

INTEGRATING VICTIMS OF CRIME IN OUR CRIMINAL JUSTICE SYSTEM

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Abstract

For a very long time, legal systems in the world over focused on retributive justice, whereby punishment was inflicted on someone as vengeance for a criminal act. Today, the trend is fast changing. Recent laws creating offences and procedural laws are favouring the restorative justice that focuses on the needs of the victim of crime by attempting to heal the harm done by criminal activities as against retributive justice that focuses on theoretical principle of punishment.² The familiar stereotype of direct victim is the innocent rape or robbery victim, spousal or domestic violence and such other victims of crimes of violence. This class of persons may be referred to as direct or primary victims in this article. There are other persons sometimes more difficult to ascertain who, though not the direct victims but who can reasonably be said and seen to be victimized by criminal conduct such as dependents of a victim of murder or a husband traumatized by the rape of his wife in his presence. These persons may be called secondary or indirect victims. This work examined the need to integrate victims of crime in our criminal justice system and made a call for a paradigm shift. It suggested ways for achieving a more effective protection for victims of crime.

1. Introduction

The administration of criminal justice system today has moved away from punishment to restorative justice system. This no that inform the change of the word "prison" to "correctional centre" because the word "prison" is pejorative and the focus today is not just to punish the offender but also to ensure that the victim of crime are well integrated or stands to benefit in criminal justice administration. Recent laws creating offences apart from stipulating punishment also contain numerous provisions which enable the court to award compensation or to make restitution order in property offences.

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² VAPP Act 2010, Child Right Law of Anambra State 2004, Disability Laws of Anambra State 2019, VAPP Laws of Anambra State 2018 and ACJL Anambra State 2010 and ACJA 2015.

Today, the Victims Rights Movement has received the stamp of global acceptance at the United Nations.³ The victims as a concept in victimology, is difficult to define principally because the phenomenon of victimization manifests itself in diverse forms. The word "victim" was fairly defined as:

"Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws prohibiting criminal abuse of power. A person may be considered a victim...regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependent of the direct victim and persons who have suffered harm in intervening to assist in distress or to prevent victimization".⁴

"Rights" in the expression "Victims rights" is a bit more difficult to handle. In legal theory the concept of "rights" is the subject matter of heated and sometimes riotous controversy admitting of varying permutations of legal and jural postulates.⁵ In every day usage, it is an emotive expression. Generally however, there is some agreement on the point that it usually refers to the incidence of expectations and obligations arising from relationships which, within any legal system, are protected by law or capable of such protection.

2. Rationale for Integrating the Victim into the Criminal Justice System

The compelling need to ensure protection and integration of victims of crime in our criminal justice system has long received the opinion of the court. Ilori J. in *Akilu v Fawehinmi* insists that:

³ United Nations Declaration of Basic Principles of Justice for victims of crime and Abuse of power 1999.

⁴ N.L. Henderson "The wrongs of victims rights", standard press, Vol. 37 Pg. 937, 2009.

⁵ "Rights" by Alan White 1985 Pg. 1

"... there must be justice to the victim (and society must insist on having justice for the victim in order to avoid anarchy)."⁶

The above point was succinctly made clear by a justice of rare breed, Hon. Justice Chukwudifu Oputa J.S.C. in *Godwin Josiah v The State* when he observed as follows:

... Justice is not a one-way traffic. It is not justice for the appellant only. Justice is not even only a two-way traffic. It is really a three-way traffic. Justice for the appellant, accused of a heinous crime; justice for the victim ... and finally justice for the society at large, the society whose social norms and values had been desecrated and broken by the criminal act complained of.⁷

The functions of the victim in the criminal process cannot be over emphasized. Essentially, they are three. Firstly, as the complainant, he activates the criminal process. Without him, the criminal process would be dormant and redundant, perhaps indeed, otiose. Secondly, at the investigation stage, his statement and co-operation is necessary to enable the investigators apprehend the suspect especially in cases where the victim has physical contact with the suspect. Thirdly, at the trial stage, his evidence is very vital for the conviction of the defendant.

