

## **A CRITICAL REVIEW OF THE ROLE OF GOVERNMENT AND CULTURE IN CIVIL AND CRIMINAL LAW FOR VICTIMIZED INDIVIDUALS BY OFFENDERS**

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**Abstract-**In India, the Legislature and the Judiciary have taken gradual steps to develop the necessary principles by which compensation could be paid to the victims of crimes. The Legislature has done it by enacting the different kinds of laws, namely, the General Laws and Special Laws. The Judiciary through the cases which have been decided by it propounded a set of principles to provide the remedy of compensation where the law is not adequate to provide a solution to the victim of crime. The attention is focused on the general laws which deal with the compensation to victims of crime. The general rule relating to the provision of benefits to victims of crime is found primarily in the 1973 Code of Criminal Procedure and, thus, in the Constitution. Sub-part two of this section deals with special legislation, i.e. Probation of Offenders Act, 1958, Motor Vehicle Act, 1988, Scheduled Castes and Scheduled Tribes (Atrocities Prevention) Act, 1989, Human Rights Protection Act, 1993, Workmen Compensation Act, 1923, Personal Injuries (Emergency Provisions) Act, 1962, Personal Injuries (Compensation Insurance) Act, 1963. There are several other special laws, i.e. the Environment Protection Act, 1986, the Dowry Prohibition Act, 1961, the Food Adulteration Prevention Act, 1954, the Civil Rights Protection Act, 1955, under which there is no provision for victims to obtain compensation. This article explain the role of government law and civil law.

Keywords: Legislature, Judiciary, General Laws, Environment Protection Act, government law

## **1. Introduction**

There are two bodies of legislation designed to prevent or punish serious misconduct or to compensate the victims of such misconduct. Criminal law deals with conduct that is or can be perceived as an offense against the public, culture, or the state-even if a person is the immediate victim. Murder, abuse, robbery, and drunken driving are examples. Civil law deals with conduct that, like a business, constitutes an injury to a person or other private party. Defamation (counting criticism and slander), breach of agreement, carelessness that causes injury or death, and harm to property are models. Criminal law and civil law contrast with how cases are launched (who can bring charges or record lawsuits), how cases are selected (by a judge or jury), what kinds of penalty or punishment may be required, what gauges of proof must be met, and what legal rights the litigant may have access to. For example, only the bureaucratic or state government (the prosecutor) may initiate a case in criminal cases; cases are most often chosen by a jury; penalty for severe (lawful offense) charges consist regularly of imprisonment but may also include a fine paid to the government; to verify conviction, the prosecution must blame the respondent's' past fair confusion'

On the other hand, in civil cases, cases are brought (suits are recorded) by a private meeting (the offended party); cases are typically chosen by a judge (although notable cases can require juries); punishment always requires a fiscal honor and never involves detention; to prevail, the offended party must build up the responsibility of the respondent just as shown by the 'prevalence of p p'

Significantly, since both an open crime and a private injury can be established by a solitary wrongful act, it may give rise to both criminal and civil charges. A paradigm commonly referred to is that of the retired American football player, O.J. Simpson: he was convicted of murdering his best half and her companion in 1995, but after two years he was found at fault for their murders in a civil case for wrongful death.

## **2. Role Of Indian Judiciary In Protecting Victims' Rights**

Tears shed for the accused are normal, and 'trendy' but the law has none for the victim of crime, the unknown martyrs'? This statement by the Hon'ble Justice VK Krishna Iyer accurately portrays the condition of victims in our nation's criminal justice system.

Primary victimization would be victimization triggered by the accused party's immediate commission of a crime to the victim, while secondary victimization (otherwise referred to as post-crime victimization or double victimization) arises in the view of state organizations/institutions/instrumentalities because of its inconvenient nature.

When the victim is victimized again, re-victimization happens. Self-victimization uses a number of motives to legitimize misuse. The main goal of a criminal justice system is, without a doubt, the preservation of human life, liberty, and property. In order to rebuff and change individual life, rights, and property, the cutting-edge criminal law should speak to society's desire and expectations.

In the reformatory theory of punishment, which means achieving cultural parity by restoring the criminals, the legislation of our criminal system follows its fundamental foundations. For example, the Indian Criminal Law, which is primarily specified in the Indian Penal Code ('IPC') and the Criminal Procedure Code ('CRPC'), has countless steps to guarantee that freedom of inference is not binding

However, the courts have usually acknowledged that a definitive wrong has been done to the victim and his wellbeing is of equal significance to that of the perpetrator. Mindset has begun to change. Many nations around the world have felt the need to offer recovery and legal aid to help them to recover from the impacts of crime. Jus's Declaration of Fundamental Principles.

