

VICTIM PROTECTION IN BANGLADESH: A CRITICAL APPRAISAL OF LEGAL AND INSTITUTIONAL FRAMEWORK

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ABSTRACT

Victims of certain offences like human trafficking and rape suffer psychologically and experience emotional distresses and trauma. In particular, victims and witnesses of trafficking for sexual exploitation and sexual and gender based violence may feel particularly vulnerable and reluctant to seek justice unless specific protection measures are in place. In addition to the inevitable psychological trauma, survivors face social isolation and ostracism that further damage their self-esteem and seriously undermine their personal and professional futures. The necessity of protection is particularly important for woman and child victims in cases of organised crimes where witnesses may be intimidated not to give any witness. Traditionally, victims are not guaranteed any right or protection under the legal system of Bangladesh. However, recently the victims are receiving attention under many legal systems and there is increasing demand that the concerns of crime victims should be integrated in the criminal justice system and they should have access to and participate in criminal proceedings. It is now widely accepted that justice cannot be administered effectively without due recognition of the rights and interests of the victims. But the existing legal and institutional framework on victim protection in Bangladesh is inadequate and has not been developed in coherent manner. There is no specific legal framework to deal with all the issues involved in victim protection. The piecemeal legislative approach is not useful to provide adequate support and care for the victims of offences. There should be comprehensive legal framework on victim protection in Bangladesh.

INTRODUCTION

The criminal justice system in Bangladesh, based on the adversarial model, focuses heavily on the offender and his rights and is often blamed for its insensitivity and inaction towards victim protection. The plea of innocence, rights against arbitrary arrest, right to fair trial are various measures designed to

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ensure the rights of the accused. But the role of victims is restricted to that of informant and witness for the prosecution even though he or she has suffered physical, emotional, psychological injury as well as financial and property losses.¹ Victims of crimes are used as witness. Crime victims are often victims of the criminal process. Insensitive questioning by the police, inadequate provision of information, delays, or unexplained decisions by prosecutors to discontinue cases entail further suffering for victim.²

Victims of certain offences like human trafficking and rape suffer psychologically and experience emotional distresses and trauma. In particular, victims and witnesses of trafficking for sexual exploitation and sexual and gender based violence may feel particularly vulnerable and reluctant to seek justice unless specific protection measures are in place.³ In addition to the inevitable psychological trauma, survivors face social isolation and ostracism that further damage their self-esteem and seriously undermine their personal and professional futures.

In such cases, victims often have been treated in the criminal process in ways that can be described as oppressive. In this way, victims who report crimes are often subjected to 'secondary victimisation' at the hands of police, prosecutors and courts.⁴ Adequate support to victims of violence such as acid attack and rape, may go a long way in helping to restore the lives of disheartened victims. It is important that family, relatives, friends and community should provide encouragement and compassionate support to all victims.

The necessity of protection is particularly important for women and children victims in cases of organised crimes where witnesses may be intimidated not to give any witness. Intimidation may involve the following tactics: explicit threats of physical 'violence against victims, witnesses and their families, indirect intimidation such as gang members standing outside a victim's or witness's house, nuisance phone call, verbal warning, damaging property of victim or witness and courtroom intimidation.⁵ According to one author,

¹ On perspective of victims of crime, see generally, Rao, S. Venugopal, *Victims of Crime*, Allied Publishers Ltd., New Delhi, (1989).

² Lucia Zedner, *Criminal Justice*, Oxford University Press, Oxford, 2004, p. 143.

³ Protecting witnesses and victims: special measures for women and children, available at www.ohchr.org/EN/NewsEvents/Pages/WitnessAndVictimsProtection.aspx

⁴ 'Secondary victimisation' can be caused by police indifference to the victim, insensitive, embarrassing and adverse questioning by the police and the lawyers, insecure or hostile environment at the police stations, and intimidation of the victims. See also, Maguire, M. and Pointing, J. (eds.), *Victims of Crime: A New Deal?* Open University Press, (1988).

⁵ Arafat Ameen, 'Victims and Witness Protection: In Search of a Legal Regime in Bangladesh', *The Daily Star*, October 1, 2005.

“Witness intimidation which includes threats against the victims of crimes strikes at the root of the criminal justice system in Bangladesh by denying critical evidence to police investigators, prosecutors and by undermining the confidence of the community specially, women.”⁶

However, recently the victims are receiving attention in many legal systems and there is increasing demand that the concerns of crime victims should be integrated in the criminal justice system and they should have access to⁷ and participate in criminal proceedings.⁸ It is now widely accepted that justice cannot be administered effectively without due recognition of the rights and interests of the victims. The reasons for this shift are the following: first, it has increasingly been perceived that while more severe punishment for the offender may satisfy the immediate emotions of outrage and revenge, in the longer term, it does not contribute to the healing of victims. Second, victims may lose confidence in criminal justice system if they are not adequately protected. Third, integrating the victim’s perspective into the criminal justice system can provide more opportunities for victims to be heard and gain satisfaction.⁹

A victim sensitive criminal justice system is essentially based on restorative justice paradigm and requires that victim should be treated with compassion and dignity, and be entitled to access to mechanism of justice and compensation in appropriate circumstances.¹⁰ Victims should be informed of their rights in seeking redress through criminal justice system. A victim sensitive criminal justice system should be based on the following considerations:

- Informing victims of their role and scope, timing and progress of the proceedings and of the disposition of their cases;
- Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- Providing proper assistance to victims throughout the legal process;

⁶ Dr. Taslima Monsoor, ‘Management of Gender Relations: Violence against Women and Criminal Justice System in Bangladesh’ British Council, Dhaka, 2008, p. 26.

⁷ A.S., Justice Anand, ‘Rights of Victims of Crime: Need for a Fresh Look’, R.V. Kelker Memorial Lecture delivered in Faculty of Law, University of Delhi on 30th April 2005.

⁸ See, Jonathan Doak, *Victims’ Rights, Human Rights and Criminal Justice: Re-conceiving the Role of Third Parties*, Hart Publishing, Oxford, 2008.

⁹ Lode Walgrave, ‘Extending the Victim Perspective Towards a Systematic Restorative Justice Alternative’ in: Adam Crawford and Jo Goodey (eds.), *Integrating a Victim Perspective within Criminal Justice*, Ashgate, Dartmouth, 2000, p. 253-255.

¹⁰ Vibhute, K.I., ‘Justice to Victims of Crime: Emerging Trends and Legislative Models in India’, in: K.I. Vibhute (ed.), *Criminal Justice*, Eastern Book Company, Lucknow, (2004), pp. 370 – 395, at 373.