The victim is the object of crime. Without him, there would be no offender. His complaint activates the criminal process at the investigation stage and, having so activated it, his participation is essential if the process is to be consummated. Thus, his statement to the investigator is very vital in order to make out a *prima facie* case necessary for prosecution to commence. In the court room proceedings, he is invariably the star witness. The case stands or falls according to the weight of his evidence.

⁶ Suit No. ID/312 188 (unreported).

⁷ *Godwin Josiah v. State* 198 5 INWLR PT. 1 pg. 125

So vital is his role in the whole process that his withdrawal of the complaint invariably results in a withdrawal of the charge.⁸ Further proof of the utility of the victim in the criminal process is provided by the fact that the absence of the *Corpus delicti* in murder cases for instance, drastically reduces the possibility of conviction. This pivotal role of the victim is understandable because he invariably has the most intimate personal experience of the crime.

It can thus be said that the criminal justice process is substantially victim-centric. As a member of the society, the criminal justice system aims at protecting all members of the society in general and the victim in particular. The protection of the victim in this way can be achieved by giving adequate institutional remedies to the victim and not by causing him more emotional distress. If the victim is so vital to the means of the criminal process, it is only fair that the victims should be afforded public protection and attention. The VAPP Act has offered a solution to the victims by giving them protection as well as award of compensation. This move will no doubt encourage victims of sexual offences to report such act for prosecution. Failure to put into consideration the interest of victims of crime has led to general apathy on the part of victims in refusing to prosecute prospective offenders in rape cases.

It does often happen that the victim, especially in cases of crimes of violence is extremely traumatized⁹ or even sustained some damage to his psyche. Such an experience could drive the victim to take the laws into his own hands in search of vengeance against the suspect. At other times the victim may become so completely devastated by the experience as to lose his sanity.

A cursory look at the various provisions of the VAPP Act shows that victims of crime have been accorded their right of compensation and protection. By Sec 1(3) of the VAPP Act, the court shall award appropriate compensation to the victims as it may deem fit in an offence of rape. It is also provided that any person who inflicts any physical injury or attempt to commit any act of violence shall be liable to pay compensation.¹⁰

⁸ See sec. 191 of ACJL 2010 of Anambra State.

⁹ See Sec. 3 VAPP Act, 2015.

¹⁰ See generally Sec. 2 and 5 of the VAPP Act 2015.

It is also interesting to know that the VAPP Act has extended protection and award of damages to persons who commit political violence by a state actor. The Act has succeeded in holding the state vicariously criminal liable to pay damages.¹¹ The VAPP Act did not leave any stone unturned in its bid to assuage the hardship faced by victims when it provided for a protection order against acts of violence against a complainant. This application can be brought by a police officer, health service provider or even a teacher and *afortoiri*, any person in *loco parentis* with the complainant may bring the application before the high court.¹² In today's society, where spousal or domestic violence is a frequent occurrence, the VAPP Act has offered a solution to restrain the respondent husband including an order directing the respondent to secure alternative accommodation for the complainants.¹³

When a victim comes to terms with the reality of his traumatic experience, particularly in the context of crimes of violence and property crimes, there is often, in addition to the economic loss, an attendant emotional injury. These may manifest themselves in feelings of depression, social insecurity, self deprivation and sometimes delusion(s). These factors and more may push the victim into feelings of phantom societal hostility and insecurity which may be deepened if the victim perceives an absence or inadequacy of social support from friends, relatives and the agents of the criminal process.⁴⁰ These may enhance a paranoid view of the world and translate into feelings of suspicion, insecurity and being 'hunted for'. This may manifest itself either in violent dispositions to attack the society or any perceived representatives or symbols of the society or in bouts of fatalism which may result in suicide. In this way the victim dramatises his interpretation of emotions of self-immolation arising from a feeling of loss of self-value or vengeance occasioned by a persecution complex.

