

Protecting victims of Human Rights

This is an intensive era of Human Rights. Human Rights are in global gaze and are in active attention of the international institutions on Human Rights including the United Nations. There has been thrust and emphasis for better protection of Human Rights, their promotion and prevention of violation of Human Rights. But till recently sufficient attention was not given or little attention was given to the status and rights of victims of Human Rights violation.

The concept of victim dates back to ancient cultures and civilization. Broadly, today the concept of victim includes any person who experiences some kind of injury, loss or hardship due to any cause. The word 'victim' is generally used without attaching to any specific situation like cancer victims, holocaust victims, accident victims, etc. Here our focus is on the 'role of human right organizations/institutions in protection of victims of Human Rights violations' in relation to crime.

The term "crime victim" generally refers to any person or entity who has suffered injury or loss due to illegal activity. Such loss or harm can be physical, psychological or economical. Because of the fear, some times crime-related victims are reluctant to report crimes to police or they are terrified to testify in support of their complaint even if made. This position creates difficulty for the criminal justice system to accomplish its purpose. There is need for effective partnership and co-operation among criminal justice system, victim assistance

Justice (Dr.) Shivaraj V. Patil*

personnel and trained mental health professionals who can help victims with crime-related stress. Such collective and cooperative effort, in my view, helps criminal justice system to become more effective and meaningful in curbing and minimizing crimes. The effective participation of victims at all stages of investigation, prosecution and trial will be of great assistance to the administration of justice in criminal justice system. It is needless to state that appropriate necessary protection has to be provided to the victims and witnesses so that they can be fearless. Victims, as a matter of right, should be entitled to what is stated above in relation to their participation and protection. Help, support and other remedial measures to the victims may be, broadly speaking, of two kinds – one is compensatory and the other is rehabilitation to restore the dignity of the victim in the society. This view is supported by the United Nations Declaration of "Basic Principles of Justice for Victims of Crime and Abuse of Power."

On 29th November 1985, the United Nations General Assembly in its Plenary Session adopted a Declaration of "Basic Principles of Justice for Victims of Crime and Abuse of Power". This Declaration is of global importance and of great contribution for the rights of victims. This declaration contains some suggestions relating to the problems of

* The author is Retired Judge of the Supreme Court of India and former member of the Human Rights Commission of India.
E-mail: patilsvp@gmail.com

victims of crime including victims of abuse or power which are:

- a) Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to promote redress, as provided for by national legislation, for the harm that they have suffered.
- b) Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
- c) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information.
- d) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings without prejudice to the accused and consistent with the relevant national criminal justice system.
- e) Providing proper assistance to victims throughout the legal process.
- f) Taking measures to minimize inconvenience to victims, protect their privacy where necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting award to victims.

By lodging a complaint, the victim sets the criminal justice mechanism into motion by giving information about the crime. In our

country, the complaint is known as “First Information Report (FIR)”. The victim is entitled to a copy of the FIR free of cost. Although there are various safeguards to ensure the victim that he has easy access to justice, in practice does not have easy time or easy access to justice. It is here there is need for greater sensitivity on the part of all concerned, i.e. the police officers, NGOs, judiciary, media and the concerned Govt. After lodging the complaint as the things stand, the victim does not form part of the investigation or trial procedure. The victim in India is merely relegated to the position of a witness who is called to identify the accused or material objects recovered at investigation level and testify at the trial and the victim is subjected to cross-examination by the defence. Repeated cross-examinations, some times can be very traumatic for victims of grave crimes as they have to relive the horrors of the crime again and again. Defence uses this provision of law to put psychological pressure on the victim. No doubt, cross examination is indispensable but care must be taken to see that it is not made a source of further agony for the victim.

Over the years, the criminal justice system has given an impression that it is the “protector of the right of the accused” rather than ensuring justice to the victim. There is a need to strike a balance between the interest and the rights of the victim and the accused. Efforts are being made in this regard by placing amendment to the Criminal Procedure Code in the light of various reports submitted to improve the criminal justice system.

