

THE HEART OF THE PENAL SYSTEM IN THE CATHOLIC CHURCH

A Critical Analysis of the Position of the Victim in Paedophilia Cases

Davis Panadan, CMI*

The author deals with the context of child sexual abuses by Catholic priests and the Apostolic Letter *Sacramentorum Sanctitatis Tutela* that approved the new laws on *graviora delicta*. The author critically analyzes the position of the victim in the penal process system of the Catholic Church and draws conclusions regarding its alleged placement at the heart of the criminal justice system. In conclusion the author states how the substantive and procedural changes to the *graviora delicta* will help the Church better serve her followers in achieving justice for victims and suggests ways and means of making the criminal justice delivery mechanism victim-friendly and sensitive, so that it can meet the challenges faced by victims and provide effective justice to those affected by crime.

Introduction

It is obvious that in human rights discourse a victim's perspective cannot be seen in isolation from the perspective of various organs of society. Governments may be guided by claims of sovereignty; peoples pursue their aspirations in terms of self-determination and development; religions entertain value systems; and political and social institutions look for a normative basis in order to attain their objectives. The perspectives of these various actors may be human rights-related, but they often differ depending on the status and power

*Davis Panadan CMI, born on 17 January 1971 at Meloor in Thrissur, was ordained priest on December 27, 2002. Currently as a research student he is about to defend his PhD thesis soon in law at the National Law School of India University, Bangalore. He holds an LLM from the same institution and a licentiate in Oriental Canon Law (LOCL) from DVK the Pontifical Oriental Institute, Rome. He has authored many articles and at present he is lecturer of civil and canon law at Dharmaram Vidya Kshetram, Bangalore.

positions, including in the Catholic Church. These entities can promote and defend their interests to varying degrees. However, victims often find themselves in vulnerable situations of neglect and abandonment and are in need of the care, interest, and active recognition of the human rights promotion and protection systems. The position of victims, at least the most destitute among them, was aptly characterized by a former Director-General of UNESCO in a publication marking the 20th anniversary of the Universal Declaration of Human Rights:

The groans and cries to be heard in these pages are never uttered by the most wretched victims. These, throughout the ages, have been mute. Whenever human rights are completely trampled underfoot, silence and immobility prevail, leaving no trace in history; for history records only the words and deeds of those who are capable, to however slight degree, of ruling their own lives, or at least trying to do so. There have been -there still are -multitudes of men, who as a result of poverty, terror or lies, have been made to forget their inherent dignity, or to give up the efforts to secure recognition of that dignity by others. They are silent. The lot of the victim who complains and is heard is already a better one.¹

Victims who are in a position to speak often express themselves in similar terms. Consequently, one may learn more about the essence and universality of human rights from their voices than from those of secular or religious leaders. Concepts of human rights are better gleaned from their perspective than from the demands of the powerful accused of violating those rights. Systematic breaches of international law and flagrant deprivations of rights occur in many different settings and situations, such as paedophilia. Ignorance and incapacity handicaps victims who want to present and pursue their claims, and their vulnerability exacerbates this problem.

The first part of the paper discusses the context of child sexual abuses by Catholic priests. It also treats the May 21, 2010 update of the 2001 *motu proprio Sacramentorum Sanctitatis Tutela*, by which Pope Benedict XVI approved the new laws on *graviora delicta*. Part two summarizes the circumstances surrounding the publication of the new *graviora delicta* laws. Part three discusses the substantive changes made to the

¹Rene Maheu, in Preface to *Birthright of Man, An Anthology of Texts for Human Rights*, prepared under the direction of Jeanne Hersch, UNESCO, 1968, 2.

motu proprio. Part four analyzes the procedural law changes to *graviora delicta*, including an overview of the constitution and competence of the Church tribunals that apply these new laws. The last part studies characteristics of victims, how crime impacts them, and the need for a better understanding of who they are and what can be done to help them. Procedural and service rights especially play an important role in defining whether victims are given appropriate attention. The paper aims to critically analyze the position of the victim in the penal system of the Catholic Church and draw conclusions in regard to its alleged placement at the heart of the criminal justice system. It concludes by reiterating the reasons for the substantive and procedural changes to the *delicta graviora* and how these changes will allow the Church to better serve her followers in achieving justice for victims. In conclusion, the paper seeks to suggest ways and means of making the criminal justice delivery mechanism victim-friendly and -sensitive, so that it can meet the challenges that victims face and provide effective justice to those affected by crime.

