
THE VICTIMOLOGIST

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Editor's Comment

Unfortunately, *The Victimologist* was not published in 2011. This was the consequence of several factors but primarily that no articles were submitted for publication, despite my plea as Managing Editor. I am pleased to begin 2012 with an article on victims' rights written by two active WSV members: Dr Beulah Shekhar and Prof Dr Jo-Anne Wemmers. Their article is an apt lead-in to the WSV's Quadrennial Report to the United Nations Economic and Social Council, which (amongst other pointers) describes the WSV's activities to advance victims' rights.

20-24 May 2012, the WSV's International Symposium on Victimology happened in Den Haag, Netherlands. Over 400 delegates heard many scholars, researchers and practitioners speak on an array of victimological matters. The symposium was promoted via traditional media but also the WSV Facebook page, which attracted over 3,500 likes (followers). Since then the WSV Facebook page has evolved into a prime means of communicating with both WSV members and the public.

This edition of *The Victimologist* also reports on the EU Justice Ministers commitment to advance victims' rights and introduces the New South Wales (Australia) Victim Services On-line Clearing House.

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'SMARTER' Rights for Victims

*Dr Beulah Shekhar
Prof Dr Jo-Anne Wemmers*

It has been over twenty-five years since the United Nations adopted the Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power. The Declaration played a key role in stimulating Member States of the UN to introduce victims' rights domestically and inspired the inclusion of victims' rights in the Rome Statute, which established the International Criminal Court. Today, many developing nations, such as India are just beginning to address victims' rights. What lessons can they learn from other nations, such as Canada, which introduced victims' rights in the 1980s?

CANADA

Canada played a key role in the adoption of the UN Declaration in 1985, and therefore, it is not surprising that it was quick to act nationally. In 1988, the Federal-Provincial-Territorial Working Group on Justice adopted the Statement of Basic Principles of Justice for Victims of Crime. At the same time, many provinces such as Ontario and Quebec adopted victims' rights legislation. These provincial Bills of Rights, as they are called, give rights to victims, however, they do not always specify what victims can do if their rights are not respected.

Some provinces, such as British Columbia and Manitoba provide a complaints procedure. In British Columbia for example, the Victims of Crime Act refers to the Ombudsperson Act. Victims' complaints are handled by the Ombudsman who brings out an annual report on the administration of the Act. However, the Victims' Crime Act specifically states that this Act creates 'no cause of action' for victims (article 10).

In 1999, two victims in the province of Ontario filed a complaint against the public prosecutor for failure to respect their rights as outlined in the Bill of Rights. The judge concluded that "the legislature did not intend for ... the Victims' Bill of Rights to provide rights to the victims of crime..."¹ The rights included in the Bill of Rights did not include an enforcement mechanism and therefore they cannot be considered rights.

What is a right? We typically speak of someone having a right. For example, a person has the right to freedom of speech. But more than just the ability to act, rights are enforceable. They bring with them an obligation to respect a person's right. One person's rights presuppose another person's duties, hence Hohfeld (1964) argues that there cannot be a right without a duty.

In 2003, the Canadian Statement was replaced by a Declaration of Basic Principles of Justice for Victims of Crime. However, the new Statement included several minor modifications. For example, article 10 states that information should be provided to victims about available options to raise their concerns when they believe that these principles have not been followed (Article 10). Thus, the Declaration addresses the importance of enforceable rights but is falls short of including an enforcement mechanism.

