



Absence of Respect and Recognition of Victims in the Criminal Justice System in Bangladesh

Mohammad Omar Faruk^{1*}

Sanjeev P. Sahni²

Gerd Ferdinand Kirchhoff³

¹Doctoral Research Fellow, Jindal Institute of Behavioural Sciences, Centre for Psychology and Victimology, O. P. Jindal Global University, Haryana, India and Associate Professor, Department of Criminology and Police Science, Maulana Bhashani Science and Technology University, Santosh, Tangail, Bangladesh.

²Email: ru_faruk@yahoo.com

³Principal Director and Professor, Jindal Institute of Behavioural Sciences, Centre for Psychology and Victimology, O. P. Jindal Global University, Haryana, India.

*Professor, Jindal Institute of Behavioural Sciences, Centre for Psychology and Victimology, O. P. Jindal Global University, Haryana, India.

Abstract

This study explores how the victims of crime are treated in the criminal justice system of Bangladesh. Therefore, this study aims to learn victims' access to justice, victims' participation in criminal proceedings, victims' rights and needs of protection and support services and to identify the ongoing victimization process and capacity gaps existing within the criminal justice system. As a matter of fact, in Bangladesh victims are often found utterly dissatisfied with the treatment of the current justice system as it does not ensure their due respect and recognition. The qualitative techniques are applied in this study. However, the prevailing legal provisions do not manifest victims' respect and recognition. Supports of the criminal justice system to the victims are quite inadequate compared to the rights of the victims. Indeed, in Bangladesh victims have a limited legal right to access to the court proceedings. But, because of victims' lack of awareness about those rights, unfair treatment towards them and the absence of the rules of law, victims cannot get full benefits even of those inadequate laws. Thus, victims undergo different challenges in all stages of the justice system which include reporting the case, investigation by the police, giving testimony, trial process, plea bargaining etc. Finally, a victim protection scheme should urgently be developed to provide the victims with a fearless environment for seeking justice, physical security, psychological assistance, reparation and rehabilitation etc, with a view to establishing the rights of the victims.

Keywords:

*Crime victim
Criminal justice system
Victim participation
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1. Introduction

In Bangladesh victims are often found reluctant to enter in the criminal justice process due to the fear of re-victimization and retaliation by the accused. They also want to avoid calling the police, filling out a case, appear at the court and so on. They are also disinterested in filing cases because of their economic vulnerability. Moreover, the current practices of the criminal justice system emphasize more on the preservation of offender's rights than the protection of victims' rights. As a matter of fact, the system is often criticized for its apathy towards victims' protection (Faruque & Rahaman, 2013). Yet, there is no independent law for ensuring crime victims' rights and their protection in Bangladesh. In fact, the existing law cannot guarantee crime victims' rights and protection. Here in Bangladesh, the criminal justice system has less control over society. Along with the weakness of the criminal justice system itself, victims' personal and social factors are also responsible for discouraging the victims from seeking their rights and protection to the criminal justice system. Victims often want to avoid embarrassing the offenders who are at least their

relatives, friends and acquaintances. They often want to avoid the publicity of the incidence of victimization because such publicity often brings for them social stigma (Bangladesh Police, 2019).

Giving proper recognition to the victims and treating them with respect are basics for the actual operation of the justice system. Without these, it is not possible to know and measure the harms rendered to the communities. It is essential for the criminal justice system to listen to victims, to give value to their opinions and to support them so that the victims find confidence and reliability in justice system resulting in a safer community for all. However, unlike the European and the North American countries, in Bangladesh crime victims are not properly defined and hence, are not neutrally treated. In this country, victims play merely a minor role in the criminal trial process. Again, the legislation of the country has given an episodic and passive recognition to the crime victims. Thus, victims have a limited constitutional right to access to the criminal proceedings. But, because of the lack of awareness of their constitutional rights and of the absence of the rule of law in the criminal justice system, victims cannot also get full benefits from even such law. Thus, they fail to enjoy the rights and protection as proclaimed in the constitution of Bangladesh (Hendry, 2015).