1. Child Sexual Abuse Cases and the Catholic Church

The topic of child sexual abuse by Catholic priests came to the forefront in 2002 with the case of John Geoghan, a priest in the Boston Archdiocese who was accused of abusing more than 130 children over three decades. He was convicted of one count of indecent child assault, sentenced to prison, and murdered by an inmate while incarcerated. Although his case was extreme, it brought intense media attention,² record reporting of past abuses by priests, and searches for explanations about how such a crisis could occur in the Catholic Church. Questions about the abuse crisis centered around two key issues: How could priests commit such acts, and how could an organization knowingly allow the abuse to occur? As Catholic communities, survivors' groups, and the general public were seeking answers to these questions, so was the Church. Because the Church did not know the extent of the crisis or its causes, it commissioned many studies to address these issues. But we miserably failed to study the issue from the victim's perspective, as Jesus handled and healed the lady who was caught in adultery.

²The Boston Globe Spotlight Investigation, www.Bostonglobe.com/news/special-reports/investigations/reporters-bios, accessed in December, 2014.

The 1962 document *Crimen sollicitationis*³ preceded and was in force until the promulgation of *Sacramentorum Sanctitatis Tutela*. This text was to be diligently stored in the secret archives of the Roman Curia for internal use only. Why were the new *delicta graviora* laws made public in such a reserved manner, without a press conference and without publication in the *Osservatore Romano*? I understand that reporters and the media prefer numerous press conferences, but the topic is a very delicate one.

In recent years, child sexual abuse by clerics has attracted a great deal of attention and created an intense debate on the laws and procedures the Church applies to punish these crimes. It is right for there to be transparency about the laws that are in place to combat these crimes, and it is appropriate that those laws be presented in their entirety to enable the victim to get justice.

2. Some Notes on Procedure in Sexual Abuse Cases

The motu proprio contains only one delict *contra mores*, found in art. 4: the delict against the Sixth Commandment committed by a cleric with a minor under the age of eighteen years. Here, some considerations of the praxis of the Congregation for the Doctrine of the Faith (CDF) are relevant:⁴

a) The motu proprio speaks of a “*delictum cum minore*.” This does not mean only physical contact or direct abuse, but includes indirect abuse also (for example: showing pornography to minors; indecent exposure in front of minors). Included also is the possession of, or downloading from the internet of, paedophilic pornography. This type of behaviour is also a civil crime in some nations. While “browsing” may be involuntary, it is difficult to see how “downloading” could be considered so. The latter involves not only an intentional act, but often payment by credit card and the furnishing of personal information by the purchaser which can be traced back to him. Some priests have been incarcerated for possession of thousands of pornographic photos of

³Supremae Sacrae Congregationis Sancti Officii, *Instructio de modo procedendi in causis de crimine sollicitationis*. By Pope John XXIII, 16 March, 1962. (Accessed in December, 2014). Hereafter *Crimen Sollicitationis* (Latin).

⁴Cooperman, Alan, Vatican “Memo Cited in Sex Abuse Cases: Significance of 1962 Secrecy Order Disputed,” *Washington Post*, August 25, 2003. Available at http://www.vatican.va/resources/resources_norme_en.htm, accessed in December, 2015.

children and youth. According to the praxis of CDF, such behaviour is considered a *delictum gravius*.⁵

b) CIC c. 1395 §2 speaks of a delict with a minor under 16: "*cum minore infra aetatem sedecimannorum*." The *motu proprio*, on the other hand, speaks of a delict with a minor under 18: "*delictum ... cum minore infra aetatem duodevigintiannorum*." This discrepancy complicates classification of the delict. Some experts speak not only of paedophilia (the sexual attraction to prepubescent children), but also of ephebophilia (the sexual attraction to adolescents), of homosexuality (the sexual attraction to adults of the same sex), and of heterosexuality (the sexual attraction to adults of the other sex). Between sixteen and eighteen years of age, some "minors" may indeed be perceived as objects of homosexual or heterosexual attraction. Some civil jurisdictions consider a person of sixteen years as capable of giving consent for sexual activity (whether hetero or homosexual). The *motu proprio*, however, stigmatizes as a delict every violation of the Sixth Commandment with a minor under eighteen years of age, whether based on paedophilia, ephebophilia, homosexuality, or heterosexuality. This differentiation has a psychological, pastoral, and juridical importance. It helps, no doubt, both the ordinary and the judge to grasp the gravity of the delict and to choose the means necessary to reform the guilty cleric, repair scandal, and restore justice.⁶

c) A few serious cases of sexual abuse of minors between the ages of sixteen and eighteen committed prior to April 30, 2001 were dealt with under CIC c. 1399: "In addition to the cases established here or in other laws, the external violation of a divine or canonical law can be punished by a just penalty only when the special gravity of the violation demands punishment and there is an urgent need to prevent or repair scandals."⁷

⁵Cooperman, Alan, Vatican "Memo Cited in Sex Abuse Cases: Significance of 1962 Secrecy Order Disputed." *Washington Post*, August 25, 2003, available at http://www.vatican.va/resources/resources_norme_en.htm, accessed on April 9, 2015.

⁶CIC c. 134.

⁷William H. Woestman, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law* (Ottawa: St. Paul University, 2000) 27.

