

POSITION OF A VICTIM IN FRENCH CRIMINAL JUSTICE SYSTEM

S. Vijayan¹

ABSTRACT: Criminal Justice System is the pillar on which the society stands. If the criminal justice fails the society fails. If the people in a country loss faith in the law and more specifically the criminal law and Criminal Justice System then it will lead to anarchy and general lawlessness. To ensure that the people trust in the Criminal Justice system it is necessary that the guilty are punished and the victims are compensated. The entire focus of the criminal justice system is focused on the offender and the victim is pushed to the margins. The victim plays a minimal role in the Criminal Justice System and he gets pretty much nothing out of the criminal trial. The criminal justices system in France is quite opposite to what is there in India in almost all respects and it very evident when it position of victims in the criminal justice System. This paper aim at examining the position of a victim of crime in France.

Key words: Criminal Justice System – France – Partie Civile.

Crime as a social phenomenon is omnipresent throughout the world and no society is free from it. Invariably in all the major legal system the entire focus of criminal law is on the accused person. The Primary object of Criminal Justice System is to protect the society against offenders. For this purpose the law holds out threats of punishments to prospective law breakers as well as makes the actual offenders suffer the prescribed punishment for the crimes committed by them. This primary object cannot be achieved without the participation and the cooperation of the victim in the Criminal Justice Process.

But the Criminal Justice process offers nothing in return to the victim who suffers hardship both at the hands of the perpetrator and also in during the investigation and the trial procedure. An analysis is made here as to the legal frame work of the criminal justice system with a view to ascertain the participation of the victims of crime in the criminal justice process and how far the law provides for the rights of the victims to be upheld and their grievances duly redressed.

¹ S. Vijayan, Assistant Professor of Law, Dr. Ambedkar Government Law College, Puducherry.

VICTIM

In the Indian Criminal Justice System the victim has very little role to play in the criminal justice process except to be called as a witness. Though crime is considered to be a violation of the rights of the society, it is the victim who suffers the actual harm. The term 'victim' of crime remained undefined for quite a long time.

The most comprehensive definition for the term 'victim' could be found in the United Nations General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of Power, 1985. Articles 1 of the said declaration which are reproduced hereunder define the term victim as

"Article 1:- 'Victim' means persons who, individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal law operative with member states, including those laws proscribing criminal abuse of power."

Article 2 further widens the scope of the term: - *"A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim also includes, where appropriate, the immediate family or dependants of the direct victim and the person who suffered harm in intervening to assist victims in distress or to prevent victimization"*

However a much narrower and restrictive definition to the term 'victim²', added to the Criminal Procedure Code, 1973 by way inserting section 2(wa), which reads as under

'victim' means 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' includes his or her guardian or legal heir"

² Inserted by the Code Criminal Procedural (Amendment) Act, 2008

INDIAN POSITION

In India, we follow the common law system of Criminal Justice, which generally keeps the victim away from the criminal justice process except other than calling him as witness contrary to the continental civil law system in which the victim has defined role in the criminal trial process. Under Code of Criminal Procedure, 1973, the victims of crime may participate in criminal trial process conducted by the state in the following ways.

- (i) Right to give information to the Police, regarding commission of a cognizable offence³.
- (ii) To be examined by the Police during investigation⁴.
- (iii) To appear as a witness.
- (iv) Right to engage counsel with limited powers in trial process⁵.
- (v) Right to compound cases. In some cases with the consent of the court and in some other cases even without the consent of the court⁶.
- (vi) Right to participate in the meeting meant for working out a satisfactory disposition of the case, where the accused has voluntarily made an application for plea bargaining.⁷
- (vii) Right to appeal⁸.
- (viii) Limited right to compensation⁹

The victim is not a party in the criminal case. He cannot get his grievances redressed in the criminal case. If he wants his injuries or damage redressed he has to file a separate civil suit for damages. Though the victim has a limited right to compensation, the right to claim compensation is not an absolute one it is left to the discretion of the court of law.

IN FRANCE

³ Code of Criminal Procedure, 1973, Sec.154.

⁴ *ibid* Sec.161

⁵ *ibid* Sec. 301 and also Sec.225 which mandates every trial before a court of sessions to be conducted by the public prosecutor.

⁶ *Ibid* Sec.320.