Victims' rights mean the rights which the victims deserve as human beings. In criminal law, victims are typically treated as witnesses and so they do not have an available access to the system; they have the access to the system only when they are required to testify the incidence of violence before the court. Such treatment becomes a key source of disappointment for the victims pursuing judgement to the criminal justice system. The court system does not often want to accept that the victims have also the rights to enjoy some opportunities and privileges. But it known that as individuals, victims are supposed to get proper recognition by the law. However, rights become meaningful only when these rights are fully enforced and indiscriminately enjoyed. Unfortunately, in Bangladesh, instead of safeguarding victims, the current legal system offers more privileges to the criminals making them more influential and dominant in the judicial process (Alam, 2016). Thus, in the name of fair trails, the legal system of the country appears to be committed to safeguard the offenders not the victims (Bari, 2016). Even, the Code of Criminal Procedure of 1898 does not provide better protection to the victims of crime (Bari, 2016).

However, the legal and institutional structure for victims' protection seems to be insufficient. In fact, almost 150 years back, when the British enforced criminal laws in this region, the rights of the criminals were emphasized not the rights of the victims. The rights of criminals were also protected by the Penal Code 1860, the Evidence Act 1872, and the Code of Criminal Procedure 1898. But, because of the advancement of human values and the rise of mass consciousness, over years a few different laws (Dowry prohibition Act 2018, Women and Children Repression Act 2000, The Act of Control of Acid 2002, Domestic Violence Prevention Act 2010, etc.) have been enforced for ensuring the rights and protection of the victims. This is indeed a paradigm shift of the criminal justice system in Bangladesh as victims' rights and protection are also addressed through these acts.

But in about 150 years back when the criminal law was enacted by the British in this region, the protection of victims' rights was not emphasized. Thus, there appears to have a paradigm shift in the treatment of criminal justice system in Bangladesh. Changes taking place in the concept of human value, in the philosophy of life and in technologies have largely contributed to this shift. Under such circumstance, a comprehensive review of the Penal Code of 1860, the Code of Criminal Procedure 1898 and the Evidence Act of 1872 need to undergo a thoughtful consideration. To cope with the challenges stated above, the investigators, prosecutors, and judges need to be pro-active in speeding up justice to victims within the framework of the existing legal system. An exhaustive statute for protecting victims and witnesses is urgently required. About the position of crime victims in Bangladesh, Sahni, Dhanda, and Palit (2017) cited Ullah (2006) "Until the turn of this century, there was no law that protected the interests of the victims of the offenses. They, the victims, were really forgotten people and had to fend for themselves" (p. 152). Regarding the recent developments in this regard, Sahni et al. (2017) also pointed out, "The last five years have seen new legislation being passed in order to provide compensation and restitution to victims of crime." But all those acts are insufficient in providing the rights and protection of the crime victims precisely. Again, many countries respond to the incidences of victimization and the victims by providing compensation to them. However, the system has not yet been introduced comprehensively across the world though discussions about the issue have started about a century ago. Certainly, there are few developed countries like United States, England, and Germany which have started providing compensation to the victims. Unfortunately, most of the countries of the world are still far away from implementing the scheme, Kirchoff (2010).

This study is to consider crime victims' position in Criminal Justice System (CJS) of Bangladesh. More specifically, the objectives of the current study are as follows:

- i. To identify the participation and access of victims in Criminal Justice System (CJS) in Bangladesh.
- ii. To examine how Criminal Justice System (CJS) in Bangladesh treats the victims in question of ensuring their rights.
- iii. To find out the challenges that are apparent in receiving legal rights by the victims of crime in Criminal Justice System of Bangladesh.

The significance of the present study is of three-fold. First, this study can be used to understand current participation and access of victim in Criminal Justice System (CJS) in Bangladesh. In other words, it is a

picture of the present status of crime victims' access to criminal justice system. Second, this study may be helpful to get ideas about how the victims are treated by the criminal justice system and whether their rights are ensured or not. Finally, this study may also assist to understand the contexts that are deceptive in getting legal rights by the crime victims in Bangladesh Criminal Justice System. Above all, this study emphasizes that victims' rights are deeply rooted with the basic human rights. Legal system becomes meaningful only when the human rights of the victims are truly addressed. On the contrary, if the system fails to address this basic thing, it will ultimately fail to meet up the rights of the victims and to uplift the human values. Unfortunately, the monopoly of power of the state in the criminal justice process has silenced victims, making them as just observers to a crime against the government. This approach fails to recognize the reality of victims. However, the ability to exercise rights, to use free-will and rational choice may give true meaning to the notion of 'human dignity' to the victims. Otherwise, the victims, who are usually forced to lose their individual human rights due to the discrimination existing in the society, will remain voiceless objects of the criminal justice system.

