

“Awareness for Victim of Abuse of Power”

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Abstract

The purpose of this article is to know the rights of the victims who suffer the abuse from society or from individuals. The person who suffers from the abuse or mistreatment or exploitation or from any power from politicians is victim of abuse of power. It can be seen in very level of the society and in various forms. Victims of abuse of power suffers lots of fear to face the things which lead to major effect specially in mental level that lead to lots of fear and low esteem. This article covers the challenges faced by the victim of abuse of power. That there is need to educate the people and spread the awareness about that what victims faced through the abuse of power.

Keywords- rights, victims, abuse, challenges, society and etc.

1. INTRODUCTION

Defending the rights of individuals, society, and the state is the principal objective of criminal justice; to enforce the law by punishing the accused for breaking it. In the case of conviction, the accused is punished with imprisonment and kept in prison so that he or she can be reformed. It is the intent of the law to protect the rights of the offender, to punish him/her and thus to reform and rehabilitate him/her with all the resources and goodwill available through the court system and other agencies. In contrast, the victim is often left to fend for themselves with little or no support from anyone. A person's rights have been violated, his or her dignity invaded, and the loss he or she has suffered are not matters of concern to anyone but him/herself. Reporting a crime to officials who decide if the case is to be prosecuted, how to proceed, and what punishment should be recommended is his/her primary purpose. Incredibly, justice rarely redresses the wrongs perpetrated by the offender on the victim; instead, it exacerbates the injustice by focusing its attention exclusively on the offender and by marginalizing the victim's needs. As a matter of fact, the victim is an observer of criminal justice who often goes unnoticed. Over the course of history, the evolution of vengeance from private to state-administered justice has led to the criminal justice system where victims play a second-class role.

2. THE NOTION OF ABUSE

It is vital to address the issue of legitimacy in addressing the exercise of power, especially when that power is abused. Furthermore, separate distinctions must be made between legitimate and illegitimate power, as well as between the abuse of legitimate power and the exercise of illegitimate power, the mere assumption of which, by definition, constitutes abuse. A distinction of this nature implies the existence of norms and criteria that can be used

to assess power. Having political power makes it legitimate if it arises from a mandate granted by a group to serve that group's interests. Such powers are subject to a clearly defined constitutional and legislative framework, as is the exercise of them¹. A commercial or industrial organization whose legal basis of establishment is based on the laws of the country where they operate may be considered legitimate in its exercise of economic power.

As well as distinguishing between an economic enterprise that was unlawful from the outset and a legitimate economic enterprise that deviated from lawfulness during the course of its operations, there needs to be a distinction based on the type of economic activity. The former is typically found in organizations (such as organized crime) which attack or penetrate lawful sectors and activities, while the latter is often found in organizations conducting illegal or criminal activities.

"Abuse" is etymologically derived from the Latin word "abusus" meaning unjust, excessive, or bad use. It is perhaps because of this that power cannot be defined without mentioning the abuse to which it may be subjected. The term "the inordinate thirst for power" is used in conjunction with "misappropriation of power" as well as the famous "recourse for excess power". In terms of abuse of power, it became apparent that it is both broad and vague. A general definition of abuse would be that it can be rooted as much in the object of power as in the means of achieving it. Abuse can occur either when necessary means are employed to achieve unlawful ends or when inappropriate means are employed to accomplish unlawful ends or when improper means are employed to accomplish laudable goals. In many cases, however, abuse takes the form of a method that is violent, fraudulent, or corrupt to achieve dishonest or harmful goals.

Three elements² should be taken into account in order to effectively implement the concept of abuse of power:

1. For what purposes is the power exercised;
2. The means by which the power is exercised; and
3. Limitations on the exercise of power.

When abuse of power is committed, the purposes that it seeks to achieve are usually unlawful. In terms of typical cases, power has been used to prevent the imposition of legal controls and criminal sanctions against certain types of behaviour at the highest levels of socio-economic and political structures. Another example is when the power is used to halt or suspend proceedings or judgments against incompetent officials or those responsible for simple legal violations or conventional offences. Illicit and unlawful means can be employed to exercise power. Its variety is great, ranging from convictions to constraints, from fraud to

¹ Dussich, John P., *On Behalf of Victims of Crime and Abuse of Power*, 12 THE APPLICATION OF THE UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE 207-208 (2003).