The question of prescription with regard to *graviora delicta* is once again much discussed after the *motu proprio* because, for the first time in history, a time limit has been imposed, after which the *action criminalis* is extinguished for these delicts.⁸ Art. 5 §1 indicates that a delict is bound by prescription after ten years, while Art. 5 §2 establishes that this period of ten years runs according to the norm of CIC c. 1362 §2 or of CCEO c. 1152 §3: "Prescription runs from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased. In cases of sexual abuse, the period of ten years begins to run the day on which the minor completes his eighteenth year."⁹ Experience has shown that a term of ten years is inadequate for these types of cases and that it would be desirable to return to the former system in which these delicts were not subject to prescription at all.¹⁰

Delicta graviora are referred to CDF by the ordinary in virtue of Art. 13 of the *motu proprio*, which speaks of "notitia saltem verisimilem ... de delicto reservato" and of an "*investigation praevia*."¹¹ The first phase is identical to that envisaged by CIC c. 1717 and CCEO c. 1468. The ordinary or hierarch has the obligation to investigate both the credibility of the accusation as well as the substance or object of the alleged delict.¹² If the result of the "*investigation praevia*" is that the accusation is credible, the ordinary or the hierarch no longer has

⁸Cooperman, Alan, Vatican "Memo Cited in Sex Abuse Cases: Significance of 1962 Secrecy Order Disputed" *Washington Post*, 25 August, 2003. Available at http://www.vatican.va/resources/resources_norme_en.htm, accessed in December, 2014.

⁹Cooperman, Alan, Vatican "Memo Cited in Sex Abuse Cases: Significance of 1962 Secrecy Order Disputed." *Washington Post*, 25 August, 2003. Available at http://www.vatican.va/resources/resources_norme_en.htm, accessed in December, 2014.

¹⁰On 7 November 2002, the Holy Father granted to CDF the faculty to derogate from prescription on a case by case basis upon request of an individual bishop.

¹¹*Acta Apostolicae Sedes* (Vol. 93, pp. 785-788).

¹²Cooperman, Alan, Vatican "Memo Cited in Sex Abuse Cases: Significance of 1962 Secrecy Order Disputed," *Washington Post*, 25 August, 2003. Available at http://www.vatican.va/resources/resources_norme_en.htm, accessed in December 2014.

power or competence to treat the material in conformity with CIC c. 1718 and CCEO c. 1469. He must refer the case to CDF.¹³

2.1 As Regards Religious, the Following Procedural *Iter* Is Foreseen

Each time the competent superior/major superior¹⁴ receives information about at least a probable *delictum gravius* committed by a

¹³CDF studies the acts submitted by the ordinary and, if no further information is requested in order to arrive at an informed decision, the congregation proceeds to a very important first decision: the method, *iter*, of resolving the case. Different possibilities are: a) CDF may decide that the facts of the case do not require any further penal action and propose, or confirm, some non-penal administrative provisions for the sake of the common good of the Church and the good of the denounced cleric. Against such provisions of CDF, it is not possible to make hierarchical recourse to the Apostolic Signatura, but only to the cardinal and bishop members of CDF in ordinary session, commonly known as the *Feria Quarta*. b) CDF may decide to present the case directly to the Holy Father for a *dimissio ex officio* of the accused cleric. This is reserved for particularly grave cases in which the guilt of the cleric is beyond doubt and well-documented. It is the praxis of CDF to request that the ordinary ask the guilty cleric if he would prefer to seek on his own initiative a dispensation from his priestly obligations. If the cleric refuses, or does not respond, the case proceeds. The Disciplinary Section of the CDF prepares a report for the Holy Father who himself decides the case on the occasion of the audience, generally on a Friday, granted to the cardinal prefect or to the secretary of the congregation. The rescript will be communicated to the ordinary. There is no appeal or recourse against the decision of the Holy Father. c) CDF may decide to authorize a penal administrative procedure according to CIC c. 1720 (CCEO c. 1486). If the ordinary is of the opinion that the case merits the imposition of the penalty of dismissal from the clerical state, he must refer his opinion to CDF which will, in turn, decide whether to impose a penalty. Recourse against such a decision may be made to the *Feria IV*. d) CDF may decide to authorize the ordinary to conduct a penal judicial process in the diocese, with the proviso that, in every case, an appeal will be reserved to the tribunal of CDF. The judges, the promoter of justice, the notaries, as well as the advocates must be priests (Art. 12) or be dispensed from this prerequisite. Art. 22 further requires that the acts of the case be transmitted *ex officio* to CDF at the conclusion of the first instance. The Promoter of Justice of the congregation has the faculty to appeal the first instance sentence within thirty days. In these cases, CDF has the faculty to sanate any violations of procedural law by inferior tribunals. The decision of the Tribunal of CDF in second instance cannot be appealed and therefore becomes *res iudicata* (Art. 23 n. 1 and n. 4).