As for the horrible condition of the nation's criminal justice system, the government selected the Malimath Committee to suggest improvements to the criminal justice system. The report of the Malimath advisory group emphasizes as one of its key destinations' justice for victims.' It means giving importance to victims of crime by allowing them in criminal procedures and compensating them as a perfect issue.

### **3. A SYSTEMATIC PORTRAYAL OF VICTIM PROTECTION UNDER GERMAN CRIMINAL PROCEDURE LAW**

It is generally accepted that in German criminal trials, the victim of a crime does not have an independent role. In fact, in the victimology literature there is talk of the "elimination" from the criminal justice process of the victim of serious crime and the substitution of the desires and needs of the victim with the criminal prosecution apparatus. Instead of the emotionally-laden word "victim," dogmatism in criminal law uses "injured party" or "aggrieved party." In a criminal case, the victim takes on meaning solely as the initiator of the criminal proceeding or as evidence material.

In various victimological research, the explanation for the "neglect" of victims "as such" is usually found in the relation of criminal procedure law with material criminal law directed at the defendant and the crime, which puts the offender and the establishment of his individual guilt at the core of the investigation phase of the law enforcement authorities. This principle refers to the monopoly of the state over criminal prosecutions.

In this regard, Paragraph 152(1) of the German Code of Criminal Procedure (Strafprozessordnung; hereinafter referred to as 'StPO') specifies that the Public Prosecutor's Office shall be appointed solely to file public criminal charges. The victim does not, in principle, have any claim to be compensated by the perpetrator. On the one hand, the importance of the State's monopoly over criminal prosecutions lies in the need to prevent self-administered justice and, on the other hand, in ensuring that trials take into account, in a fair manner, both the public's interest in criminal prosecution and the individual interests deserving of protection for the persons affected by the criminal prosecution measures.

In comparison to the fact that the injured person as a significant figure to be regarded in a criminal case is not a recent discovery, these "less creditable" outcomes from the point of view of victim safety remain. The Criminal Procedure Code gives victims their own chapter in §§ 374 through 406h: 'Participation of the Aggrieved Person in the Proceedings.' From a historical point of view, the victim's involvement in criminal proceedings is an anomaly rather than a law. In Germanic law, therefore, criminal justice was practically in private hands. The Germanic feuding right allowed any free man, with the aid of his relatives, to

"revenge injury to his person, honor, or property when he did not want to take the compensation ordered by law."

The first proof of state involvement in disputes between private individuals in the early Middle Ages is available. In Article 74 of the Edictus Rothari of 6437, which is part of Langobardic rule, famous for its progressiveness, it is therefore written that an aggrieved party who took advantage of compensation (Wehrgeld), or whose family did so, must refrain from the right to feud in response. This was to expressly repress the right to feud, and it became increasingly restricted during the subsequent period.

#### **4. The Difference Between Civil And Criminal Law**

Legislation can be categorized in a range of ways. Law is divided into civil and criminal by one of the most common classifications. "The "body of law having to do with the private rights of persons" is a simple concept of civil law. Civil law is between people, not the government, as this definition suggests.

Criminal law contains legislation passed and implemented by government intervention, while civil law provides a redress for citizens who need to enforce private rights against other people. Family legislation, wills and trusts, and contract law are some examples of civil law. This is called civil action, or a civil lawsuit, if people need to settle a civil dispute. The damage action is referred to as a tort if the form of civil litigation includes an injury.

#### **Characteristics of Civil Litigation**

It is important to distinguish between civil litigation and criminal prosecution. Civil and criminal cases share the same courts, but they have very different goals, purposes, and results. Sometimes, one set of facts gives way to a civil lawsuit *and* a criminal prosecution. This does not violate double jeopardy and is actually quite common.

#### **Parties in Civil Litigation**

An injured party sues in civil litigation to obtain a court-ordered relief, such as income, property, or some kind of results. Anyone who is injured may civilly sue an individual, company, or other business organization. The injured party who is appealing is considered

the complainant in a civil action matter. A plaintiff must employ an attorney or represent himself or herself and pay for it. Hiring an attorney is one of the many legal expenses and should be weighed carefully before jumping into a case.

