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간접외상노출이 대리외상화에 미치는 영향에서 소진과 직무만족의 역할
: 매개된 조절효과 분석 이달향 · 최윤경
범죄피해평가의 형사사법절차상 효과 분석 윤상연 · 김영수
토픽모델링을 통한 가정 내 아동학대범죄 유형화 김윤아 · 한민경
학대 피해 노인의 형사절차상 권리 보호 및 지원방안에 관한 논의 임정후

한국피해자학회 30주년 기념 국제학술회의

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Current Status and Challenges of Protection and Support for Victims in India

G.S. BAJPAI*

Until 1970s the victims of crime were not considered as an essential part of the criminal justice system. This attitude started to change after the formation of the standalone discipline of victimology and research in the field of victimology. From the past few decades, the field of victimology has witnessed a huge growth and also created revolution in many countries to deal with victims of crime. All over the world, countries have started recognizing the need for victim's services to help them in criminal justice system, to overcome the effects of crime victimization and to provide justice. But in India, still victims are not recognized as victims and there is no significant improvement of victim's position in the criminal justice system.

I. About Victim's Services

Generally, victims of Crime, their families and dependents receive services in the aftermath of the traumatic incident from social workers, counselors, psychologists, and other helping professionals across a range of settings, such as law enforcement, the court systems and community. Police based victim services are very essential and play an important role in providing services at critical time i.e. immediately after the offense and during the investigation. Victim assistance services at the court level are provided during the hearings

* Rajiv Gandhi National University of Law, Punjab (India) Vice-Chancellor

and focus primarily on case notification and advocacy, witness testimony, and crisis intervention. During the court processes, survivors, family members, and significant others may experience re-traumatization as a result of the court proceedings that bring up memories, emotional reactions, and psychological disturbance.

II. How victim' s services can be organized in India

There is a need for collective and comprehensive effort by law enforcement agencies, policymakers, communities, etc. to provide services victims. Victim' s services in India can be organized by having a separate legal and policy framework respects to victims, through which a specialized organization or institution can constituted to handle victims, ensure their rights, ensure their safety & security of victims, protect re-victimization and also provide comprehensive services to the victims of crime. Government can also organize victim' s services through local self government to provide community based services to victims.

III. TYPES OF VICTIM' S SERVICES

India is still in the developmental phase with respect to recognizing victims as an essential part of criminal justice system and also providing services to them. Services to victims are very limited and also some services are crime specific. Victim' s services in India can be classified as followings:

1. Financial Assistance

Victim' s Compensation Scheme: After section 357 of CrPC, the following section has been inserted, namely- Victim compensation scheme- "357A. (1) Every 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.

Restitution: Section 359 of the Code is regarding order to pay costs in non-cognizable cases. Under the Section whenever any complaint of a non-cognizable offence is made to a court, the court, if it convicts the accused, may, in addition to penalty imposed upon him, order him to pay to the complainant, in whole or in part, the cost incurred by him in the prosecution, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days and such costs may include any expenses incurred in respect of process-fees witnesses and pleader's fees which the court may consider reasonable. An order under this Section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision. Other acts under which restitution is provided to victims:

2. **Medical Assistance:** The criminal law amendment act, 2013 has made a provision under section 357C for providing treatment to victims. It provides that all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the IPC.

3. **Legal Assistance:** The victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer. The victim's right to participate in criminal trial shall, inter alia, include:

- To produce evidence, oral or documentary, with leave of the Court and/or to seek directions for production of such evidence.
- To ask questions to the witnesses or to suggest to the court questions, which may be put to witnesses?
- To know the status of investigation and to move the court to issue

directions for further investigation on certain matter or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth.

- To be heard in respect of the grant or cancellation of bail.
- To be heard whenever Prosecution seeks to withdraw and to offer to continue the prosecution.
- To advance arguments after the Prosecution has submitted arguments.
- To participate in negotiations leading to settlement of compoundable offences.

4. Witness Protection Scheme: As victims in India are considered as witness, this scheme is available to victims as well, which protects the victims and their interests in some way. The scheme envisages that adequate security measures should be there for the safety of the witnesses.