INDIA

In India, crime victims have no rights. Although, an important object of the criminal justice system is to ensure justice to the victims, they have not been given any substantial right, not even to participate in the criminal proceedings.(Malimath, 2003). The victim has no role either in prosecution or in sentencing. The role of the victim in the Indian Criminal Justice System which follows the common law colonial tradition, is restricted to that of a witness (Muralidharan, 2004) It is refreshing to note that despite the fact that no separate laws for Victims of crime have been enacted in India, Victim justice has been rendered through the proactive action of the apex court and ensuing judgments (e.g. The Vishaka Judgement) Above and beyond this, many national Consultations, Commissions and Committees have strongly advocated Victims' rights and reiterated the need for a Victims' law.(Shekhar, 2012)

¹ *Vanscoy and Even v. Her Majesty the Queen in Right of Ontario*, [1999] O.J. No.1661 (OntSupCtJus)

In spite of the National Consultations on judicial reforms, comprehensive victim legislation has yet to see the light of day in India. While several National Commissions (e.g. National Commission on Human Rights) have been put in place to help victims of human rights violations, child victims, women victims and the victims of the scheduled class or tribe, these commissions remain toothless tigers without enforceable victims' rights and, hence, contribute to the secondary victimisation of these hapless victims.

Regarding reparation by the offender, under Section 357 of the Code of Criminal Procedure, when a Court imposes a fine or a sentence which includes a fine, it may order the fine to be awarded to the victim in compensation for any loss or injury caused by the offense. In cases where no fine is imposed, the Court may direct the accused to compensate any person for loss or injury. Until a few years ago, the courts were reluctant to invoke these sections of law. The Supreme Court pointed out that the provisions of Section 357 Cr.P.C should be invoked liberally in favour of the victim saying "*The quantum of compensation may be determined by taking into account the nature of crime, the justness of the claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default.*" After this landmark judgement, the Higher Courts have been more inclined to award compensation even where no fine has been ordered².

Regarding compensation for victims of crime and Abuse of Power, there is nothing in currently in place. Nevertheless, Section 358 of the Code of Criminal Procedure provides for compensation to a person wrongfully arrested by the police. Indeed, the Indian government has been reluctant to recognize compensation in general. In 2010 India ratified the UN convention Against Torture India and the Convention against torture. But on compensation it says - An act of torture, if proven, does not require the perpetrator to pay

² *Hari Kishan vs. State of Haryana* [AIR 1989 S.C. 2127]

compensation to the victim. The courts in India, thus far have taken a minimalistic view on compensatory claims concerning acts of torture. A claim for compensation is dealt within the realm of personal injury claims. Awards of compensation vary widely from court to court throughout the country (AHRC-003-2009).

The only silver lining in this cloud, is that, in the progressive state of Tamil Nadu, on the behest of the Indian Society of Victimology and as a consequence of their tireless effort to bring home to the advantages of creating a Victim Assistance Fund, the Chief Minister of Tamil Nadu announced in April 1995, the introduction of a new scheme to provide monetary assistance to certain categories of Victims and allocated ten million rupees as a first step for the scheme. Though it is not a law but an Executive order, under this pioneering scheme, Victims were eligible for monetary assistance (Shekhar, 2005).

There are no specific laws concerning witness protection in India. The only possible measure is for the court to impose a condition at the time of considering a bail application. The usual practice is to impose conditions, for example that the accused shall not interfere with the witness or the evidence in the case. But there is no safe and watertight framework within which compliance to these conditions can be guaranteed. It is a common practice in India for the accused to try to threaten the witnesses and or tamper with the evidence in a case. (AHRC- 003-2009)

The latest amendment to the Criminal Procedure Code, which finally received the President's assent in 2010, after a year in abeyance, is encouraging. This legislation addresses some important aspects of victims' justice such as requiring the completion of investigations of rape and child abuse within three months; the right of rape victims to engage a lawyer of their choice to assist the prosecution; the ability of the trial court to award compensation in cases of acquittal to the victim under section 357 of the Criminal Procedure Code; and the right of the victim to rehabilitation (Venkatesan,2010). New legislation will allow judges' orders to reach victims and their families, assisting them in accessing justice and securing their rights. However, the Indian government has failed to implement both the letter and spirit of this new legislation law. Thus, the Indian legal regime has failed to protect victims' rights in two fundamental ways. Firstly, by failing to enact

suitable laws and secondly, when legislation is in place, by failing to monitor its implementation. (Sarkar,2010)

SMARTER RIGHTS

Any well thought of or well conceptualised legislation is characterised by three points - Firstly, that the legislation in question addresses a felt need, secondly, that it is broadly acceptable and finally it is an enforceable piece of legislation. So what happened to the Victims' Bill of rights that were enacted in Canada? Were they purely paper tigers? Are developing countries like India, where there are no Victim laws, sailing on the same boat as these developed countries with Victim rights that are not enforceable?