² Victims of Crime: Working Paper Prepared by the Secretariat for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF .121/6).

torture, from threats to coercion, and from corruption to executions. There is even the possibility of abuse of authority by negligence or carelessness. Power abuse is often manifest as an omission, or as a refusal or unwillingness to take action.

In "*Vishaka & Ors v. State of Rajasthan*"³, the Apex Court laid down guidelines for the prevention of sexual harassment at the workplace. The case law "*D.K. Basu v. State of West Bengal*"⁴, addressed the issue of custodial violence and laid down guidelines to prevent abuse of power by law enforcement officials. The case "*Nilabati Behera v. State of Orissa*"⁵, raised awareness about the state's accountability and the victims' right to seek compensation for abuses of power. The judgment in "*Ramesh Kumari v. State*"⁶, underscored the importance of empowering victims with the knowledge that they have the right to have their complaints registered and investigated, thus preventing abuse of power by law enforcement agencies.

3. LIMITATIONS

When power is abused, it occurs when it is exercised outside of its legal or moral limits. The power of government can be fairly precisely limited by certain widely known rules. Accordingly, the "Human Rights" proclaimed by the United Nations represent a concept which, in its European form, even carries the force of law. The international order transcends national boundaries and represents the theoretical bulwark of each individual. Power abuse is both normative and relative at the same time. In addition to being normative, it has a link to the system of values and norms and is influenced by the ideologies people follow. As a result, the criterion used to differentiate between an exercise of normal power and its abuse varies with the normative model. You may see one or another power employee as either good or bad, depending on whether you support or oppose the conflictual or consensus models of political theory. In both time and space, power abuse can be considered a relative concept. Different cultures, ideologies, political regimes, and economic systems affect it equally in each country. Amounts of abuse change continuously as the world changes politically, economically, and socially.

It was felt that despite adhering to the legalistic principle, the legalistic approach is too narrow, so offences of abuse of power should also be included in the general theme, as well as those offences not identified as offences but which should be criminalized. The report acknowledges, with regard to typologies of abuse of power, that the distinction between economic, political and social power is always difficult since they are all entwined, in a way that often makes the distinction quite tricky⁷. An economy and government collude in a variety of ways, including the simplest one of bribing administrators so as to protect their illegal but profitable activities from government sanction. The second, more complicated way

³ AIR 1997 SC 3011.

⁴ AIR 1997 SC 610.

⁵ AIR 1993 SC 1960.

⁶ AIR 2006 SC 1322.

⁷ Measures to Implement the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: Report of the Secretary-General (E/AC.57/1988/3).

is when the corporations are guided by their own ideological pursuits, supporting political parties and groups of the same tendency to put them in office so they can dominate the political scene. As a final variant, a third model is similar to the second but adds a characteristic, the government and corporations support a particular sector of the population both financially and ideologically. When there is an abuse of power in criminal justice, the fundamental principles of the law are ignored. These principles include the principle of legality, the principle of nullum crime sine lege, and not just these principles, but basic international human rights protection.

4. INTERNATIONAL PRINCIPLES

In the Universal Declaration of Human Rights⁸, Article 5, it is stated that the principle of *indubio pro-reo* applies before determining the culpability of the accused if it is not established in accordance with due legal process and with all safeguards for his/her defence. The International Covenant of Political and Civil Rights of 19 December 1966 also protects the right of the accused to answer any charges brought against them. Art. 14, paragraph 3, also protect the right of the accused to face any proceedings.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, which went into effect on 4 November 1950, established the right to due process as well as in *dubio pro-reo* legal protection. Human dignity is thus protected over procedural felony convictions in international human rights clauses.

5. VICTIM COMPENSATION

It does not mention anything specific about victims of crime in the Indian Constitution, the supreme law of the land. Part IV, Directive Principle of State Policy, Art 41 and Part V, Fundamental Duties, Art 51A set forth respectively that the state is responsible for securing "the right to public assistance in cases of disability or in other situations of undeserved want" and for "having compassion for living beings" and for "developing humanism." Several interpretations have been made of these articles to find support for victims of crimes. Art. 21 of the Constitution have interpreted the right to compensation as an integral part of the right to life and liberty. In 1983, the Supreme Court acknowledged that the petitioner was entitled to claim compensation for illegal detention, and it awarded the petitioner Rs. 35000 in compensation. Chandrachud C.J. noted this in his judgment.