2. Research Methods

This study is qualitative in nature as the entire study is conducted based on using secondary sources of information such as relevant books, research journal articles, and research reports, general reports published in different national and international media. Here data and information collected from different sources have been analyzed in descriptive methods.

3. Findings and Discussion

3.1. Victims' participation in Criminal Justice System (CJS) in Bangladesh

Ensuring easy access for the victims to justice carries a huge significance. When victims enjoy an easy access to the system, they can challenge the undue exemption of the offenders from their guilt or punishment. Thus, victims' presence and participation in the criminal justice system can improve the quality and efficiency of the system, (UNDP, 2015). Moreover, there are some other ways to uphold the rights of the victims and to guarantee their protection. These ways may include the active presence of the victims in trials, state-run compensation plan, prompt and warm response by the concerned officials, collaboration of the Government and Non-Government institutions and finally, ingenious arbitration of the judiciary. However, a victim protection strategy must incorporate physical security, psychosocial care, reparation, and shelter to the victims. Above all, a conducive environment is to be developed for the victims so that they feel truly encouraged to report the incidences of victimization to the legal authority and to pursue the proceedings accordingly.

However, Bari (2016) points out some reasons behind the reluctance of the victims to seek justice to the court. The reasons are victims' inability to identify their rights, failure to enunciate their arguments, and the low rate of conviction in such cases. It is to be mentioned that Bangladesh is a densely populated country having over 160 million people. Again, as a poor country, it has a massive limitation of wealth. Thus, support from the criminal justice system is entirely inadequate compared to huge demand. Hence, lots of cases remain pending for years, and so, the conviction rate in criminal cases is meager (UNDP, 2015). This is such a clear picture of the justice system of Bangladesh that every victim is well-aware of it.

3.2. Victims' Rights and Criminal Justice System (CJS) in Bangladesh

Though there is not a single law to protect the rights of the victims in Bangladesh, different laws have provisions for victims. These laws are usually considered as the legal framework for securing the rights and protection of the victims of crime. The first law regarding the rights of the victims of crime came into force in 2000. The law is known as Suppression of Women and Children Repression Act, 2000. Criminal laws, which have been passed and enacted in the following years, have observed the inclusion of some provisions in favor of the victims of crime. Such provisions address the need and potential vulnerability of the victims, and the maintaining of consistency with the international obligation for protecting victims' rights. It is imperative that the rights need to be legally protected to allow victims to avail of benefits. It is to be mentioned that legal experts usually intend to sketch drawbacks and limitations of different aspects of victims' rights in Bangladesh from legal perspectives, revealing current legal status and recommendations for legal reforms. For instance, Ullah (2006) outlines the available legal rights for victims of crime with a focus on participation, compensation, and restitution, and compares the provisions to the standard set by the United Nations resolution.

Similarly, Faruque and Rahaman (2013) reviewing existing rights for the victims of human trafficking and rape, opine that the piecemeal legislative approach is not adequate to provide care for the victims. Since historically, one of the primary official establishments institutionalized by the British colonialists has been the administration of criminal justice (Halim, 2009; Haque, 2003; Panday & Mollah, 2011) legal analysis has been a dominant approach to view issues related to offending and victimization. These legal approaches are essential to feed into advocacy for legal reform, but not entirely conducive to understand the real situation as to what extent victims can enjoy their rights. In fact, equal participation of both the accuser and the accused

is necessary for a free and fair trial. Justice (Haque., 2005) observes that respecting the rights of the prosecuted and the litigant is very important to reach to a fair judgement in any trial.

As per the existing laws mentioned above (Domestic Violence Prevention and Protection Act 2010 and the Women and Child Repression Act 2000), victims are supposed to receive compensation. Receiving compensation can help the victim recover her financial harm. It can also help to bear the cost of medical treatment, expenditure for legal matters, and even for livelihood. But courts usually do not pass such orders, and thus, victims' rights are often kept suspended. Apart from this, the existing laws do not redress the sufferings of the victims (Karim & Khan, 2017).