⁷ *Ibid* Sec. 265 C

⁸ *Ibid* Proviso to Sec.372 inserted vide Code Criminal Procedural (Amendment) Act, 2008

⁹ *Ibid* Sec. 357A (4) of Cr.P.C- when accused is not traced or identified and this Right is not before the court.

In France, as in other countries the criminal justice system is state monopolized. If a crime is committed it may give rise to different proceedings one initiated by the state aimed at punishing the offender and one a civil action brought by the victim of crime for claiming compensation for the harm suffered at the hands of the offender. The State action is called the “*action publique*¹⁰”, that is public action and the action brought by the victim is called as the ‘*action civile*¹¹’, that is civil action. The peculiar situation is that both these action can be simultaneously in the criminal court itself. It is also possible for the victim to file a civil case to claim damages.

The right to claim damages for the injuries suffered by a person due to either an intentional act or a negligent act emanates from Article 1382¹² of the French Civil Code. A Judgment delivered by the court will achieve two objectives one it provides the offender with the appropriate punishment and it will also provide due reparation to the victim for the loss suffered him at the hands of the offender.

RATIONALE

Criminal court which conducts the trial has complete knowledge of the facts and circumstance of the case, including the injury suffered by the state. The court is also aware of the contribution of the victim the offence and conditions which will make him disentitled from receiving the compensation. Then asking the victim to approach the civil court file a separate case and prove the exact same thing sheer waste time of the court and will lead to secondary victimisation of the victim at the hand the criminal justice system. It is also possible that the victim could fail to apply for compensation before the civil court either due to ignorance, hesitation or means. So a court which is familiar with the whole case should decide on the question of compensation also.

POSITION OF THE VICTIM

¹⁰ Article 1 of French Code of Criminal Procedure

¹¹ Article 2 of French Code of Criminal Procedure.

¹² French Code Civil Art. 1382 – “An act whatever of man which causes damage to another, obliges the one by whose fault it occurred, to compensate.”

The injured party has the right to engage an advocate and approach the criminal court as a *Partie Civile*, (Civil Party in a criminal proceeding). An advocate for the victim has a many rights in the criminal trial. He has the right to address the court, cross examine the witness. He has the right to address the court in between the prosecution and the defense. But the victim usually speaks after the defense had made his arguments

The role of the advocate for the victim is to impress upon the judge on the question of compensation, he also has the right to address the jury on the question of punishment. The jury does not have any say in the question of compensation but still the victim's advocate will be entitled address the jury on the question of conviction also.

REQUIREMENTS TO BE FULFILLED.

To file a petition as a *Partie Civile* before the Criminal Court, it necessary that the victim should fulfill certain requirements such as

- i. **Competency:** A person can bring the civil action in criminal trial only when the criminal action is possible. If the criminal action could not be commenced due the death of the accused than civil action before the criminal court is also not possible.
- ii. **Nexus:** it is necessary to show the nexus between the offence committed and the injury suffered. It is also necessary in some subordinate criminal courts as the Police courts or correctional courts, compensation can be awarded only when the accused is found guilty.

VICTIM COMPENSATION SCHEMES

If the offender cannot be traced or the offender does not have sufficient means to provide compensation to the than the victim also has other options to get compensation for his loss and injury. The government had formulated certain fund to provide compensation to the victims. Such as

1. Le Fonds de Garantie des Assurances Obligatoires de Dommages (FGAO) (The Mandatory Third Liability Insurance Guarantee Fund)¹³ – This fund is the oldest in France which provides compensation for hit and run accidents cases or where an uninsured vehicle has caused the accident.
2. Le Fonds de Garantie de Victimes des actes de Terrorisme et d'autres Infractions¹⁴ (FGTI) (The Guarantee Fund for Victims of Terrorist Acts and Other Offences) – this fund is established to provide compensation to the victims of major crimes as well as terrorist acts.
3. Le Service d'Aide au Recouvrement des Victimes D'infractions (SARVI) (The Crime Victim's Compensation Recovery Assistance Service.¹⁵) – this fund is focused on providing compensation for minor offences causing minimal damages.
4. La Commission D'indemnisation des Victimes D'infractions (CIVI) Crime Victim Compensation Board – this board is associated with the criminal court. The victim will apply this board for claiming compensation under the FGTI
5. Fonds d'Indemnisation des Victimes de l'Aminate (FIVA) - this is specific fund for compensating victims relating to asbestos poisoning.
6. Office National D'Indemnisation des Accidents Medicaux (ONIAM)¹⁶ it is yet another specialized agency created to compensate cases of medical negligence.

