

## THE STUDY OF VICTIMOLOGY AND CRIME VICTIMS

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### INTRODUCTION

Victimology is the scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system that is, the police and courts, and corrections officials and the connections between victims and other social groups and institutions, such as the media, businesses, and social movements<sup>1</sup>. Victimology is however not restricted to the study of victims of crime alone but may cater to other forms of human right violations that are not necessarily crime. It is an important part of the criminal justice system along with criminology and penology. 'Victimology' is a subset of the broader field of criminology, which is the study of crime and of criminals. Whereas conventional approaches to criminology focus on understanding categories of criminals, however, for example, rapists and serial and spree murderers, Victimology, as the name suggests, focuses on understanding the victims of crime. Those engaged in the study of Victimology look for patterns among victims of specific types of crime to better understand, and hopefully provide for some level of predictability, what is motivating the criminal. For example, a serial rapist might be focused solely on women who fit certain descriptions or who live in certain types of homes or apartments they may provide easy access for the rapist. When patterns are identified among victims of a specific type of crime, it becomes increasingly possible to conjure an image of the individual or individuals perpetrating the crimes in questions. Similarly, by studying the victims of crimes, including any relationships that exist between the victim and the perpetrator, it becomes increasingly more likely that an accurate portrait of the criminal can be drawn.

### HISTORICAL OVERVIEW OF VICTIMOLOGY

Victimology as an academic term contains two elements: One is the Latin word 'Victim' which translates into 'victim'. The other is the Greek word 'logos' which means a system of

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<sup>1</sup> Andrew Karmen, 2003, Crime Victims: An introduction to Victimology, Wodsworth Publishing

knowledge, the direction of something abstract, and the direction of teaching, science, and a discipline. The concept of a science to study victims and the word ‘Victimology’ had its origin with the early writings of Benjamin Mendelssohn (1937; 1940), these leading to his seminal work where he actually proposed the term ‘Victimology’ in his article “A New Branch of Bio-Psycho-Social Science, Victimology” (1956). It was in this article that he suggested the establishment an international society of Victimology which has come to fruition with the creation of the World Society of Victimology, the establishment of a number of victimological institutes (including the creation here in Japan of the Tokiwa International Victimology Institute); and, the establishment of international journals which are now also a part of this institute. Mendelssohn provided us with his Victimology vision and blueprint; and, Mendelssohn is referred to as *The Father of Victimology*.

The nature and extent of victimization is not adequately understood across the world. Millions of people throughout the world suffer harm as a result of crime, the abuse of power, terrorism and other stark misfortunes. Their rights and needs as victims of this harm have not been adequately recognized. The UN General Assembly adopted the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985. This provides a universal benchmark by which progress can be assessed in meeting the needs of victims of crime and abuse of power. Much progress has been made since 1985 primarily by governments in Western Europe, North America and elsewhere. They have implemented programmes and laws to give effect to those basic principles but even in affluent countries much work remains. Additional resources are needed everywhere especially for countries that are developing and in transition. The rights of the victims of crime and abuse of power are still not adequately recognized in any part of the world. Their families, witnesses and others, who aid them, are still unjustly subjected to loss, damage or injury. They too often suffer hardship when assisting in the prosecution of offenders. The recent UN Congress in Bangkok also drew attention to the victims of terrorism. Victims of stark misfortunes such as natural disasters, accidents and diseases share similar trauma, loss and suffering. Services to meet the needs of victims have much in common between victims of crime, abuse of power and stark misfortunes.<sup>2</sup>

## MEANING OF VICTIMOLOGY

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<sup>2</sup> John P.J.Dussich, VICTIMOLOGY – PAST, PRESENT AND FUTURE

According to Schultz (1970) - *Victimology is the study of the degree of and type of participation of the victim in the genesis or development of the offences and an evaluation of what are just and proper for the victim's welfare.*

According to Drapkin and Viano (1974) - *Victimology is the branch of criminology which primarily studies the victims of crime and everything that is connected with such is victim.*