In India, there is no statutory recognition of the right of the victim to restitution. However, the judiciary has set up a trend to take notice of the victim’s right to restitution. The argument in favour of right of a victim to restitution is based on the principle that the State should be liable to pay compensation on the failure of its agencies to anticipate and prevent the losses or damages. It may be added that the State is liable only where there is definite failure on its part resulting in a loss.

The criminal justice system at all stages of investigation, prosecution and trial, has to make provision for assistance of professionals to provide victims assistance, services and accommodation to ease their difficulties, when they had already trying and traumatic time. Even at the stage of filing the FIR, the enforcing agencies do not show the sensitivity expected of them. Victim sensitivity training should be provided to all criminal juvenile justice professionals. Absence of trained enforcement personnel coming into contact with emotionally distraught victims may result in decrease of the victims' confidence and willingness to participate in the criminal justice system. In our criminal justice system, the victim is a witness in the prosecution of a case. There is a need for protection of the victim and witnesses against the intimidation to ensure fair play and justice. In South Africa, the Witnesses Protection Act, 1998 provides for establishment of a Central office for witnesses' protection. This office will be responsible for the protection of witnesses in terms of the Act and will perform duties relating to protection of witnesses.

Compensation to victims should be a State obligation in all serious crimes irrespective of whether the offender is apprehended or not; may be a separate legislation is needed in this regard. In the case of Nilabati Behera vs. State of Orissa (1993(2) SCC 746), the right of a victim of custodial crime to receive compensation was upheld by the Supreme Court. For the purpose of providing compensation to the victims, there is a need for establishment of a separate fund especially called victim compensation fund. The law may provide for the scale of compensation having regard to different kinds of offences for the guidance of the court along with the conditions under which compensation may be withdrawn and in respect of offences for which compensation may not be granted.

Policies and measures for the victim of the Human Rights violations were developed in

three stages in the western countries. A system of monetary support for the victim was established in 1960s. New Zealand was the first country to make a law to give monetary support to the victim followed by other western countries. In 1970s strengthening of immediate and direct support for the victim was developed. From this onwards direct support to the victim was started to be given by non-profit organizations such as Victim Support in the UK, the National Organisation for victim assistance in the USA and by the governmental sectors. Research made indicated that the improvement of the legal status of the victim and the establishment of the rights of the victim were essential for effective management of the criminal justice system. Having regard to this principle, status were enacted for the improvement of the legal status of the victim and their rights. The Western and some Asian countries through various kinds of laws and statues such as the right to receive fair treatment, respect of dignity of the victim in the criminal justice process, the right to receive information about criminal justice proceedings, the right to attend to trials, the right of protection from threats and revenge and the right of compensation and reparation tried to improve the legal status of victims and their rights. In this background, "The Principles of Justice for Victims of crime and Abuse of Power" was adopted in the Seventh United Nations Congress on the Prevention of Crimes on the Treatment of Offenders in 1985. These principles require and expect nations and nationals to have sympathy and respect for the victim. Thus victim protection and support gained ground leading to restorative justice approach emerging as a new concept to deal with, which the criminal justice system was failing to address earlier.

The victim jurisprudence is given due consideration and paramount importance in the developed countries. In our country too the criminal Justice System towards protection of victims of violation of Human Rights needs

urgent attention to develop further. There is need to increase the level of participation of the victims in Criminal Justice Process. The offender has the right to be heard before passing the sentence about the punishment given by the court whereas the victim has no such right in this regard.

