

THE RIGHTS OF VICTIMS OF VIOLENT CRIMES IN CRIMINAL JUSTICE PROCESS: DO THEY EXIST?

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presentation at the Maiden regional conference on
Criminal Justice Administration, 1-4 November, 2022**

Abuja , Nigeria.

Outline

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Introduction

- ▣ Crime victims are an integral part of the criminal justice system, however, most studies are centred on the offender/ defendant without much recognition on the victims of crime and their rights to protection. Criminal law has always pandered towards punishment of a convicted offender and views crime as offences against the State which ought to be prosecuted by the State.
- ▣ The rights of victims are often not enforced or not even known; as such victims are left hanging during trials and post-trial. The victims only stand as prosecution witnesses to give evidence to prove the crime.
- ▣ Although there are some victimology theories that seem to blame the victim, however, these theories are no longer popular in contemporary times.
- ▣ Victims of violent crimes have rights. The paper establishes the fact these rights exist and are found in laws such as the ACJA, Domestic Violence Act of Ghana VAPPA, EFCC Act UN General Assembly resolution, however, the laws need to be exercised to ensure Justice is done to the victim, defendant and the society at large.

Who is a victim of crime?

- ▣ Under the United Nations Declaration of the Basic Principles of Justice for the Victims of Crime and the Abuse of Power, 1986, victims mean ‘Persons who individually or collectively, have suffered harm, which include physical or mental injury, emotional suffering or economic loss or substantial impairment of fundamental rights through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power’
- ▣ Could be physical, financial, mental or emotional harm, economic loss, or substantial impairment of his or her fundamental rights.
- ▣ Furthermore, a person may be considered a victim regardless of whether the perpetrator is identified, apprehended; prosecuted or convicted; irrespective of the familial relationship between the defendant / accused and the victim. This means that anyone who is affected by a crime or any form of violent activity including domestic, sexual and gender based violence is a victim. A victim can be a woman, man, child, youth, elderly man, a relative of the accused, or a dependent of the victim.
- ▣ Also see Definition under the VAPPA

Victimology theories

- ▣ Victimology is the scientific study of victims and was a concept coined as early as the 1940s by a French lawyer, Benjamin Mendelson.
- ▣ It is the study of causes of victimization, its consequences and how the criminal justice system to which the victim belongs helps such victim. It involves scientific approach towards knowing what the relationship between the criminal and the victim is.
- ▣ It studies to understand the crime from the victim's perspective who has, or is suffering from any injury or destruction due to some other individual's or group of individual's action.
- ▣ It has been discovered that the role of the victim is actually significant, as it can directly or indirectly influence fate and motivate a criminal.
- ▣ There are four theories
 - ▣ i the victim precipitation theory -
 - ▣ ii. the lifestyle theory
 - ▣ iii the deviant place theory and
 - ▣ iv the routine activities theory

- ▣ **Victim Precipitation Theory** -that crime victims attract victimisation to themselves by their provocative and instigatory behaviour during interactions between perpetrators and their victims. EG offences on rape could be caused by action of the victim, a person leaves a door open, then burglars or robbers can come in , victim being the first attacker in assault cases etc
- ▣ **the lifestyle theory**- This theory believes that those whose lifestyle increases criminal exposure are more likely to become victims of crime. Thus people's daily activities may bring them in contact to crime or increase their risks of being victims of crime.
- ▣ **the deviant place theory** -Deviant place theory takes a different approach by taking the blame off the individual victim but locates it in the places he visits that are prone to crime. For them victimisation can be stopped if people avoid certain places eg keeping late nights, wearing skimpy dresses. It holds that victims do not motivate crime, but the environment makes them susceptible to crime
- ▣ **the routine activities** -This is similar to lifestyle activity theory as both emphasise how patterns of routine activities or lifestyles in conventional society provide an opportunity structure for crime.

Rights of Victims

- ▣ Protected under the ACJA, EFCC Act, Advanced Fee Fraud Act, VAPPA introduced a shift away from retributive justice towards restorative justice for victims who may be affected by criminal behaviour.
- ▣ ACJA – do these provisions meet the standards contained in UNGA Resolution 40/34.
- ▣ **Day to day trial and trial in absentia-** sections 396 and 353 ACJA- This is with a view to achieving its purpose of expeditious dispensation of justice and safeguarding the constitutional rights of all citizens to speedy trial.
- ▣ **Award of Compensation to Victim in Judgment-** Section 314 (1)(2) Before the enactment of ACJA, compensation was basically a remedy available in civil litigation with victims of crime left to lick their wounds.
- ▣ **Power of court to order payment of expenses or compensation-s.** 319(1)(a), 321 the court may direct the convict to return the property to the owner or to any person designated by the owner; to pay an amount equal to the value of the property where the return of the property is impossible or impracticable.