Antilla says, *Victimology studies by logical, Sociological, Psychological criminological aspects about the victims and brings into focus the victim-offender relationship and the role played by the victim in occurrence of the offence.*

In an extended sense, Separovic defined this doctrine, *Victimology is the entire body of knowledge regarding victims, victimization and to preserve the rights of victim ; thus it is composed of knowledge drawn from such fields Asiminology, safety, Law, Medicine, Psychology, Social Work, Education and Public Administration.*

Victimology is science of study of the relationship between victims and violators of law or offenders. Government has recently reinforced this political commitment in the form of funds for the National Association of Victim Support Schemes (NAVSS). In 1964 the United Kingdom became one of the 1<sup>st</sup> countries to establish a policy commitment to victims of crime in the form of criminal injuries compensation Board. The reports of 1<sup>st</sup> and 2<sup>nd</sup> British Crime Surveys have begun to shed some light on the nature of the relationship between victims and offenders. In particular, attention has been paid to the attitude that victims have towards the treatment of offenders.

The United Nations General Assembly has recommended payment of compensation to the victims of crime by the State. Unfortunately, the victims of communal riots, dacoit, arson and rape are not getting compensation in our present justice system. Since the State in under duty of protect the life, liberty and security of its citizens, it is bound to pay compensation to the victims of crime irrespective of whether the accused is convicted or acquitted of the criminal charge. As the government is indifferent to the crying need of the victims, the apex court directed the Government to set up a criminal injuries compensation Board, under the supervision of criminal courts for awarding compensation to victims of all crimes including rape or dacoit, in addition to the directions given to National Commission for women to evolve a proposal for rehabilitation and compensatory justice to raps victims.

Until recently, victims were not studied. They tended to be seen as passive recipients of the criminal's greed or anger, in the wrong place at the wrong time. The study of victims, known as Victimology, has resulted in theoretical and research studies, and an awareness of the victim has grown in the public consciousness. There is now recognition that victims have traditionally not been treated particularly well by the criminal justice system. Victims suffer not only during the crime, but that there are also sometimes physical and psychological complications. Perhaps the first theory to explain victimization was developed by *Wolfgang*<sup>3</sup> in his study of murders in Philadelphia. Victim precipitation theory argues that there are victims who actually initiated the confrontation that led to their injuries and deaths. Although this was the result of the study of only type of crime, the idea was first raised that victims also might play a role in the criminal activity.

The state of the victims in the discipline of Victimology has gone far ahead in the west. The victims have a right to speak and to be heard at all stages of the criminal prosecution bail, release, evidence, sentence and parole. 'Victims impact statements' are recorded and extensively used by the jury and the judge whilst convicting and sentencing respectively and thereafter 'victims impact assessments' are required to be done as a continuous act.

## **THEORIES OF VICTIMOLOGY**

A number of theories have been advanced to explain some of the findings indicated above. Life-style theory, for example, argues that certain life-styles increases one's exposure to criminal offenses and increases risk of victimization, while other life-styles might reduce risk. For example, increased risk would be likely if a person is single, associating with other young men (who are at greater risk for criminal activity), living in urban areas, and going to public places late at night. Reduced risk would be associated with staying home at night, living in a rural area, being married and staying at home, and earning more money. According to this explanation, the probability of crime depends partially on the activities of the victim. Crime is more likely when victims place themselves in jeopardy.

Victimology does not have many theories exclusively from the perspective of victims. However, some of the theoretical explanations from Criminology of crime causation are

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<sup>3</sup> Dr. Marvin E .Wolfgang (Nov 14, 1924- Apr 12, 1998) was considered to be a pioneer and world leader in quantitative and theoretical criminology. He was one of the world's most cited authors in criminology and his research and critical commentaries appear on homicide, penology, criminal statistics and delinquency criminology.

borrowed by Victimologists to understand crime victimization. One such theory is the Routine Activities Theory (Cohen & Felson, 1979).