The injured party has the option either to file a case against the offender in a civil court or he may file the claim in the same court in which the criminal case is pending for the same facts. If a victim, decides to institute a civil action in a criminal case, he files a '*constitution de partie civile*', that is a formal declaration that he exercises his civil right against the offender and demands reparation. This may even be done regardless of whether the prosecutor institutes a public action. On the completion of the trial, if the court finds the accused guilty it will also decide on the question of damages to be paid to the victim. On the contrary it is also possible that the court may also award damages to the defendant, if there is

¹³ <https://www.fondsdegarantie.fr/en/fgao-2/the-history-of-fgao/> accessed on 21/01/2017

¹⁴ <https://www.fondsdegarantie.fr/en/fgti-2/the-history/> accessed on 21/01/2017

¹⁵ https://www.fondsdegarantie.fr/wp-content/uploads/2020/08/EN-Livret-indemnisation-SARVI_AOUT2020_EP.pdf#3 accessed. On 20/01/2017

¹⁶ <https://www.oniam.fr/procedure-indemnisation>, accessed on 20/01/2017

reckless or malicious prosecution by the civil party. The public action will end if the offender dies however the civil action will continue as like any other civil case.

This integration is possible due to the fact that the French judges act in both the capacities that are Civil and Criminal. In French law Civil and Criminal Justice are meted out by the same hands. The judges act at different time in both in civil and criminal matters. There is even a practice of dividing of the crowd in the court into civil and criminal divisions or chamber. The judges are made to serve one in criminal section and one year in civil section.

COMPARISON

Civil party in a criminal proceeding is peculiar concept which is unknown in the common law system, where the civil action and the criminal action are kept apart. There is a well-developed system of law of torts in the common law countries like United States of America and England. Tortious claims form a major part of the litigation in those countries. Major part of the advocate's earning comes from contesting tortious claims.

In India though we follow the common law system, tortious cases are rarely filed for any criminal injury, except for motor accidents cases¹⁷. Civil cases are expensive, time consuming and procedurally complicated. It deters the common man from approaching the civil courts for claiming compensation. So practically speaking, there is no way for the victim to claim compensation for his injuries either in the criminal court or in the civil court. This makes the victim to lose hope in whole justice delivery system.

General human nature coupled with the time it takes for a criminal case to reach the trial stage the victim in many cases enter into an unholy agreement with the accused to settle the case if the offence is compoundable the case is settled then and there. Even when the offence is non-compoundable the witness is made to turn hostile when he gives evidence during the trial. This will lead to an overall breakdown of the criminal justice system. Where the offenders will lose the fear and the victim will lose confidence in the criminal justice process.

¹⁷ Because of the creation of Motor accidents Claims Tribunals with simplified procedures.

CONCLUSION

The concept of 'partie civile' can very well be integrated in the Indian Criminal Justice System. In India also many a times the same judge acts in both the capacities. They dispense both Civil and Criminal Justice. Let alone the constitutional courts, even in the district level the judges act in both the capacity. He will be called as 'District Judge' if he has to deal Civil Cases and he will be called as a 'Sessions Judge' if he deals with criminal cases, that to, it will happen in the very same court hall. It is only a procedural formality for filing a separate civil case. In most cases, it may even come before the same judge in the civil capacity.

It is inhuman to make a person to shell out money to pay court fee, engage a counsel to claim damages for a criminal injury which he suffered at the hands of perpetrator. Crime is actually seen as a failure of the state in fulfilling its obligation to protect its citizens. It is also the duty of the state to provide a hassle free mechanism to get the injuries redressed.

SUGGESTION:

It is imperative that the Criminal Procedure Code be amended to give a greater role to the victims of crime in the criminal justice process. Even if it is not possible in the prosecuting arena, it can be surely be included in the area of criminal injuries compensation. Owing to the similarities in the powers of the court both in India and France, which is the same court exercises both in civil and criminal jurisdiction the concept of "Partie civile", that is a civil party in a criminal proceeding can very well be introduced in India.