¹⁴CIC c. 620 and CCEO cc. 418 and 441.

religious cleric, he must carry out an *investigation praevia* according to the norm of law. The religious must be informed of the outcome and given the opportunity to defend himself.¹⁵ All the acts must be handed over to the supreme moderator according to the norms laid down in CIC c. 695 §2. In turn, the supreme moderator will forward the aforementioned acts to CDF together with his and his council's *votum* about the merits of the case and the procedure to be followed. Once CDF has received the necessary acts from the supreme moderator, it will indicate the procedure to be followed and the measures to be taken.¹⁶

The new procedural laws and all the progressive changes are modelled after the *motu proprio* to ensure the quick and efficient prosecution and punishment of these crimes.¹⁷ The Church developed

¹⁵CIC cc. 1717 and 695, §2, and CCEO c.1468.

¹⁶a) When this congregation indicates that the case should proceed to a penal trial, it can also indicate, according to circumstances, the tribunal competent to undertake the proceedings at first instance (cf. CIC cc. 1427 and 1408 with CIC c. 103, and CIC c. 1069 with CIC c. 913). Said tribunal may decree dismissal from the institute as well as dismissal from the clerical state. The appeal judgement is reserved to the Supreme Tribunal of CDF; b) When this congregation decides that the case should proceed in an administrative manner, it will ask the supreme moderator to proceed according to the norm of CIC c. 699, §1 and CCEO cc. 500, 553, and 562. With his council, the supreme moderator can decide not to order dismissal from the institute but to issue disciplinary measures. It is the exclusive duty of CDF to confirm the decree of dismissal from the institute according to the norm of CIC c. 700 and CCEO cc. 500, 553, and 562. At the same time, the congregation will also decide whether to impose upon the religious the penalty of dismissal from the clerical state. Copies of any decrees will be sent *ex officio* to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. Appeals against decrees issued in cases of *delicta graviora* will be decided exclusively by the ordinary congregation of members of the Congregation for the Doctrine of the Faith (*Feria IV*). There is no recourse to the Apostolic Signatura. Recourses have a suspensive effect. c) As regards institutes of diocesan right, each presentation to CDF by the supreme moderator must be endorsed by the bishop of the religious person's domicile or quasi-domicile according to the norms of CIC c. 103.

¹⁷Because the instruction *Crimen Sollicitationis* was to be reviewed when the new codes were promulgated, CDF devoted itself to a diligent study of the canons on delicts both of the Code of Canon Law and the Code of Canons of the Eastern Churches. Congregation for the Doctrine of the Faith, *Letter to Bishops of the entire Catholic Church and other Ordinaries and Hierarchs having an*

new sensibility to the problem of sexual abuse of minors, while offering specific guidance for bishops. In this regard, it is useful to mention that these are crimes against the person, and that the defence of victims should always prevail over protecting the Church's name or any other matters.

The Church is more concerned about the sexual abuse issues than the need for the victim-centered approach that emerged during the pontificate of Pope Benedict XVI. He says: "It seems that we must create a time for penance, a time for humility, to renew and relearn absolute sincerity. The Church is doing, and will continue to do everything within its power to investigate these accusations, to ensure the guilty parties are brought to justice for these abuses, and to put effective measures into place to protect young people in the future. As far as these issues are concerned, there are two things, I think, are important. The first concern is for the guilty parties involved: just punishment, precluding them from any kind of contact with young people, because we know that this is a disease and that free will has no bearing on this disease. Consequently, we must protect these people from themselves and keep them far away from young adults and children. The second concern is prevention, during the education and in choosing candidates for the Priesthood, to be as careful as humanly possible to prevent future cases."¹⁸

Now the trend is rather moving to a victim-centered approach. The first concern the Catholic Church's justice system should have for victims is how to heal them, and what we can do to help them

interest regarding the more serious offenses reserved to the Congregation for the Doctrine of the Faith. English translation, from *Origins* 31:32, January 24, 2001 (accessed on April 10, 2015). There was some question as to whether or not the document had been superseded with the proclamation of the revised *Code of Canon Law* in 1983. Compare Wooden, Cindy, "Vatican Official says 1962 norms on solicitation no longer apply." *Catholic News Service*, 7 August, 2003 (accessed in December, 2014) with Doyle, Thomas, The 1962 Vatican Instruction *Crimen Sollicitationis*, promulgated March 16, 1962, 1 April, 2008, paragraphs 2, 4-6 (accessed in December, 2014. However, the phrase, "in force until now" clearly established that *Crimen Sollicitationis* ceased to be in effect with the publication of the new instruction.