In the scheme of Constitution of our country, the judiciary work as a sentinel and guardian of the Constitution and as also custodian of the rights of the people. Article 32 and Article 226 of the Constitution have conferred powers on the Supreme Court and High Courts to pass appropriate orders which include to ensure the rights of the victims as well. In the absence of statutory provision in any other law, for the first time the Supreme Court and High Courts to pass appropriate orders which include to ensure the rights of the victims as well. In the absence of statutory provision in any other law, for the first time the Supreme Court of the country recognized right of compensation to the victim of violation of Human Rights in the landmark judgment in *Rudal Shah vs. State of Bihar* (1983) (4) SCC 14). That was a case in which the petitioner was illegally detained in Ranchi Jail for 14 years even after his acquittal by the court after trial. The Supreme Court while directing releasing the petitioner awarded a total sum of Rs. 35,000/- by way of compensation. This judgment was later followed in subsequent judgments of the Supreme Court as well as the High Courts.

The Human Rights Organisations/Institutions have played effective and important role in safeguarding the Human Rights and in giving support to the victims whose Human Rights were violated. The presence and participation of NGOs in defending the dignity and rights of human beings was also effectively felt since 1990s. On April 12, 2004, the Apex Court delivered the judgment of great impact and effect in which the court quashed the acquittal of 21 accused in the case known as *Best Bakery Case* and directed its retrial in a court in Maharashtra. It may be recalled that

NHRC has played a vital role in this regard in addition to the efforts made by NGOs.

There is a need for concerted and cooperative efforts of Human Rights Organisations/Institutions, NHRC and SHRCs for better protection of Human Rights including protection of victims of human right violation. In this regard, steps can be taken to build awareness of Human Rights and the ways and means of getting redressal to the persons who have suffered violation of Human Rights with special emphasis to the protection of victims of Human rights violation because of crimes. This is all the more necessary in our country because of illiteracy and ignorance about Human rights, yet, in a large section of the population. Although various UN declarations, covenants and municipal enactments are in existence, they have not yet reached level of common people and more so in rural areas. In our country having due regard to the fact that a sizeable population is still illiterate and live below poverty line, better protection & promotion of Human Rights and protection of victims of violation of Human Rights will not become meaningful and effective unless serious efforts are made for awareness building of Human Rights.

General awareness of Human Rights is not enough to check and counter Human Rights violations. It is only to prepare the ground. When specific incidents take place violating the Human Rights and victim suffers by the action of the violators, serious and proper efforts must be made to publicize the issue and organize the people locally around the issue and initiate action. This will add to awareness of Human Rights of the people of the local areas and at the same time, serves as deterrent to prevent further Rights violations.

The experts and representatives of the people should be involved in investigation and fact finding in relation to the specific incident of Rights violation. The report of such findings should be publicized and such reports should be sent to the departmental Authorities concerned. One must remember that the impact of such

reports will depend on their impartiality and fairness.

In certain types of cases of Human Rights violations, public interest litigations can be initiated before the courts. Such genuine litigations spread general awareness among the people serving the purpose of Human Rights while helping the needy in getting remedy.

The Human Rights Organisations/Institutions can play an effective role by lobbying and advocating for the issues to support the cause of protection of victims of Human Rights. Such efforts may even lead to enacting new law as a result of generating public opinion.

NGOs also should play active role in rehabilitating the victims of violation of Human Rights through networking, coordination and cooperation in the matter of securing support services such as social, psychological, physical and psychiatric etc., offered by the governmental or non-governmental organizations.

Today the media both electronic and print can play a very vital, effective and purposeful role in better protecting the Human Rights and in drawing the attention of the concerned to provide protection to the victims of violation of Human Rights; particularly electronic media can create instant and intensive impact on the minds of the people resulting in forming public opinion to activate Authorities to act promptly. Media can help the responsible people to voice their concern, seek accountability and remedies. It can do well in exposing Human Rights violations, educating and creating awareness. All this is necessary in placing the checks and balances upon the powers of the State functionaries. In a democracy, public opinion being a strong weapon, the media with the aid of latest technology can do a lot in formulating and creating public opinion in favour of the protection of victims of violations of Human Rights. It may be added that the active participation of the victims themselves in

the criminal justice process and their protection to prosecute their case need to be strengthened.

