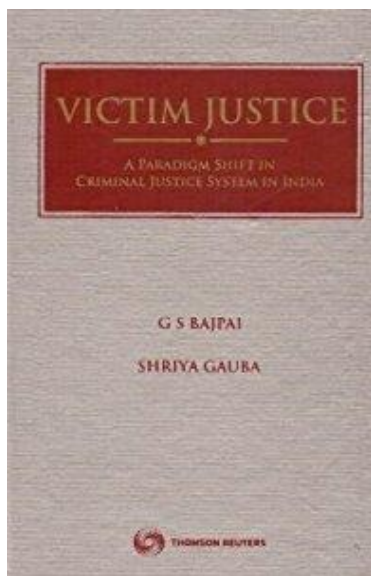


**VICTIM
JUSTICE- A
PARADIGM
SHIFT IN THE
CRIMINAL
JUSTICE
SYSTEM IN
INDIA.**

**Authors: G S
Bajpai & Shriya
Gauga, 2016,**

Thomson Reuters, ISBN 978-93-84746-68-



Surja Kanta Baladhikari

Thomson Reuters published this book titled 'Victim justice - A paradigm shift in the criminal justice system in India' written by G S Bajpai and ShriyaGauga in 2016 with ISBN:978-93-84746-68-1. It is spread over eight chapters on the topics namely the position of a victim and his position in the historical times, victim-oriented policies in specific system of the criminal justice system, voices of the survivors of crime, victim impact statements, expanding role of victim in the Indian criminal procedural justice system, Expanding role of victim in the Indian criminal substantial justice system and victim jurisprudence.

InChapter IIon 'Victim in the adversarial system: Historical perspective'- The authors have discussed the concept of dharma and nyaya in the times of pre-British era about the criminal justice system. Subsequently, the authors have referred

tothe growth of adversary criminal justice in England instances of giving the victim a place during the gathering of evidence along with citizens in the court of law. The authors have also shown how gradually the victim lost the position from the criminal trial which changed from 'lawyer-free trial' to 'lawyer-dominated trial.' The victim who was once at the forefront of the initiative for prosecuting a crime stood marginalized referring a great detriment to the voice and role of the victim. The old code of Criminal Procedure of 1860 which did not mention the word victim rather concentrated on the procedure of investigation and trial, is also showcased.

In Chapter III on 'Victim-oriented policies in select systems of Criminal Justice' the authors have discussed about the emergence of victim justice from the UN Deceleration of Basic Principles of Justice for victims of crime and Abuse of Power, 1985 which ensures that a victims of crimes to be treated with compassion and respect, access to courts for prompt redressal making the process expeditious, fair and accessible, information to the victim of crime such as awareness to the victim about his rights, role of a victim in the judicial process, notice to the victim about the progress of the trial; allowing the victim to express/present his/her views/ and concerns at various stages of the trial; victim assistance for privacy and safety; prompt disposition of the case, participatory rights to victim in a trial; victim's entitlement to fair

restitution after a crime; compensation; supply of material, medical, psychological and social assistance to the victim. These indicators are later used to assess whether these rights are there for the victim in various models of criminal justice administration. In the same chapter, the authors also refer to the International criminal court, which is the first-ever international tribunal to accord victims their rights and their due recognition through the Rome Statute of ICC, 2002, which gave the victim participatory rights in the proceedings of the court. The authors have discussed the rights in detail regarding the statute. Further, the authors have given reference to the 'handbook on justice for victims' which is a guide for the policymakers to create substantial and procedural rights to give victims their due position in a criminal trial. Rights such as re-victimization of the victimization which happens due to the reaction of the stakeholders of the criminal justice system, are one of the important areas to re-look. Victim blaming, misuse of the right of cross-examination is another area that needs attention. Subsequently the authors have taken up the model of Japan and has discussed elaborately on the statutes and policies which Japan follows relating to Benefits to Victims of Crime (Crime Victim Assistance Act) 1980, Guidelines for Protection of Victims in 1996, Victim Protection Act 2000, Protection of Victims of Crime Act 2004, Japanese Code of Criminal Procedure. In the model of the United States of America, a discussion has started with Crime Victim's Bill of Rights in 2004, case laws that have recognized the 'victim' as an essential part of the trial procedure. Other rights such as the right to be informed, the

right to be present in the trial, the right to be heard, the right to timely restitution, right to protection from the accused have also been discussed. In the Dutch model 'Vaillant guidelines,' Terwee Act 1992, Dutch criminal procedure code, Victim rights Act 2000 has been referred to the showcase of how a victim of crime is being treated.