In 2000 Brien and Hoegen, evaluated the implementation of Council of Europe's recommendations on victims in 22 countries. They conclude that in order to be effective, victim rights legislation should be written in clear, unambiguous terms and not include any escape clauses, which allow criminal justice actors to ignore victims' rights. Their conclusions resemble with what is frequently referred to as SMART criteria for management. In order to be effective, goals should be Specific, Measurable, Attainable, Relevant and Timely. Even better than SMART, is SMART -ER and that means to Evaluate and Re-evaluate these goals. Victims need specific rights that are clearly stated. Their rights need to be measurable in order to unequivocally establish whether and to what extent they have been achieved. At the same time, victims' rights need to be realistic and attainable. And it has to be clear when or at what time these rights apply. Finally, their implementation must be evaluated.

CONCLUSION

Non-enforceable rights are equivalent to no rights. If India is to truly respect the spirit of the UN Declaration, then it needs to create 'smarter' rights for victims and provide victims' with recourse when their rights are not respected. Rights without recourse are not rights. In Canada, victims do not have real rights because their rights are not enforceable. This needs to change. The Draft Convention on Justice and Support for Victims of Crime and Abuse of Power of the WSV is a step in the right direction. Once ratified, the Convention would legally oblige Member States to implement victims' rights. This would encourage Member States to take their obligation towards victims seriously and develop smarter rights for victims. However,

ultimately, change will have to happen at the national level, starting with the introduction of 'SMARTER' rights for victims.

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WSV Election – Executive Committee 2012

Earlier this year, the members of the World Society of Victimology elected six members into the Executive Committee. The count results were:

Groenhuijsen*:	51	Gaboury:	25
Morosawa*:	38	Joseph:	25
Chockalingam*:	35	Shekhar:	25
Pearson*:	34	Schaefer:	23
Weitekamp*:	29	Campbell:	22
Aertsen*:	28	De Casadevante Romani:	21

Candidates' names marked with an '*', were elected for a six year term.

These results were published on the WSV website before the International Symposium on Victimology, 20-24 May 2012, Den Haag, Netherlands.

On 20 May the former Executive Committee sat for the last time and all Executive Officer positions were vacated. On 21 May the new Executive Committee was established and new Executive Officers were elected. The newly elected Executive Committee and officer holders follow:

President

Groenhuijsen, Marc S. Prof. Dr. jur.
 Director INTERVICT
 Intervict, Tilburg University
 Netherlands

Secretary-General

O'Connell, Michael
 Commissioner for Victims' Rights
 South Australia

Vice-Presidents

Peacock, Robert. Prof. Dr.
 Department of Criminology
 Howard College
 South Africa

Pearson de Gonzalez, Annette E.
 Advisor to the National Community Justice
 House Program Bogota
 Colombia

Treasurer

Kirchhoff, Gerd Ferdinand, Prof. Dr. jur.
 Professor of Victimology,
 Graduate School of Victimology
 Tokiwa University
 Japan

Members-at-Large

Chockalingam, K., Prof Dr.
 Chair Professor in Criminal Law
 National Law University, Delhi
 India

Dussich, John P.J., Prof PhD.
 Professor of Victimology
 California State University Fresno
 California, USA
 Director, Tokiwa International Victimology
 Institute (TIVI)
 Mito, Japan


Garkawe, Sam, Ass Prof.
 Assoc. Prof./ School of Law
 Southern Cross University
 Australia

Lima, María de la Luz, Prof. Dr. jur.
 Professor of Criminal Law
 University of México
 Mexico

Mororsawa, Hidemichi
 Chair, Tokiwa School Foundation
 Professor of Victimology
 Tokiwa Graduate School of Victimology
 Mito shio
 Japan

Ivo Aertsen, Prof Dr.
 Professor of Criminology
 Leuven Institute of Criminology (LINC)
 Leuven, Belgium

Elmar Weitekamp, Prof Dr.
 Professor of Criminology (Restorative Justice)
 Institut für Kriminologie
 Universität Tübingen
 Germany

On 25 May three WSV members were co-opted to the Executive Committee. They are: Heru Susetyo (Indonesia), Fernanda Fonseca Rosenblatt (Brazil / England) and Manohar Upreti (Nepal). Further information on each will be published on the WSV website. 