¹⁸Pope Benedict XVI, Letter to the Catholics of Ireland (March 19, 2010), available at http://www.vatican.va/holy_father/benedict_xvi/letters/2010/index_en.htm, accessed in December, 2014.

overcome this trauma, find life again, and return and find renewed faith in Christ again. Care of and commitment to the victims are our first priority, coupled with material, psychological, and spiritual help. The following is the relevance of a victim-centered approach to the justice system of the Catholic Church. It argues for making the victim an important player in the system instead of relegating her/him to the side-lines. Not only will this provide much needed relief and succour to the victims, but will also help in the proper administration of justice in the Catholic Church. Further, this part makes a case for providing effective justice to the victim by supplementing her/his participation in criminal proceedings with compensation for damages suffered due to the crime, and support services to ensure proper recovery and rehabilitation.

3. Role of the Victim in the Criminal Justice System of the Catholic Church

The means of providing justice for victims has assumed great relevance in modern times. Administering criminal law efficiently, effectively, and even-handedly is a fundamental obligation of any state governed by the rule of law, especially of the Catholic Church that is guided by the mercy of the Lord Jesus Christ. One area in which the Catholic Church needs to concentrate in its penal trial is in providing justice for the victims of crime. At present, victims play only a peripheral role in the Church's justice system.

In an adversarial system, criminal cases become a contest between the accused and the state, represented by the public prosecutor. There is very little participation envisaged for the victim, the one most affected by the crime. The victims' plight is forgotten in the battle for supremacy between the state and the accused. In these systems, the victim comes first to the scene to furnish information. Once the information is furnished, the victim comes into the picture only when the prosecution calls upon her to give evidence in the court. We would say that the victim virtually takes a backseat in the criminal justice system.

But in the Catholic Church, in sexual abuse cases, the victim is neither a participant in the criminal proceedings launched against the offender, nor even reckoned as a guiding element in the process of prosecution or the ultimate decision-making. There is a plethora of instances in which the victim has been subjected to secondary

victimization by the acts of the accused or their associates. The law of the Church does not afford any relief to the victim by way of monetary compensation or reparation for the harm suffered, except to a very limited extent. There has been neglect of the victim's needs and interests, even though she/he ought to be regarded as an important player in the system. The system has no mechanism and no direction to redress the suffering and trauma undergone by a victim who has to bear the horrifying experience with all its attendant consequences silently and helplessly. There is none to counsel victims, to heal the scars left behind by the perpetrators of the offence.

Whether and to what extent the victim should be given a role in criminal prosecution are core questions that need to be addressed. In India, the adversarial system is the system in vogue for administering criminal justice. The prosecution and the accused figure are the only parties in this system. They put forward their respective versions, supported by evidence, and the session's judge/magistrate takes the role of an umpire to determine whether the prosecution has been able to prove its case beyond reasonable doubt. The accused is given an opportunity to take a particular stand in defence of his/her case, if he/she is so inclined. However, there is no statutory provision which confers a right on the victim to interpose as a party and play an active role and coordinate with the prosecuting agency to establish the guilt of the accused. From the investigation of the crime to the conclusion of the trial, the role to be played by the victim by and large is zero.

The British model of prosecution of criminal cases is in contrast with the model obtaining relevance in some other jurisdictions, especially in Europe. For example, in France, all those who suffer damage from crime are entitled to become parties to the proceedings from the stage of investigation. The victim can move the court for appropriate directions if the investigation gets delayed or distorted. She has a right to intervene in the court proceedings. The victim or her/his lawyer can play an active role on par with the prosecutor in the conduct of the proceedings. She/he can also adduce evidence with regard to the loss and suffering undergone by her so as to claim compensation.¹⁹ In some states in the U.S.A. & in Commonwealth countries, a victim impact statement is taken into account before deciding on such issues as plea

¹⁹V.S. Malimath, "Report of the Committee on Reforms of Criminal Justice System in India," 76 (2003) 102.

bargaining and grant of parole.²⁰ It may be noticed that in the United Kingdom,²¹ the right to information is ensured to the victim by means of executive instructions issued by the Home Ministry. The 1996 Victim's Charter states: "You can expect a crime you have reported to be investigated and to receive information about significant developments in your case, the police will tell you if someone has been caught, cautioned or charged, and on request, you will be told about any decision to drop or alter the charges substantially.²² You will also be told the date of the trial and the final result.²³ In light of these developments in other jurisdictions, this part will examine the role of the victim at the stage of investigation and at trial and make suggestions for changes in the Catholic Church with respect to the same.

²⁰Criminal Procedure Code of India (Cr.P.C) introduced by the Criminal Law (Amendment) Act, 2006. This amendment has, for the first time, introduced the concept of plea bargaining in India. Notice to the victim is required to be given in such proceedings.

²¹No doubt, in India, the victim has a remedy to invoke the jurisdiction of the High Court under Article 226 of the constitution. However, this remedy is discretionary and, at times, a long, drawn-out process. Aside from that, the High Court normally refrains from probing into disputed questions of fact, which might often come up in such cases.