In Chapter IV on 'Voices of the survivors of crime' the authors have given detailed account of real victims of crimes such as acid attack, sexual assault, rape have narrated their vivid experience in dealing with the stakeholders of the criminal justice system stakeholders which includes police, court, doctor and other administrative persons in-charge of administering rights of the victim. The experiences which are penned down by the author also covers the concerns of safety and security of the victim who is threatened if they are witnesses against the accused. Further in-depth analysis also shows that a victim not only needs damage control to the body but also to the mind and soul.

In Chapter V on 'victim impact & victim impact statements,' the authors have emphasized the need and importance of victim impact statements, which can be used in three different stages of a trial, which are impact stage which is the first stage followed by the steps of recoil and reorganization. The steps explain the reaction of the victim who maybe in a complete state of denial or anger which is very important to be understood by the court to conclude. In the last stage, which is about acceptance, reconciliation, and the aftermath needs of the victim to live a better life are associated with miseries of acute stress disorder and post-traumatic stress disorder,

which also needs to be taken into consideration by the court before reaching a decision. The theory of victim impact statements has referred to the UN, seventh congress on Prevention of Crime and the Treatment of the Offender, which allows the victims to express their views and concerns for presentation and consideration at appropriate stages of the process. Further, the rationale behind victim impact statements, models of VIS used in the jurisdictions of the USA, Australia, along with advantages of VIS and necessity of VIS in motor accidents.

Chapter VI on 'Expanding role of victim in the Indian criminal procedure -I (procedural justice)', the authors have discussed a range of cases decided by the Indian judiciary to substantiate victim rights in the procedural system of justice with reference to reporting and investigation, medical examination of victims of sexual assault, position of victim during a trial, importance of engaging a private counsel during trial by the victim, victims right to dignity, comfort, confidentiality and protection, participation during plea bargaining, compounding of offences and also during appeal.

In Chapter VII on 'Expanding role of victim in the Indian criminal procedure – II (substantive justice)', the authors have given various recommendations given by law commission referring to the power of public prosecutor for praying for compensation for the victim and enhancing the position of victims which was referred to the reports of the law commission in 1994 and 1996. The authors have also related to the old code of 1969 and 1898 while discussing the provisions. The remaining part of the chapter

is devoted to understanding the concept of victim rehabilitation and the need for compensation through very first cases of Nilabati Bebra to D.K. Basu and that of Ankush Shivaji Gaikwad. The authors have also made detailed discussion about the present victim compensation scheme and have also conducted an empirical study on victim of negotiable instruments, Section 304-A IPC, 323, 356, 379, 341, 354, 451, 452, 377 and 498A, the study has showcased how the compensation quantum is decided and relief is given to the victims depicted through quantitative and qualitative data.

In Chapter VIII on 'Victim jurisprudence,' which is the last chapter of the book, the authors have tried to build a road map and discussed the changes in both the procedural and substantive law. The right to appeal where a victim has to seek leave from the High Court in Section 372 Cr.P.C., which not grants a victim a right but a discretion. Reference has also been given that there is no right in case of lesser quantum of punishment. Other discussions are made upon right to be informed of investigation, unguided power of awarding compensation, right to be informed, protection of victims, participatory rights, being rehabilitated, access to free medical aid and treatment, victim-offender mediation, notice to victim on withdrawal of prosecution are some of the glaring areas which the legislature needs to consider to give the victims their due rights.

To conclude the book also has annexures of the research tools which are used in the studies conducted which not only encourages young researchers but also gives a direction. The book

showcases the victim not only from the position in ancient times but also in the present time and how better a victim of crime may be treated by referring to original data and laws of other jurisdictions. I strongly recommend this book!!

Surjo Baladhikari is a guest faculty at West Bengal National University of Juridical Sciences, Kolkata and a PhD scholar at National Law School of India University, Bangalore.