United Nations Economic and Social Council – Quadrennial Reports – Non-Governmental Organisations

ECOSOC received and noted the World Society of Victimology's Quadrennial Report, which is published below.

WSV Quadrennial Report

ECOSOC Status - Special, 1987

Introduction - The World Society of Victimology (WSV) is a not-for-profit, nongovernmental organization with Special Category consultative status with the ECOSOC and the Council of Europe. Brought together by a mutual concern for victims, its world-wide membership includes: victim assistance practitioners, social scientists, social workers, physicians, lawyers, civil servants, volunteers, university academics of all levels, and students.

Aims and purposes of the organization - The purposes of the WSV are to advance victimological research and practices around the world; to encourage interdisciplinary and comparative work and research in this field, and to advance cooperation between international, national, regional and local agencies and other groups who are concerned with the problems of victims. We accomplish these purposes through our United Nations Liaison Committee whose objectives are to support victim issues at all United Nations activities: Commissions on Crime Prevention and Criminal Justice; Congresses on Crime Prevention and Treatment of Offenders to insure victims issues are represented; and participating in activities of other bodies, e.g. Human Rights Commission, and with other Non-Government Organizations on victims.


Significant changes in the organization - The major change in the WSV during this period has been the creation of the United Nations Liaison Committee to facilitate and support interactions with the United Nations.

Contribution of the organization to the work of the United Nations - The contributions of the WSV to the United Nations have been supportive and consultative in nature. Its primary concerns during this period have focused on the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and helping the United Nations to monitor the implementation of its principles by providing lectures, publications, symposia, conferences and special training courses that explain its principles and content. Furthermore, in the spirit of that same document, this organization in collaboration with the International Victimology Institute Tilburg, in the Netherlands, has created a draft Convention on Justice and Support for Victims of Crime and Abuse of Power which it has promoted to represent a significant updating of information in keeping with new research findings, new legislation, and the wisdom from 25 years of experience by practitioners working directly with victims.

Participation in meetings of the United Nations - The WSV has participated in all the United Nations Office on Drugs and Crime, 16th, 17th, 18th, & 19th Commissions meetings, its side events and parallel meetings in Vienna during this period. It has also attended all International Scientific and Professional Advisory Council meetings in Courmayeur in December from 2007-10. During 2009 our main event was the WSV's 13th International Symposium on Victimology where the draft Convention was the focus at one panel; the theme was supported by the proceedings book of the previous year's TIVI symposium: Raising the Global Standards. During 2010, our organization also attended and actively participated in the 12th Crime Congress which attended by thirteen members. During this event a Resolution was written to encourage countries to bring the Convention to the 18th Crime Commission. The Resolution was only a proposal and not accepted for the agenda. It was distributed at this Crime Congress in anticipation of the May Commission. At this Congress the WSV prepared a formal Recommendation which was approved by the UNODC for distribution to the Congress. Another highlight was our participation in the "Salvador Declaration" including words supporting world victims' rights. Furthermore, our team succeeded in obtaining 21 signatures on a petition from States, NGOs and individuals supporting our Resolution initiative.

Cooperation with United Nations bodies Over the course of the meetings attended during this period, the World Society of Victimology provided expertise from numerous victimologist member of our society as well as the services of our two supporting institute, International Victimology Institute Tilburg (INTERVICT), The Netherlands and the Tokiwa International Victimology Institute (TIVI) Japan.