²²In India, with the recent enactment of the Right to Information Act, 2005, the victim's right to secure information from the police at the investigation and subsequent stages, may assume a new dimension, especially in view of the overriding effect given to the provisions of the act. The entries in the case diary or other police records concerning the stage/progress of the case can be accessed by the victim or the informant and, in case of non-disclosure of information, such persons can have recourse to the remedy provided under the Section 20 of Right To Information Act, 2005. However, it is doubtful whether a police officer is under an obligation to furnish explanatory information, such as the reasons for delay, and the steps being taken to expedite the investigation/trial.

²³Victim's Charter 2 (1996), available at <http://www.cjsonline.gov.uk/downloads/application/pdf/Victims%20Charter%20-%20English.pdf>. This entitlement is backed by two Home Office Circulars, which require the police to inform the victim about the progress of the case. The 1995 version of the Court's Charter provides that court staff will explain why delays are necessary and will be available to explain other points of procedure. See generally Helen Fenwick, *Procedural rights of the Victims of Crime: Public or Private Ordering of the Criminal Justice Process*, 60 MOD. 1. Rev. 317 (1997).

3.1 Role of the Victim in Investigation

At the investigatory stage of sexual abuse cases, the statement of the victim is to be recorded. The ordinary/hierarchy/supreme moderator²⁴ investigates the case pursuant to information received by him about the credibility of the accusation. Then, the victim is to be called upon to tender evidence with the ordinary/hierarchy/supreme moderator/tribunal/enquiry commission on the scheduled date. The tribunal or enquiry commission should have the *suo moto* power to summon the victim as a witness.²⁵

Penal trial presented in the CDF norm must change to accommodate the recognized needs of victims of crime. Necessary steps have to be taken by CDF to make the victim play her due role in ensuring prompt investigation and effective prosecution of the case. The victim should have a sense of satisfaction that she/he is not being neglected by the Church. One way of healing the wounded feelings of the victim, and of sustaining the victim's confidence in the penal process, is to make her/his presence felt both at the stage of investigation and in the course of trial. This can be achieved, firstly, by providing the victim with the right to information relating to investigation and the trial procedures. The victim should have the satisfaction of knowing what is happening.²⁶ The right to know about the details of the case should include the reasons for the delay in the process, the stage of inquiry or trial by the ordinary as well as the reasons for the delay in the progress of the trial, and an account of the evidence proposed to be adduced by the prosecution. A duty should be cast on the ordinary/his

²⁴If the accused is a member of religious order or congregation, etc.

²⁵Section 311 of Criminal Procedure Code of India, 1973 (amendment in 2001).

²⁶No doubt, under the current Indian law, there are certain provisions which are meant to provide the victim with such information. If the police refuse to investigate a case, then the police officer is required to notify the informant and provide the reason for the refusal. Section 173(2) of the Criminal Procedure Code of India further requires that the report sent to the magistrate after the investigation is completed shall be furnished to the first informant. However, the police very often violate this obligation. Apart from ensuring strict observance of the aforementioned requirement, a further provision ought to be made to obligate the concerned police officer to furnish on request a copy of such a report to the victim, even if she is not the first informant. This should be coupled with the conferral of a right to the victim to contest the findings of the report before a superior police officer.

delegate/hierarchy/supreme moderator/enquiry commission to apprise the victim of the developments in investigation, unless the information is likely to hamper investigation. The victim should have access to a copy of the charge sheet filed in the tribunal.

3.2 Role of the Victim in Prosecution

The next important question is whether and to what extent the victim should be allowed to play a role in the proceedings set in motion by the criminal prosecution.²⁷ The argument that the intervention of victims in the prosecution process may vitiate the fairness of the trial by opening the doorway to retributive or vengeful traits in the victim is untenable. But the victim's participation, at least to a limited extent, would help the enquiry commission in fulfilling the duty entrusted to

²⁷In India, the prosecution is carried on by the public prosecutor, who is supposed to be fair and objective in his approach. He is considered to be an officer of the court, with a duty to assist the court in arriving at its decision. The P.P. is not supposed to identify himself with the police and seek to get conviction by any means, fair or foul. At times, the court may permit an advocate authorized by the informant or the victim to assist the P.P., but such advocate has no independent right to present the case. His role is that of assisting the P.P. who is in sole charge of the prosecution. The victim also has the opportunity to address the court in case the magistrate is not inclined to take cognizance after the police report is submitted. Further, the informant or the victim can also have her say when bail is liable to be cancelled. The relevant provisions of the Criminal Procedure Code of India deserve a special reference. Section 225, Cr.P.C., enjoins that in every trial before a Court of Session, the prosecution shall be conducted by a P.P. Section 301 bears the heading "Appearance by Public Prosecutors." Section 301(1) lays down that the P.P. or the assistant public prosecutor in charge of a case may appear and plead without any written authority. Then follows section 301(2), which seems to qualify the general rule relating to the appearance of P.P. It enjoins that where a private person instructs a lawyer to prosecute any person, the P.P. or the AP.P. in charge of the case, shall conduct the prosecution, and the lawyer so instructed can only act under the directions of the P.P. or the AP.P., as the case maybe. However, he can, with the permission of the court, submit written arguments after the evidence is closed. That means that the counsel engaged by a private person such as the victim or the first informant can assist the prosecutor with the permission of the court and submit written arguments after the evidence is closed. The role of a private counsel in such an event, as pointed out by the Supreme Court in the case of *Shivkumar v. Hukum Chand*, AIR (1999) 7 Supreme Court Case, 467, is more or less that of a junior counsel who assists a senior. He cannot act independently of the P.P.