Consequently, under section 5 of the Probation of Offenders Act, 1958, the court may order the offender to pay compensation and costs to the victim upon releasing the offender on probation or admonition. The CrPC, 1973 also contains sec 250 (compensation for accusation without reasonable cause), sec 357 (compensation for damage to property, whether or not there was a punishment of damages), sec 358 (compensation of up to Rs. 100/- to persons

⁸ Universal declaration of human rights | ohchr, <https://www.ohchr.org/en/universal-declaration-of-human-rights> (last visited May 26, 2024).

wrongfully arrested), and sec 359 (order to pay the cost in non-cognizable cases). Victims of crimes may be compensated and charged with costs depending on the circumstances. Specifically, Section 357 Cr. P.C 1973 provides that a court imposing a fine or a sentence (including one of death) in which the fine constitutes a part may, at its discretion, order payment of compensation, to a person harmed by the offence⁹, and from the fine recovered. Such compensation for victims can, however, only be awarded in cases where there was a substantive punishment, including the fine, and not in cases where the defendant was acquitted.

5.1 Victim Compensation Scheme

In 2009, the Code of Criminal Procedure, 1973, added a new section 357A to implement victim compensation schemes (VCS) in response to the growing need for compensation for victims of crimes. Under this scheme, the state would compensate for any loss or injury caused to the victim by the offender through institutionalized compensation. For the purpose of creating and maintaining the fund, the states are responsible. VCS applies if the compensation paid by an accused is insufficient or where no compensation is due either because the accused has been acquitted or discharged or because the offender cannot be traced or identified. On the recommendation of the court, such a payment can also be authorized in addition to the compensation payable under sec. 357 of the Cr.P.C. (1973).

It is specifically provided in Section 357B Cr.P.C. that, in cases of acid attack or gang rape, the state shall pay the victim additional compensation on top of the fine specified in the section. Under this scheme, the District Legal Services Authority (DLSA) or the State Legal Services Authority (SLSA) have the authority to decide the amount of compensation to be awarded to victims, subject to the maximum amount prescribed by the State¹⁰. Apart from compensating victims, section 357A aims to provide immediate assistance to victims who need first aid or medical care in addition to any other interim relief that may be necessary. After a period of initial reluctance and a push by the courts, the states notified the scheme in accordance with this legislative amendment. Almost all states and union territories have established the scheme to ensure that victims and/or their families are compensated and given other relief.

6. CONCLUSION

India's criminal justice system has experienced a paradigm shift in how it addresses victims of crime. Restitution and compensation to victims have become dominant components of the 1985 Declaration, which enumerates its central principles. Out of the fines imposed, compensation to victims has been used sparingly and minimal amounts have been paid. It is the states' bold attempt to compensate victims for the losses or injuries suffered and to meet

⁹ BAJPAI, G., & GAUBA, S., VICTIM JUSTICE: A PARADIGM SHIFT IN CRIMINAL JUSTICE IN INDIA 54 (Thomson Reuters 2016).

¹⁰ Chakrabarti, N. K., & Dube, D., R. *Deb's Principles of Criminology*, 1 CRIMINAL LAW AND INVESTIGATION 88 (2017).

the needs of rehabilitation by providing the VCS. The schemes in different states have however been found to be divergent in many ways. There is also some variation in the amount paid in compensation across states. As a result, it is important that the scheme works to benefit the victim and that all reasonable efforts are made in order to facilitate the process.

A DLSA/SLSA must demonstrate compassion and empathy for the victims of the crime, their pain and agony, and the difficulties they face. So, it is imperative that the victim's interests are taken into account so that he/she can be rehabilitated, reintegrated, and re-socialized for a dignified life. There should be an emphasis on the simplicity of procedures, and victims should be relieved of the burden of obtaining certificates, submitting documents, etc. It is crucial to offer interim assistance to victims, such as in cases of gang rape, acid attacks, etc., without any regard to formalities. There should be attention given to the pendency of applications as VCS relies heavily on providing victims with relief as soon as possible.