5. Volunteers and Non-Governmental Organizations: In India, Volunteers and non-governmental organizations play a major role providing services to victims of crime as far as government provide services and assistance to victims are critical time. Most of non-governmental organization provide following assistance and services to victims of crime:

- Help victims in filing a proper case
- Provide information about their rights
- Help in legal process
- Medical and Psychological assistance
- Coping skills to prevent secondary victimization and PTSD

IV. Guidelines for Victim Assistance – Rape Victims

In *Bodhisattwa Gautam vs. Subhra Chakraborty* (AIR 1996 SC 922), the Supreme Court held that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. The court, having satisfied the prima facie

culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985:

- i) The complainants of sexual assault cases should be provided with a victim' s Advocate who is well acquainted with the CJS to explain to the victim the proceedings, and to assist her in the police station and in Court and to guide her as to how to avail of psychological counselling or medical assistance from other agencies;
- ii) Legal assistance at the police station while she is being questioned;
- iii) The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed;
- iv) A list of Advocates willing to act in these cases should be kept at the police station for victims who need a lawyer;
- v) The Advocate shall be appointed by the Court, in order to ensure that victims are questioned without undue delay;
- vi) In all rape trials, anonymity of the victims must be maintained;
- vii) It is necessary, having regard to the Directive Principles contained under Art. 38 (1) of the Constitution of India, to set up a Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment;
- viii) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of the rape.

UJJAWALA: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation

The components of scheme and pattern of assistance

1. Prevention: formation of community vigilance Groups to prevent victims from trafficking and creating awareness in the society through various media and techniques.
2. Rescue: Through formation of network of Police, NGOs, Women' Groups, Youth Groups, Panchayat, Hotels and tour operators etc., to gather information on traffickers, suspicious people and vulnerable families to rescue victims. The scheme will provide food, shelter, toiletries, clothing, trauma care/counselling, medical aid etc. during the interim period between rescue and production before the concerned authorities.
3. Rehabilitation:
 - Setting up of Protective and Rehabilitative (P&R) Homes - The P&R Homes would be set-up by the agency
 - Basic amenities - to provide basic amenities such food, clothing and other items of personal use.
 - Medical Care - This Scheme would provide Doctor's fee, cost of medicines, hospitalization, appropriate linkages to de-addiction centres. Since the victims of trafficking undergo immense psychological trauma, professional counselling services would be provided through a qualified clinical psychologist and psychiatrist.
 - Legal Aid- As victims are the main witnesses against the trafficker/pimp/perpetrator, or to claim their right to property, marital rights, divorce, maintenance and custody of children, they will need to be provided with legal aid which would include court work and documentation relating to the victims court case.
 - Administrative Costs - To support small contingencies arising out of the

project.

- Education - As a large proportion of the rescued victims are children, they will need to be inducted in to the formal or open school system, for which some expenditure on text-books, notebooks, stationary, school uniform and other incidental expenses may have to be incurred.
- Vocational Training and Income generation activities - in order to completely rehabilitate the victim it is necessary to provide alternate livelihood options. Therefore, support for vocational training is provided.

4. Re-integration

- Setting of Half-Way Home - Half-Way Home is a Home within the community, where a group of victims, ready for reintegration, live and work out of this place. This is to facilitate smooth transition from the life in P&R Home to an independent living in the community. A Half-Way Home is for a group of victims who are gainfully employed and can live semi-independently with minimum supervision. This is a phased approach to reintegration into the community.
- Restoration to Families - The scheme would cover travel of the victim and an escort from destination area to her hometown/village, expenses incurred towards her food during her travel and incidental expenses.

5. Repatriation

- Facilitate repatriation procedures - The scheme would provide for expenses incurred in fulfilling various formalities for obtaining repatriation order for the victim.
- Repatriation to country of origin - The scheme would cover travel of the crossborder victim and an escort from destination area to her country of origin or border, expenses incurred towards her food during her travel and incidental expenses.

V. EFFECTIVE METHODS IN DELIVERING VICTIM'S SERVICES

Following are the effective methods in delivering victims services:

Police Based Services: Immediately after the crime, victims first approach police for the filing case. Police should be trained and oriented in a way that they can provide proactive services to victims in that critical time. Police team should also have a social worker and psychologist to provide support and assistance to victims immediately after the incident of crime.

Victim's Services Organization: Government should create a specialized and national organization, which can provide services to victims and ensure that the services are reaching to victims at right time. India can also constitute a special post like "Victims Commissioner" like the United Kingdom or Australia to provide victims services and justice to victims.

Community Based Services: Government should empower local self government to provide community based services to victims of crime which will ultimately help in victims in rehabilitation and reintegration especially in case of victims of family and sexual violence, child victims.

VI. ISSUES/CHALLENGES IN DELIVERING VICTIM'S SERVICES

- Victims are recognized as witnesses rather victims
- Inadequacy of the legal and policy framework in providing victim's services
- No specialized government organization to focus on victims and providing services to them.
- Law enforcement agencies and courts are not trained to handle victims and also to provide services to them.

- Lack of collaboration between law enforcement and academia, which can help providing training and development support respect to providing services to victims.