



VICTIMS OF BOTH CRIME AND PUNISHMENT: DELHI HIGH COURT'S ATTEMPT TO MAKE LAW HUMANE

THE DECISION of the Delhi High Court in *Brindavan Sharma v. State*,¹ is a milestone in Indian criminal jurisprudence inasmuch as for the first time the Delhi High Court thought it obligatory both morally and legally to care for the victims of not only crime but also of punishment. The facts are unique.

Father of three children killed the mother making them virtually orphans. Father accused showed willingness to give all the movable and immovable property to the children but the court was not satisfied with it. It went ahead and suggested to one Vinod Dhawan, a philanthropist to pay a monthly assistance to these children (Rs. 2,100/-). Mukul Mudgal J took judicial notice of the absence of a scheme to make provision for such victims and asserted the need for the court's proactive role thus:²

This has been necessitated by the fact as of today, nothing has been brought to our notice to suggest whether there is any social benefit available to such victims of crime as the children in the present case. The court cannot be a helpless and mute spectator in such cases and must decree within our legal system some procedure to help such helpless victims of both the crime and the punishment. The court is duty bound in law to ensure that the mandate of Articles 21 and 39 is given effect to.

After noting that the philanthropist has taken care of the children and that the court is duty bound to do something it stressed the obligation of the government thus:³

While the misfortune befalling the three children in the present case is taken care of by one of the compassionate citizens of this country, we are of the view that it is for the Government to devise some method and procedure so as to ensure that the victims of crime such as the three children in the present case, are looked after institutionally and provided succour and support.

The court then surveyed the constitutional and statutory provisions in the light of the international instruments obliging the government to

1. CRL.A. 927/2002 of Delhi High Court.

2. *Id.*, para 6. The bench comprised of Mukul Mudgal and Reva Khetrpal JJ.

3. *Id.*, para 9.



take steps for the welfare of children. Pointing out the need for making proper investment for a crime free society by way of taking care of children the court examined the mandates of articles 21, 39(e) and Convention on the Rights of the Child relating to survival, protection and development and asserted that it was necessary to give further directions.⁴

Mudgal J examined the provisions in the Convention on Rights of the Child and emphasized the need for noting the interconnection of the requirements of these instruments and wove out a theory that the government is under an obligation to make suitable arrangements for taking care of child victims of crime and punishment.⁵ Elaborating the obligations contained in articles 2.2, 8.1, 12.1 and 12.2 of the CRC and article 39 of the Constitution the court asserted that it is a national and international obligation of the state to take adequate steps for child development. In order to buttress its argument it commanded to its aid the famous *Visakha* Statement⁶ to the effect that so long as there is no inconsistency between a constitutional obligation and obligation emanating from an international document, the latter has to be given effect to.

Then the court asserted:⁷

This court accordingly in consonance with the above constitutional mandate is issuing a notice directly to the Ministry of Social Justice and Empowerment, Government of India and the Secy, Ministry of Women and Child Development consider framing of a scheme and provisions of appropriate funds for such purposes.

The court indeed sent notice to other authorities including NHRC. It is sincerely hoped that the government will positively respond to this call by the Delhi High Court. This judgment is welcome. It is convincingly reasoned. Constitutionally compelling. And socially sensitive. The compassion of the court for the hapless victims of crimes and punishment deserves approbation and emulation by other courts.

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4. *Id.*, para 14.

5. *Id.*, para 15(b).

6. AIR 1997 SC 3011. The statement runs thus:- “ Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into the provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution.”

7. *Supra* note 1, para 16.