

## ENACT A LAW ON VICTIMS' RIGHTS

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The meandering course of law in Gujrat in which all the actors of the system including the victim-witnesses, like Zahira Shaikh, have made their contribution towards subversion of justice, reinforces the apprehension that in spite of the combined Herculean rescue operation of the NHRC and the Supreme Court and NGOs like Citizens For Justice and Peace, delivery of justice will continue to remain not only uncertain and delayed, but likely to be tainted.

The other issue which requires national attention relates to rights of victims-both to reparation and to protection as witness. It is the absence of such a law which has been a major factor in the subversion of the course of justice in Gujarat as noted by the Apex Court.

While the Supreme Court preferred to spend all its wisdom and energy on getting the riot cases transferred and retried in the State of Maharashtra, it looked askance at the plea of all the petitioners for provision of adequate compensation to victims, and directed the issue to be settled by the High Court of Gujarat. Time was ripe for the Supreme Court to settle the jurisprudence of victim-compensation in the light of the UN Basic Principles of Justice For Victims of Crime and Abuse of Power, 1985, which finds full endorsement by Justice V.S. Malimath Committee on Criminal Justice Reforms. We agree with the "considered view of the Committee that criminal justice administration will assume a new direction towards better and quicker justice, once the rights of victims are recognized by law and restitution of life, limb and property are provided for in the system". Besides compensation, rights of victims include their protection and participation in the entire process of justice.

The National Commission For Minorities (NCM) has been raising the issue of adequate compensation to victims under law since 1980, with a supportive note of Justice H.R. Khanna, who cited examples of Britain, New Zealand, Canada, USA, and Australia where provision for payment of compensation to victims of violent crimes existed since 1960's. Malimath Committee has also cited examples of the European Convention on the Compensation of Victims of Violent Crimes (1983), and subsequent legislation in various countries, including the United Kingdom's Criminal Injuries Compensation Act, 1995. In the United States, there is a Victims Rights and Restitution Act (1999). Further, in the light of its Report "Criminal Justice: The Way Ahead" (2001) the British Government proposes to make provisions under law "putting the needs of victims and witnesses at the heart of the Criminal Justice System".

In our country a draft bill on the subject was submitted to the Government in 1995 by the Indian Society of Victimology. In July 1996, Justice Anil Dev Singh of Delhi High Court, in the course of his judgment, in civil writ petition No.1429 of 1996, holding the State liable to pay adequate compensation to victims of anti-Sikh pogrom of 1984, made a strong plea for enactment of such a law. In the NCM Report on "Criminal Riots Prevention and Control" (1999) written by this writer as convener of its committee, the recommendation for such a law was again forcefully made.

In our view, given the absence of specific law on the subject, the Supreme Court should not have abdicated its responsibility to provide justice to victims in terms of reparation, restitution, and rehabilitation, besides physical protection of witnesses and their participation in prosecution that it directed.

It needs to be noted that while disposing of Civil Writ Petition No.232 of 1997 (S.S. Ahluwalia vs Union of India) praying for extending the benefits of the Delhi High Court, judgment in Smt. Bhajan Kaur vs Delhi Administration case to the entire country, the Supreme Court in its direction of 16 March 2001 did not overrule the rationale of recognition of the victim's right, under given circumstances, to get compensation from the State. It noted the basic argument of the judgment in para-1, without any adverse comment. Its direction to High Courts of respective States to make detailed examination of the circumstances arising in each case was based on the plea that "such examination can't be done by us". Tacitly the Apex Court has accepted the principle of State's liability under Article 21 of the Constitution in the event of failure of governance leading to violation of victim's rights. It is only the issue of the nature of circumstances for its applicability in each case that is to be decided by each High Court.

It is unfortunate that NHRC, whose final report on Gujarat (May 2002) had held the State Government responsible for comprehensive failure of governance, did not approach the Supreme Court for direction regarding compensation to victims for all losses, to be determined under an independent judicial authority and not by the State Government.

In our post-Gujarat 2002, two representations to the NHRC, during Justice Verma's Chairmanship, we had pointed out the need for such a mechanism for victims' rights and for suggesting a model law on genocide to the government, as the NHRC had been empowered to seek "effective implementation of treaties and international human rights instruments" under clause 12 (f) of its Act. It is a pity that even during his more illustrious successor's Chairmanship, in spite of the NHRC's laudable role, these issues did not get the priority that they deserved.

While there is a need for a comprehensive law to deal with prevention and control of mass intergroup violence and for speedily punishing the guilty, there is a strong case for a separate law on protection and compensation to victims of all crimes and violence for individuals or any class of citizens. Such a law may provide for consideration of collective hate motive as an aggravating factor, in accordance with Durban Declaration and POA (2001). The proposed law on communal violence may also have provision for establishing an Authority to determine all losses suffered by victims of mass hate and to settle claims of compensation.

The law on victims rights should include protection and participation of victims-witnesses in the process of justice. It is the absence of such a law that has made even worst victims of Gujarat carnage feel insecure and turn hostile under threat or allurements. The abandoned victims concern for survival and rehabilitation makes them succumb to temptation of handsome amount offered by their tormentors.

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