### **The Routine Activities Theory**

This theory says that crime occurs whenever three conditions come together: (i) suitable targets; (ii) motivated offenders; and (iii) absence of guardian's assistance from the government, though it is not a right of the victim as it is not a law but only an Executive order of the Government (Chockalingam, 2003).

### **Psycho-social Coping Theory**

Psycho-social coping is a general theoretical model from which any form of victimological phenomena can be explained. The model uses behavioural versus legal concepts. Phenomenology, Control Theory, Stress Theory, Symbolic Interactionism and Behaviourism are the primary roots of this theoretical model. Most part of the literature on coping has evolved from psychology, dealing with just cognitive responses to various forms of stress (Dussich, 1988). According to Pearlin and Schooler (1978), coping refers to things that people do to avoid being harmed by life-strains. To understand how and why some victims are able to overcome life's problems and some others not, a psycho-social coping model was developed in order to comprehensively deal with psychic, social and physical variables.

A psycho-social coping model is an attempt to explain the dynamics of how people deal with problems in their environment. The term 'environment' used in this model is referred to as 'Coping Milieu'. The main term in the Coping Milieu is the Coping Repertoire, which is made up of a person's coping skills and supported by four other interacting resources: (i) time; (ii) social assets; (iii) psychic assets; and (iii) physical assets. The coping process is the dynamic component of the model and is made up of four sequential phases:

The result component of the coping model is concerned with: (i) either the elimination, or (ii) reduction, or (iii) retention of stress. The information obtained from the coping process is fed back to the coping repertoire and in turn the original coping repertoire is altered. The repertoire, problems, coping processes and the products are the key elements of coping (Dussich, 1988; Dussich, 2006). Both social and physical resources help the individuals to deal with stress in specific situations.

## CURRENT SITUATION OF VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS IN INDIA IN COMPARISON TO INTERNATIONAL STANDARDS

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN General Assembly, 1985), considered the 'magna carta' for victims, provides the basic framework of principles which in the last two decades have been vociferously debated and converted as victims' rights by some of the developed countries. The international standards expected of the countries in the treatment of victims by the CJS agencies at different stages of the criminal process have been elaborately detailed in the UN Handbook on Justice for Victims (United Nations Office for Drugs and Crimes, 1999, chapter III, pp.56-76).

The police play a pivotal role in victim assistance as it is the first agency victims come into contact with after being victimized by a crime. The attitude of the victims towards the entire CJS will be based on the kind of treatment the victims get from the police whom they first encounter. Unfortunately, in India the police are still not oriented to meet the expectations of the victims as per the UN Handbook on Justice for Victims.

The police at the field level who are in actual contact with the victims in day to day crime situations are blissfully ignorant of the international developments in the field of Victimology and the better treatment victims deserve from the police. The treatment of victims by the police also forms the basis for a negative perception of the CJS, more particularly, the police, because the 'treatment with compassion and respect for their dignity', emphasized by the UN Declaration, is missing completely. Because of the police behaviour and their attitude in general, the legal community opposes any criminal law reforms which bestow trust on the police and enhance their powers. Even today, Section 25 of the Indian Evidence Act, "*No confession made to a police officer shall be proved as against a person accused of any offence*", remains in force. But the Government and the Police Academies pursue a policy of sensitizing the police to a better treatment of victims. The Handbook says that "victims have a valid interest in the prosecution of the case and should be involved at all stages of the proceedings". In practice, the entire court proceedings protect the rights and interest of the accused, neglecting the victims' interest. Excepting that the victims are summoned to tender evidence in courts, the various services and assistance to be rendered by the prosecution to victims (pp.66-68) are not practiced in the criminal courts in India. In a nutshell, victims are alien to the criminal proceedings as they have no rights excepting to be a witness when

summoned by the court. With regard to the role of the judiciary in justice for victims, judges are by and large sympathetic towards victims, on many of the requirements, such as separate waiting halls, information about the criminal proceedings.