The defendant is called the accused wrongdoer and the individual or individuals who are being sued. Although the word plaintiff is always synonymous with civil action, in both civil litigation and a criminal case, the wrongdoer is considered a defendant, so this can be confusing. Any person or item that has caused harm, including an individual, company, or other business entity, may be the defendant. Even if the defendant did nothing wrong, a defendant in a civil action matter must recruit and pay for an attorney. In civil cases, the right to a free counsel does not apply, so a defendant who can not afford an attorney must represent himself or herself.

### **Goal of Civil Litigation**

The purpose of civil litigation is to compensate the plaintiff for any injuries and to bring the plaintiff back in the position occupied by the individual before the accident took place. Interesting results are generated by this objective. Occasionally, where there is no fault on the defendant's behalf, it creates responsibility or a duty to compensate. The purpose is not to punish, but to make the complainant whole, so blame is not really an issue. Often the statute allows the defendant to pay if the defendant has the means to pay, so that society does not bear the burden of the damage of the plaintiff.

A defendant in two cases can be liable without blame. Next, the statute broken by the defendant does not require blame. This is usually referred to as strict liability. Since they do not have a motive component, strict liability torts do not warrant blame. Another scenario where the defendant may be responsible without liability is where the defendant has not necessarily committed any act, but in a special arrangement is connected with the acting defendant. Vicarious liability is called the strategy of making a separate agency or person responsible for the defendant's conduct. Employer-employee liability, also referred to as reacting superior, is an example of vicarious liability. If an employee injures a claimant while on the job, the employer may be responsible for the injury of the plaintiff, whether the

employer is at fault or not. Clearly, the employer normally has the greater opportunity to pay between the employer and the employee.

## **5. Conclusion**

A few of the basic schools of legal thought, such as natural law, positive law, legal realism, and critical legal studies, have been familiarized with this segment. It has also provided you with a brief history of common law, including contracts, wrongs, and criminal law. There has also been a study of the distinctions between civil and criminal litigation, content and procedure, and the different sources of law. Every source has a different level of authority, beginning with primary constitutions that would override any lower-court legislation that does not comply with its standards and provisions. There is also a discussion of the substantive differences between common law and civil law (continental or European) law systems.

In the final analysis, a public prosecutor is a judicial officer and is expected to provide the court with assistance in making a fair and equal decision. To the opposite party, he is also expected to be reasonable. Not so much the letter of law, but the spirit of law founded on prudence, common sense and justice, should be his guiding principle.

A society regulated by the Letter of Law does not make full use of its human resources. By quoting Russian Nobel laureate Solzhenitsyn, I conclude that a culture based on the letter of law, which never reaches a higher level, takes very little advantage of the high level of human possibilities. To have some positive effect on society, the letter of the law is too cold. There is an atmosphere of spiritual mediocrity, paralysing the noblest instincts of man whenever the question of life is woven into legalistic relationships. Providing assistance to victims of crime is of particular importance because, as a result of a crime, victims have suffered irreparable loss and harm. The victims' issues and the crime's effects are long-lasting. The institutions of the criminal justice system should also be open to the needs of victims of crime and resolve their concerns in a genuine and empathic manner.

Various attempts are being made by the judiciary to reform the criminal justice system in India, but there is a lot to be done to create a favorable climate for victims. Victim protection

will be assured by steps like the introduction of a dedicated victim welfare law to sensitize the state agencies to a victim's needs.

In many fronts, the fight by victims to obtain formal protections within the criminal justice system continues. And, as the above review shows, the barriers that victims face come from several quarters. Resistance within the criminal justice system from the ostensible supporters of the victims appears to be low profile, and takes the form of foot-dragging, co-optation, and objections on tactical grounds. Via their studies and analyses, criminologists and victimologists have found that the newly obtained rights have little effect, and that business continues as normal.

Two responses are probable to both of these victims' pains. The first response, both menacing and extremely undesirable, may be the abandonment of the system's fight for formal rights and a shift towards a subtle embrace of street justice that is illegal and vigilante.

The second, even more promising, alternative may be for an increasing number of victims to redirect their attention and resources to explore the potential of the emerging informal justice sector. This alternative to traditional adjudication, conducted at the neighborhood level, focuses on the principles of dispute resolution, using mediation methods to accomplish the objectives of victim compensation, criminal recovery, mutual healing, and community peace.

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