Initiatives taken by the organization in support of the Millennium Development Goals - Over the course of the meetings attended during this period, the World Society of Victimology provided expertise from numerous victimologist member of our society as well as the services of our two supporting institute, International Victimology Institute Tilburg (INTERVICT), The Netherlands and the Tokiwa International Victimology Institute (TIVI) Japan.

Additional Information - The role of the WSV is to continue to address the key principles set out in the 1985 Declaration for all States. Additionally, some of our efforts within the scope of this Declaration and the proposed draft Convention significantly touch on: human rights, security, empowerment of women and protection of children, all special areas of concern for the United Nations. 

EU ministers back new bill to help victims of crime

Nikolaj Nielsen

BRUSSELS - Justice Ministers meeting in Luxemburg on Friday (April 27) have backed a new EU law to strengthen legal and police protection for victims of crime.

The measures would help streamline judicial and legislative procedures for EU nationals in civil law cases who currently risk struggling with different languages, cultures and legal systems when moving to another member state.

"The council agreed to have a greater defence of the victims of crime, there is an agreement on the framework for the set-up of victim's protection. The important thing is to ensure that victims don't drown in cumbersome procedures," said Morten Bodslov, the Danish minister for justice, who chaired the talks.

Under the proposal, victims would be issued an EU-wide standard certificate containing all the relevant information on their case. They could then present the certificate to police in any other member state.

For instance, if a court in one EU country ordered an estranged spouse to stay at least 500 metres away from his or her partner, the same would apply in any another member state. The police would have to contact the 'stalker' and notify them of the consequences if he violates the injunction, while the victim, would - in theory - receive the same level of protection.

Authorities would first have to verify that the accused stalker has received a fair trial, before issuing the certificate.

The regulation is part of a larger 2009 commission draft European Protection Order (EPO) directive designed to ensure victims of violence and crime are afforded the same protection no matter where they live or reside in the EU.

The EPO as a whole has received wide support from the both the European Parliament and member states. Under the EPO, victims of rape, children, persons with disabilities and victims of human trafficking are designated by the commission as "vulnerable" and would benefit from special treatment.


The European Parliament's civil liberties, justice and home affairs and women's rights committees want to expand the commission's list of designated vulnerable.

Asylum seekers and refugees, elderly and victims of gender-based violence, terrorism, organised crime, violence in close relationships, torture, hate crime, organ trafficking and attempted homicide should also be considered vulnerable, say the committees.

"Women are particularly exposed to hidden and unreported forms of violence, and while establishing minimum standards for the protection of all victims, it is essential that issues such as gender-based violence are recognised and properly addressed," Bulgarian liberal MEP Antonia Parvanova, the rapporteur for the women's rights committee, said.

The two committees will meet in late May to vote on the regulation.

Source: EUobserver - <http://euobserver.com/22/116074>

Further information will be included in forthcoming editions of *The Victimologist* 

New South Wales, Australia Victims Services Clearinghouse website

In February 2012, the New South Wales (Australia) Attorney-General launched the NSW Victims Services Clearinghouse:

http://www.victimsclearinghouse.nsw.gov.au/vocrc/victims_clearinghouse_index.html

or


<http://bit.ly/wRVTdB>

The online database contains summaries of all reports, which are divided into categories such as domestic violence, sexual assault, elder abuse and victims' rights. The Attorney-General said,

"The clearinghouse is a one-stop shop for research into victims of crime, containing more than 250 reports, conference papers and journal articles from Australia and around the world ... It will help guide government policy and be an invaluable point of reference for anyone providing frontline services to victims of crime, including psychologists, GPs, police and legal practitioners."

The NSW Government will also provide up to \$200,000 a year to support further research into the most effective methods of helping victims in their recovery.

"The new funding program will focus on victims' issues, where there is little or no local research available," said the Attorney-General.

In 2012, funding will be provided for research into court support for victims of crime and the impact of media reporting on victims. The clearinghouse website also has a Media Toolbox, containing resources to assist reporters covering cases involving victims of crime. 



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The Victimologist -- Newsletter of the World Society of Victimology



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