Since Bangladesh, like some other developing countries, immensely suffers from a lack of implementation of laws from a socio-legal approach (Lacey, 1996; Schiff, 1976) a comprehensive understanding of the position of victims about how they live, suffer and survive is not possible with mere legal analysis. With this backdrop, Shahidullah (2014) suggests that any study of criminal justice in Bangladesh must be explored in the context of its political situation and legal implementation (i.e., the rule of law).

3.3. Challenges that is Apparent in Receiving Legal Rights by the Crime Victims in Bangladesh Criminal Justice System

The following challenges are apparent in recognizing crime victims as well as receiving legal rights by Criminal Justice System in Bangladesh:

(a) Reason for not reporting: Already explained that for a variety of reasons, victims in Bangladesh are highly discouraged about reporting the incidence of victimization to the police or court. 74% of the victims do not report the incidence to the police or the court. Therefore, due to various reasons, numerous crimes remain unreported to the law machineries of the country. In fact, factors like social stigma and cultural values discourage woman and girl victims from disclosing and reporting sexual harassment to the legal authority. Furthermore, pursuing justice can be both intimidating and challenging for the victims of gender related violence (Hendry, 2015). Besides, it often happens that the cunning culprits file case first with a fabricated story and thus try to divert people's attention from the real incidence causing difficulties for the hapless victims to get justice from a cross-case (Haque., 2008).

(b) Challenges faced by the victims in investigation and pre-trial period: Victims cannot withdraw the case in investigation period. Again, the victims have nothing to do or to say unless they are summoned by the investigating officers who enjoys the full liberty in conducting the investigation as his own will. Investigating officers are sometimes found to delay to record victims' or witness' statements. Again, the magistrate cannot record their statements under section 164 of the Code of Criminal Procedure unless the investigating officer produces the victim to the magistrate. Same thing may happen in holding the Test Identification Parade (TIP) of a victim or a property and about a forensic or viscera report of any detained article. However, after the police submit their report after investigation, the result of the investigation is supposed to be transmitted to the informant in BP Form. Again, there is no policy of keeping the victims updated about investigation progress. If the victims on their own accord do not take initiatives to know the progress in investigation, they remain ignorant of the investigation result. Again, the victims can know nothing about the police report. Hence, due to defective and incomplete investigation the prosecution may fail to pass the right verdict and thus, victims may be deprived of the expected justice. Even the victims cannot know why he has been denied justice. Indeed, under the current practices, after filing the case and appearing for FIR, the victim has nothing more to do apart from visiting the court on regularly just to know if the accused has submitted any application for bail or for getting release or criminal revision.

(c) Embarrassment testimony: As told earlier victims are treated as mere witnesses in in the trails and prosecution process. The role what they can at best play in the court is that they can produce testimonies before the court if asked. However, the victims and the witnesses often get demotivated to enter the trail process as the whole process usually takes longer time to pass the final judgement than expected. On the contrary, prosecution may also fail to produce the witnesses and victims to the court due to the changes of their location. Again, in respect of some cases, due to a sort of 'local compromise' the victims are often seen to produce soft and agreeable evidences so that the accused may get exempted from the accusation. The victims usually agree to do so because they often feel unsafe and vulnerable on the face of social influence and monetary strength of the facing the victimizers. Thus, inadequate protection measures for the victims and witnesses is a big concern in the already paralyzed trial system of Bangladesh where gruesome criminals and goons often tend to threaten the victims and witnesses and thus, compel them to either withdraw the case or produce obliging evidence in the court. In certain cases, the victim feels embarrassed and threatened while answering queries of the lawyer or the judge in the immediate presence of the offender. Further, many victims of crime relating to violence against women become vicious targets of further psychological assault in the face of unhealthy cross-examinations by the defense lawyer. The Law Commission 2016 has seen that victims of sexual assault typically feel embarrassed to be interrogated in an open trial proceeding. Though many special laws provide for trial *under the camera*, the judges rarely resort to such protective measures for victims.

(d) Infrequent delivery of compensation order: As per the Code of Criminal Procedure, the court enjoys the right to impose a monetary fine on the criminals as the sole or extra punishment. The court has

the discretion to direct the whole or a part of it to get paid to the victim (Code of Criminal Procedure 1898, s 545). However, judges scarcely exercise this provision of judgment, and if ever done, the compensation amount is too meager.