- ▣ **Award of Damages-** Section S.454(3)(a). The damages the court may order the defendant to pay under this section is not alternative to conviction or punishment but aimed to serve as substitute for same.
- ▣ **Plea Bargain-s.** 14(2) EFCC Act. Whereas its application was limited to offences relating to financial crimes, the ACJA however, extended the scope of its application to all offences including violent crimes. Prior to the passing of the ACJA, the prosecution need not consult with the victim of the offence before entering into a plea bargain with the defendant, under the ACJA, the prosecutor may enter into a plea bargain with the defendant with the consent of the victim or his representative where inter alia the defendant has agreed to return the proceeds of the crime or make restitution to the victim.
s. 270 ACJA

- ▣ Under the VAPP, the Act mandates the Police to provide assistance to a victim to file a complaint regarding the violence; to arrange transportation for him to a safe place or shelter or to a hospital or medical facility for treatment of injuries where such are needed; to explain to the victims their rights to protection against violence and the remedies available to them; explain to the victims their right to file a criminal complaint in addition to any other remedy available to them.
- ▣ sec 32(1), 38 (1)

GHANA

- ▣ The Domestic Violence Act (DVA) was passed following several years of advocacy efforts by key civil society and women's rights organisations, the media and International Bodies. Act 732 of 2007
- ▣ The Act outlines a comprehensive legal framework for the prevention of and protection against domestic violence and criminalises various acts of physical and sexual violence, economic and psychological abuse and intimidation in domestic relations
- ▣ The Act does not only criminalise various forms of abuses but also seeks to address the concerns of victims. Numerous remedies are therefore enshrined therein to restore the victim of domestic violence to his previous position and to assuage the injury or losses he/she suffered.

- ▣ The Act mandates the police to respond to a request by a person for assistance from domestic violence and to offer the protection and assistance that the circumstances of the case or the person who made the report require, even when the person reporting is not the victim of the domestic violence. Domestic Violence Act s. 7
- ▣ The police must also inform the victim of his/her right to any services which may be available. The victim must also be assisted to have free medical services from the state. The Act provides the establishment of support fund to victims of domestic violence and how this fund will be applied. Moneys in the fund shall be applied towards basic material support of victims; training of families of victims; any matter connected with the rescue, rehabilitation and reintegration of victims of domestic violence.

- ▣ Like in Nigeria, Ghana also suffers from inadequate infrastructure that would make enjoyment of these rights by victims of violent crimes practicable. For instance it was observed that victims of violent crimes still pay for medical care where available, the police are not funded enough to be able to provide shelters to victims of violent crimes and the victim support funds are never properly applied. This is a problem of the whole criminal justice system.

Conclusion and recommendation

- ▣ All humans have rights, victims of violent crimes have rights in the criminal justice system, however, these rights need to be triggered just as that of the offenders.
- ▣ Victims aid prosecution of defendants and help strengthen the criminal justice system. The ACJA, EFCC, VAPPA, Domestic Violence Act and other laws discussed all establish the rights of victims. However, there are challenges in implementing and enforcing these rights. Such challenges include-
 - ▣ Lack of adequate infrastructure in the criminal justice process
 - ▣ Lack of access to justice
 - ▣ Lack of victim support fund
 - ▣ Lack of awareness that victims deserve justice
 - ▣ Delay in trials and incessant adjournments and technicalities
 - ▣ Poor funding of criminal justice institutions

- ▣ The paper explored legislation in both Nigeria and Ghana on the protection of the rights of victims of violent crimes. Although it found that in these countries, victim rights exist and are laudable, it however makes the point that it is not enough to engrave these rights only in letters. A lot still needs to be done by the governments of these countries to move these rights from merely aspirational to realism. The paper observed that many factors exist that make victims of violent crimes unable to fully enjoy the rights available to them and makes recommendations that would bridge the identified gaps. These recommendations border on ways to enhance expeditious trial of cases, provision of adequate medical facilities and proper funding of support mechanisms for victims of violent crimes. Although it is recognised that African countries struggle with myriad of problems that compete for attention, which would challenge the resources of government, protection of rights of victims of violent crimes should never be considered less important.



THANK YOU