riots (2002), the Kandhamal Riots (2008), the Muzaffarnagar riots (2013) and so on. Further, in many of these incidents, it was the Supreme Court that came to the rescue of such victims in providing them relief and justice. The Supreme Court ensured that the victims are not only provided proper

²¹ Central Victim Compensation Scheme Guidelines, *available at* <https://www.uphome.gov.in/images/pdf/CVCF.PDF>, (Last accessed on February 19, 2023)

relief, care and assistance but also compensation for the loss and damages they have suffered due to the riots. The compensation shall not only cover the personal and property loss but also in case of death during the riots.²² Although the State Government as well as the Central government has provided compensatory measures to victims however most of the time the compensation is never enough to cope up with the need and requirements of the victims. Further, how can we be assure that each and every household has received the compensation amount; there may be some household that might have never received them. Thus what the victims require right now is not just restitutive rights but also a victim support scheme or service which will not only aid the victim in providing legal assistance but also enable him/her to participate in the procedure of the crime. This has been retreated in *Delhi Domestic Working Women Forum v. Union of India*,²³ wherein the Supreme Court stressed on the need of providing legal assistance specially to victims of rape crime right from the police station level. This may also be read in consonance with other cases especially with regard to victims of religious crime as they are the ones who need victim support services the most. Thus it is very much necessary to provide assistance to victims of religious crime as most of them are unable to defend themselves.

In order to cope up with the loss of life and property for victims of communal riots, a Communal Violence (Prevention and Rehabilitation of Victims) Bill was tabled in the Lok Sabha and Rajya Sabha in 2005, 2011 and 2013 however it never saw the light of the day. The Bill was mostly criticised on the ground that since provisions are already in existence to cater the needs and requirements of victims of crime thus it would not be beneficial to create a separate bill for victims of communal violence since the same can be incorporated with the latter with effective implementation by the executive.²⁴ However such implementation has never come into effect till date. Further clubbing victims of religious crime with the victims of other crime will not help at all in providing them justice. We need to understand that victim of religious crime are very much different from victim of other crime as the nature and gravity of the offence is different. In a serious offence only one or two person is affected but in a religious crime it is a group of people or sometimes even the whole community which is affected by it, hence bringing victims of religious crime under the garb of laws made for victims of heinous offences may not be sufficient enough to address each and every issue.

²² On Victim Compensation and Religious Freedom, Defending Forb, *available at: <https://defendingforb.org/en/india/on-victim-compensation-and-religious-freedom/>*, (Last accessed on February 19, 2023)

²³ (1995) 1 SCC 14

²⁴ *ibid*

In India, the plight of victims is quite pitiable, even after being victimised they are most of the time being left on their own to fend for themselves. Most of the time it is only the high profile cases that gets access to higher courts, for some their journey to achieve justice ends only in the Districts Courts. Most of the time victims are also not interested in pursuing the matter due to the long course of hearing and exchange of dates that take place among the Court and lawyers. The victim comes to court with the hope of getting justice but is most of the time left shattered due to the time it takes up to address his issue. Further the victims of religious crime are often over looked especially by the State, although they are provided financial relief by various order of the court however most of the time this relief is also limited as it does not reach every person. The State also refuses to enact special laws to look into the plight of the victims of religious crime or for that matter of fact Communal violence due to the fact that existing provisions are already in place but the reality is even those provision are not enough to address the need of these people. Thus there is a need and requirement to enact laws or principles or guidelines to address the need of victims specifically of religious crime. However to do this the Government first need to understand the concept of religious crime and come up with a proper definition and provisions to deal with such crimes.

Thus it is very much necessary to bring in a separate law which will not only address the issue of religious crime but also the need and requirements of the victims especially that of the family members in case of loss of life or property. Most of the time, crime with regard to communal violence or religious crime has always been read with Section 294-298 under Indian Penal Code 1860 without truly understanding the true nature or gravity of the crime. Hence it is very much important that separate laws be framed with regard to these crimes so that it is not only the victims who will be benefited but also send a message to the offenders.

CONCLUSION

In India victim's rights have only been limited to compensatory and rehabilitative rights. Although these rights may be sufficient enough to help the victims of religious crime however what the victims really require right now is a stringent law that will not only enable them to provide justice but also punish the wrongdoer. Further, in comparison to rights provided to victims of other crime, victim of religious crime have most of the time been overlooked. Also many at times victims of religious crime are never provided with proper assistance by the police officers with regard to addressing their cases. In most of the occasion, the victims after registering their FIR are neither being updated with the status of the case nor are they being kept in the loop with regard to the daily progress of the investigation. Although the Malimath Committee report has suggested the Government to involve the victims in the investigation process but this has never been carried out. Thus at the end of the day the only role that victim play in attaining justice is when they are being summoned as witness or for a compromise. Thus the scope of victim's rights in India is very limited as compared to the rights provided under the UN Declaration for victims of various crimes. Thus in conclusion one may say that there is not just a need to expand the victim's rights in India but to also ensure that they are being treated with dignity and self-respect. Further the State should not only come up with laws that will enable the victims to have access to justice and fair treatment but to also ensure that in case of loss of life or property the victims family is provided with adequate means and measures to avail their rights in attaining justice for their loved ones. Thus, there is a need and requirement to enact laws and guidelines which will address the victims of religious crime. However in order to do so, the Government first need to understand the concept of religious crime and come up with a proper definition and provisions to deal with such crimes. Thus, without understanding the concept of religious crime, its impact and its effect upon the society and the individual as a whole the Government cannot come up with solutions to deals with victims' rights especially victims of a religious crime. Thus, the need of the hour right now is not just proper redressal of victims of religious crime but also providing a proper definition as to what exactly constitute a religious crime. It is only then that the Government can properly assess the situation and formulate laws for the protection and benefit of victims affected by religious crime in India.