(e) Not Legal Definition of the term 'Victim': For long victims have played a subordinate role in criminal trials of Bangladesh. However, several pieces of national legislation utilize the term "victims" yet the term "victim" has not been legally defined.

(f) No recognition of victims' voice during the trial: In the jurisdiction of Bangladesh, victims are often found unwilling to seek judgements to the court because the victims often remain afraid of the possibility of being victimized, and avenged. Moreover, their lack of adequate knowledge regarding their rights of presenting their arguments and the low conviction rate in criminal cases also discourage them to go to the court for seeking justice. Consequently, it is difficult for a judge to ensure neutral and fair judgment if he fails to hear from the victim. In addition, the prosecutors are also not found to be fully sympathetic and responsive to the sorrows and suffering of the victims.

(g) Lack of a comprehensive law: In Bangladesh, there is a lack of an exhaustive law regarding victims' rights and protection. Such situation has been a matter of widespread concern for the parties involved with the legal system. Unfortunately, currently no precise law securing the protection of victims and witnesses exists in Bangladesh.

(h) Non-existence of plea bargaining: The criminal Justice System of the country does not have any provision of plea bargaining. Thus, there is no institutional space to settle down the point of contention between the defendant and the victim. However, the scope of plea bargaining may contribute to increasing the number of offences at the later stages of the trial process. Despite this possibility, the victim at least gets a space for voicing his grievances under the system.

(i) Infrequent and scanty protection for victims in special laws: Already told that in Bangladesh there are few special laws aiming the protection of the victims. However, because of the lack of a complete legitimate and official structure, the provisions for protection in those laws appear to be minimal and insufficient in comparing to the needs of the victims. Again, due to the absence of positive and conducive legal and institutional structures in Bangladesh, there is very little development of optimum culture in the practices in the legal system. Consequently, the bodies comprising the justice sectors such as judges, lawyers and the officials appear to be uninterested in restoring protective measures for the victims.

(j) Apathetic behavior of justice sector professionals: Professionals working in the justice sector are often found unsympathetic to the predicament of the victims. They remain reluctant in applying the existing laws and thus, the rights and betterment of the victims get jeopardized. The officials of this sector often appear to be merely aware of the ongoing development in the sector, current trend, scope for better service and sensitization concerning the victims. Again, due to the fund shortage, providing required protection to the crime victims remains a big challenge. In fact, the budget of the government for providing financial protection to the victims is often meager and highly limited.

(k) Weak arrangement regarding victims' protection: Currently, both the government sector and the non-government sector are working for the protection of victims' rights. However, the present legal and institutional structure designed for ensuring victims' rights proves insufficient as well as incoherent (Haque, 2003). In fact, the initiatives adopted by the both the government and non-government agencies are found inadequate while they are also seen to work being poorly equipped and inadequately facilitated. Again, these machineries are also inflicted with organizational weaknesses and loopholes as well. Because of all these drawbacks, victims often face huge difficulties in reaching the District Legal Aid Office (Bari, 2016). Besides, the national and regional committees about the protection of the victims as proposed in special laws have not yet been completely formed and thus, victims cannot reap the benefits of this provision also. Faruque and Rahaman (2013) rightly mentions that the crime victims do not get complete support and protection as per their requirement.

4. Conclusion

Like many others countries of the world, Bangladesh is facing many challenges in dealing with victims and in protecting their rights. From the above discussion, it is evident that although there are few laws and provisions protecting different types of rights of the victims in Bangladesh, those are insufficient, incomplete and ineffective. A wide range of primary and secondary services such as temporary shelter, instantaneous monetary support, health care service, legal advice, psychotherapy, and training for capacity building for rehabilitating and reintegrating into the society etc., is required to be provided to the victims. Yet, the stereotyped criminal justice strategy and the absence of separate legislation and justice procedure affect the services for the victims in Bangladesh. Hence, there is the need of effective victim support system in criminal justice system in Bangladesh. Finally, the study becomes a good tool in exploring and understanding the extent of existing services and aids provided to the victims. It also identifies the problems and barriers faced by the victims and highlight the importance of the victim rights in criminal justice system. However, the government and the concerned bodies need to take timely initiatives to provide professional support to the victims keeping in mind that everything must be developed basing on the greater welfare of the victims.

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