it, and would provide much needed assistance to the court in its search for truth within the framework of criminal jurisprudence. Secondly, the victim will have the satisfaction of guiding the prosecution along the right lines, and of the court hearing her view point. The right approach would be to balance these diverse considerations and to provide a limited role to the victim. At the stage of formulating the charges, it is proper that the victim is heard. The victim can always notify the enquiry commission that a relevant witness has not been examined, or that some material piece of evidence has been left out. At the conclusion of the trial, supplementary arguments should be allowed to be advanced by the victim or her/his counsel, both on the merits of the charge, as well as on the sentence. These measures, apart from taking care of the interests of the victims, provide considerable assistance to the court in handing down its verdict, without in any way stifling the essential principles of criminal law, including the procedural safeguards available to the accused.²⁸ At the same time the courts will be better assisted in their quest for truth and in arriving at a just decision, without pandering to the retributive spirit or vengeful attitude of the victims. It will not in any way diminish the presumption of innocence in favour of the accused, nor jeopardize the due rights of the accused.

3.3 Victim Compensation

The more important aspect of rendering justice to the victims, however, lies in providing monetary relief for the loss and suffering undergone by the victim.²⁹ The resolution adopted by the General

²⁸Under section 311, Cr.P.C., the court has the power to summon at any stage, any person as a witness, or examine any person who is in attendance, though she has not been summoned, or recall or re-examine any person already examined. The court is enjoined with a duty to do so if the evidence of such a person appears to be essential to the just decision of a case. Another provision which is in a way complimentary to section 311, Cr.P.C., is section 165 of the Indian Evidence Act, 1872. It invests the court with the power to ask any question to any witness at any time about any fact, and to order the production of any document or thing related to any relevant fact. This power can be exercised by the court "in order to discover or to obtain proof of relevant facts."

²⁹Under the existing provisions of the Cr.P.C., there is a limited scope to grant compensation to the victims. Section 357(1) provides that in a case where a sentence of fine is imposed (with or without imprisonment), the court may order the whole or any part of fine to be applied for the payment of

Assembly of the United Nations in 1985, incorporating the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,³⁰ is a big milestone in the evolution of the concept of victim's compensation. This declaration lays down the foundation for the state's obligation to compensate the victim, and is considered to be the *Magna Carta* of victims' rights.³¹ The declaration recommended the establishment of national funds for compensating victims. It further provided that victims should receive necessary material, medical, psychological, and social assistance through governmental, voluntary, community-based, and indigenous means. This declaration underscored the need to strengthen the judicial and administrative mechanisms to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.³²

English legal system has been introduced a non-statutory scheme of *ex gratia* payments by the state and as a result, the Criminal Injuries Compensation Board has been constituted. It also referred to similar programmes in vogue in New Zealand, Northern Ireland, and in some of the states in the U.S.A. However, no specific recommendation was made regarding state compensation of victims.³³

compensation to any person, for the loss or injury caused to him by the offence. This is subject to the rider that in the opinion of the court, the compensation is recoverable by such person in the civil court. Section 357(3) enables the court to order the accused person to pay, by way of compensation, a specified amount to the person who has suffered loss or injury by reason of the offending act. Such an order can be passed even if the fine does not form part of the sentence imposed.

³⁰G.A. Res. 40/34 (1985), available at http://www.unhchr.ch/html/menu3/b/h_comp49.htm.

³¹The Declaration provides: [W]hen compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: (a) victims who have sustained bodily injury or impairment of physical or mental health as a result of serious crimes; (b) the family and especially dependents of persons who have died or have become physically or mentally incapacitated as a result of such victimization.

³²G.A. Res. 40/34 (1985), available at http://www.unhchr.ch/html/menu3/b/h_comp49.htm.

³³This issue also received considerable attention from the Malimath Committee, which observed that victim compensation is a "State obligation in

In India, our Constitution indicates that the state's rescue of victims of crime, irrespective of its legal obligation, is a part of the ideal of social justice and a clear goal of the document. A provision such as Article 38 amply testifies to the fact that victim assistance and the promotion of welfare ideals are part of that cherished goal. The only limitation which the state has to bear in mind is the resource crunch. In India, the 154th Law Commission Report dealt with the topic of victimology but confined itself to a discussion on victim compensation. It did not address the issue of participation of victims in investigation and prosecution.