It thus becomes obvious that some form of social security is needed in order to cushion for the victim the traumatic after-effects of criminal conduct. This is where the criminal justice system comes in. By catering for the psychological, social, and economic needs of the victim, it goes a long way in cushioning the

¹¹ See Sec. 24(5) of VAPP Act 2015.

¹² See Sec 28(1) of VAPP Act 2015.

¹³ See Sec. 31 of VAPP Act 2015.

shocks of crime for the victim while at the same time facilitating the prevention of crime.

Again victimization, especially in property-related crimes sometimes leads to material insecurity. Depending on the worth and value of the property stolen and the extent of damage to the victim's psyche, he may be drawn to crime as an inverse reaction to victimization. Victims of crime need the reassurance of the society to be able to co-operate with the agents of the criminal process.

Feelings of apathy, loss of interest, depression and shame usually attend crimes of decency such as rape and indecent assault and often times discourages victims from activating the criminal process against their assailants. Such victims need to be reassured that the employment of the criminal process to redress the wrong done to them will not turn into an exercise in futility.

3. Victimology and Plea Bargain

The law requires that before the prosecution enters plea bargaining with the defendant, it must be with the consent of the victim of the crime or his representative. The prosecutor may enter into such plea bargaining during or after the presentation of the evidence of the defendant.¹⁴ Three conditions are contemplated before a plea bargain.

- a. The evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt.
- b. Where the defendant has agreed to return the proceeds of the crime or make restitution to the victims or his representative.
- c. Where the defendant has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.

Compensation of victims of crime is one of the hallmarks of plea bargain. Where there is a plea agreement, the presiding Judge or Magistrate shall make an order that any money, asset or property agreed to be forfeited under the plea bargain shall be transferred to and vested in the victim or his representative or any other person as may be appropriate or reasonably feasible and the prosecutor shall take all reasonable steps to ensure that such money, asset or property are

¹⁴ See 270(2) ACJA 2015.

transferred to or vested in the victims.¹⁵ This is notwithstanding the provisions of the Sheriff and Civil Process Act.¹⁶ In order to ensure that the welfare and interest of victims are well taken care of the Act¹⁷ provides that

any person who willfully and without just cause obstruct or impedes the vesting or transfer of any money, asset or property under the Act commits an offence and is liable on conviction to imprisonment for 7 years without an option of fine.¹⁸

4. Conclusion

The integration of victims into the criminal justice system as demonstrated above will enhance the efficiency of criminal justice administration. There is a compelling need for greater attention to the social-psychology of victims of crime in Nigeria. The legal and constitutional indifference to the right of victims reflects a widespread and more pervasive public indifference to the utility of the victim in the criminal process. The reason for this phenomenon stems largely from the unpreparedness of the society to accept victims as a functional module of the social defence system. Unfortunately, victimology deserves greater attention today than it has so far received in criminal justice administration. The general reluctance of judicial commitment to the welfare of victims in criminal process must be looked into by ensuring a legislative frame work for their protection.

5. Recommendations

- a. Victims should be treated with compassion and respect by giving them access to the mechanism of justice as provided by law for the harm they have suffered.
- b. The court should in deserving cases ensure that there is no unnecessary delay in the disposition of cases and the execution of orders or decree granting compensation to victims.

¹⁵ See 270(13) ACJL 2015.

¹⁶ Sec. 270(13) ACJA 2015

¹⁷ Sec. 270(5)(b)(ii) and (iii).

¹⁸ Sec. 270(14) of ACJA 2015.

- c. Victims should receive the necessary materials, medicals, and psychological assistance at the time of lodging complaints to the prosecuting agency.
- d. The police and other prosecuting agencies should receive training periodically to sensitize them on the needs or welfare of victims and guideline must be put in place to ensure strict compliance.
- e. Government at all levels should periodically review existing legislation creating offences to ensure their responsiveness to changing circumstances by introducing the need for compensation for victims of offences.
- f. Plea bargain should be encouraged and utilized in deserving cases to accommodate the interest of victim of crime.