The National Human Rights Commission was constituted under the Protection of Human Rights Act, 1993 on October 12, 1993. The Act also provides for the constitution of State Human Rights Commissions and Human Rights Courts at the district level for better protection and promotion of Human Rights. Over the years, in consonance with its functions, the Commission has dealt with a wide range of issues starting with the complaints of violation of Human Rights by public servants and suo-moto actions to making detailed recommendations on the systemic reforms needed in the police, the prisons and the administration of criminal justice besides sensitizing the stakeholders to various issues arising in the country.

Primarily the state is under an obligation to protect Human Rights from any violation, or negligence in protection of such violation. The state is also expected to provide the requisite means for realization of Human Rights and to ensure development. Thus, it is the primary responsibility of the state to protect Human Rights victims, and the role of other National Institutions/Human Rights organizations takes colour from obligation of the State and are required to march hand-in-hand in order to fulfill human development and realization of Human Rights.

Today the NHRC has gained the status of important player and an ally in better protecting Human Rights of its citizens including economic, social and cultural Rights. Despite some limitations the commission has acquired a high degree of repute by taking a strong, independent and committed approach on the one hand and by being innovative on the other. The Annual Reports published every year have the clear reflection of the quantum as well as the quality of the Commission's participation in the matters concerning Human Rights. The Commission has attached utmost importance to all aspects of economic, social and cultural

rights. Be it Right to Food, Right to Safe Drinking Water, Right to Shelter (Housing), Right to Health, Right to Education, Right against Exploitation and Right against Discrimination.

In the event of natural disasters like the Tsunami in Tamil Nadu, the earthquake in Gujarat, the cyclone in Orissa, etc., the resources and reach of the Government falls too short to bring relief to the victims. The help of Human Rights Organizations/Institutions in such an event becomes indispensable. The state also recognizes the role of such organizations in such unfortunate moments. The initiative of holding blood donation camps, distribution of food articles and clothes to the victims are normally undertaken by such Human Rights organizations/Institutions/NGOs.

The Human Rights Organizations/institutions are expected to ensure Human Rights for all without distinction or discrimination of caste, creed, religion, language, sex, region, etc. The growing role of Human Rights Institutions/Organizations is a promising development to uphold Human Rights.

It is needless to say that justice and respect for Human Rights must march hand in hand for the greater good of the people.

I would like to quote Mahatma Gandhi in this regard—

“It has always been a mystery to me how men feel themselves honoured by the humiliation of their fellow beings.”

Section 12(i) of the Protection of Human Rights Act, 1993, requires the Commission to

encourage the efforts of non-governmental organizations (NGOs) and institutions working in the field of Human Rights. The Commission considers this to be an important responsibility and its experience over the past nine years indicate that a close working relationship with credible NGOs is absolutely essential to the promotion and protection of Human Rights in the country.

With a view to drawing on the talents and commitments of Human Rights Organizations/Institutions, the Commission in the year 1996-97 devised a questionnaire to gather information regarding the activities in which they could best cooperate with the Commission. Today there is no field of activity which remains insulated from Human Rights Organizations/Institutions, whose advice is constantly being sought on ways to make the Commission more effective. The Commission receives number of public-interest complaints from Human Rights Organizations. These organizations have also often been associated with aspects of investigations undertaken by the Commission. Further, in respect of projects and programmes taken by the Commission, the list of these Human Rights has been growing steadily with each passing year, particularly, in respect of serious social issues, such as, child and bonded labour, trafficking in women and children, criminal justice system, literacy and Human Rights education, health care and malnutrition, mental health, HIV/AIDS, etc.—●

*Excerpts from address delivered by the author
at TATA Institute of Fundamental Sciences,
Mumbai.*

*“It has always been a mystery to me how men
feel themselves honoured by the humiliation
of their fellow beings.”*