In Europe, the Convention on the Compensation of Victims of Violent Crimes, 1983,³⁴ is another significant move in the field of victimology. It is almost along the same lines as the United Nations Declaration. Drawing inspiration from this convention, many states in Europe have taken legislative measures, such as the enactment of the Criminal Injuries Compensation Act, 1995 in the United Kingdom. In these countries, a victim-oriented approach is emerging with an accent on promoting victim satisfaction. Apart from providing monetary compensation, victims' support strategies are being addressed as an integral part of the policies modulating the criminal justice administration, especially in relation to sexual assault cases. There is raging debate in these countries as to whether a needs-based or a rights-based approach is called for in relation to the victim. In this context, restoring justice to victims by creating a corpus fund in each diocese/eparchy is being explored in the justice systems of the Catholic Church.

3.4 Victim Support Services

The above discussion becomes irrelevant if there are no means available for the victim to enforce her/his rights. Quite often, the victim might not even be aware of her/his rights, much less act upon them. This calls for the provision of legal aid to victims of sexual abuse cases in the Catholic Church. The more acceptable and practicable course would be to provide immediate assistance of recognized pious

all serious crimes, whether the offender is apprehended or not, convicted or acquitted.

³⁴European Convention on the Compensation of Victims of Violent Crimes, (E.T.S. No. 116), available at <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/116>, accessed in December, 2014.

associations in dioceses and eparchies. Such organizations, which can help the victim in seeking the advice of a competent lawyer to organize counselling by experts, and in providing a network of psychiatric services, are of utmost importance. Rehabilitation of poor victims calls for urgent attention that treats it as part of the social justice ideals of the Catholic Church. Provision of a congenial atmosphere for victims who come to the tribunal to observe the proceedings or to present evidence is imperatively needed.

Conclusion

Over the past three decades, the victim movement worldwide has agitated for an enhanced role for victims in the criminal justice system. Despite some progress towards that goal, structural as well as political factors may mean that victims have won as much as they are likely to gain from conventional justice processes. But there is good evidence that restorative justice can offer them more justice than they receive from the formal court-based system. The evidence from the research into the impact of a restorative justice programme on victims provides empirical evidence to show that the restorative alternative of conferencing, more often than court-based solutions, has the capacity to satisfy victims' expectations of achieving a meaningful role in the way their cases are dealt with as well as delivering restoration, especially emotional restoration, from the harm they have suffered.

One of the more promising aspects of the growing awareness of crime victims' needs in recent years has been in "restorative justice," an encouraging adjunct to the justice system of the Catholic Church. At its most elegant, restorative justice insists that offenders not merely be punished but held personally accountable for what they have done. Our traditional system, sometimes described as "retributive justice," asks three basic questions:

- What laws have been broken?
- Who broke these laws?
- How shall the lawbreaker be punished?

On the other hand, the fundamental questions of restorative justice, which is victim-oriented, are:

- Who has been harmed?
- How can these harms be addressed or repaired?
- Who should address or repair the harms?

In many cases, restorative justice can offer a much more inclusive and personal approach to addressing harms. It does not dispute the need

to sanction or punish offenders, but it does presume that punishment alone is not enough, and it can enable the personal needs of victims to be more fully considered during the process of adjudication. This is very different from the traditional system, which effectively excludes victims from almost every aspect of adjudication. The victim-centered approach has become more significant as the field of restorative justice has attracted individuals of heart and conscience. These persons believe deeply in the power of reconciliation and forgiveness for victims, who personally know the depth of the victim experience or the effects of trauma and post-trauma. Restorative justice practices that are firmly and unambiguously anchored in addressing the needs of victims can at the same be sensitive to the needs of offenders as they start to comprehend the effects of their actions upon their victims. Such practices offer the greatest potential "satisfaction" for victims – even when the degrees of victimization and violation are indescribably horrific.

Restorative justice gives victims the chance to tell offenders the real impact of their crime, to get answers to their questions, and to receive an apology. It gives the offenders the chance to understand the real impact of what they've done and to do something to repair the harm. Restorative justice holds offenders accountable for what they have done, personally and directly, and helps victims to get on with their lives. The strong victim benefits from restorative justice are:

- victims may receive an apology from the offender in their case.
- victims can give the offenders the insight and motivation to stop offending.
- it would reduce the likelihood of recidivism.
- victims can understand the sentence the offender had received was fair.

The Catholic Church, which is the face of the Lord Jesus Christ for mercy and justice, should aim to ensure safety and instil a sense of security in victims and their families. This not only requires that the victim be allowed to participate in the criminal proceedings of the tribunal in a meaningful way, but also that she/he be provided monetary and psychological aid and assistance. Such an approach will incidentally reduce the crime rate, as it will improve conviction rates and ensure that the penal process acts as an effective deterrent to potential criminals. Drawing a road map to give a better deal to the victims is the need of the day which can brook no delay in the Church.