## **ROLE AND TYPOLOGY OF VICTIMS**

Just as certain persons are thought to have a high probability of indulging in criminal behavior, so also some others may have a greater likelihood of being victimized. Von Hentig made the first ever study of the role of victims in crime and found some general characteristics among them which may be summarized as follows.<sup>4</sup>

- i. The poor and ignorant immigrants and those who are requisite or greedy are the victims of offences involving frauds.
- ii. Quite often, the victims of larceny (theft) are intoxicated or sleeping persons.
- iii. The depressed or apathetic person is a victim because he is “deprived of warning posts” and is indifferent to harm or injury “in prospect”
- iv. Wanton or sensual persons may become victim due to situations precipitated by themselves
- v. A lonesome and heartbroken person may become especially vulnerable because of the loss of critical faculties in him.

Among ‘general classes of victims’, Von Hentig includes the young, females, the old, the mentally defective and deranged, the intoxicated, immigrants, members of minority groups and the ‘dull normal’.

Mendelsohn studied victims on the basis of their contribution to crimes and classified them into the following categories,<sup>5</sup>

- i. Completely innocent victims, e.g., children, persons in sleep.
- ii. Victims with minor guilt and victims of ignorance such as pregnant women who go to quacks for procuring abortion.

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<sup>4</sup> The Criminal and His Victim (1948) at p.284

<sup>5</sup> V. M. Rajan, Victimology in India, at p.10

- iii. Voluntary victims, such as the ones who commit suicide or are killed by euthanasia.
- iv. Victims who are guiltier than the offenders, such as persons who provoke others to commit crimes.
- v. The criminal type of victims who commit offences against others and get killed or hurt by others in self defence.

## **VICTIMOLOGY AND INDIAN POSITION**

The world is full of crime and criminals, tragedy and violence. Crime is a social phenomenon. No society primitive or modern, no country whether under developed or developing or developed is free from its clutches. The by-product of the crime i.e. victim is equally bound to emerge. The focus has mainly and always been on criminal and crime, none on victim. So, the forgotten man in the legal world and society happens to be the “victim” for whose plight remedy we have the whole system. Criminal Law has always discouraged the acts or omissions which in general can affect right in rem and violators have always been punished with strict sanctions but the crime rate is not falling and State is in regular quest to preserve social solidarity and peace in society. The initial focus of criminologists were only on the aspect of punishment but the focus started shifting when they encountered with the fact that the person who is victim of crime is getting nothing out of the whole process of criminal justice system or is getting a so called satisfaction by seeing the offender punished. Therefore jurists, penologist etc in all countries started giving their full attention to the cause of victim in form of compensation and hence the whole debate started about ways, means and extent of compensation.<sup>6</sup>

The evolution of the concept can be traced both historically and theoretically. Historically the concept of victimology in crude sense was not only part of Hammurabi’s code but also existed in developed sense in ancient Greek city-states. The concept of compensation was also not new to India and existed in more developed sense then the present. Manu in Chapter VIII, verse 287 clearly says that:

If limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expense of the cure or the whole.

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<sup>6</sup> Abhishek Anand, Compensation to the Victim of Crime: Assessing Legislative Frame Work and Role of Indian Courts.



He further in verse 288 says that: He who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to damage.

The quote regarding the same can be found even in the works of Brihaspati. This is in brief the law relating to compensation to the victim of crime that even existed in ancient civilization of east as well as west. As far as tracing of gradual evolution of the concept is concern the whole era till mid of 1900 can be generally divided in to three parts. In initial year of human civilization when the human started living together especially after stone Age, because of absence of rule of laws and authoritative political institution, right to punish or rather might to punish (in from of eye for eye or money) was with the individual and hence in crude sense the concept of compensation existed at that time even but line of caution that need to be bear in mind is the fact that in primitive society criminal victim relationship was based on brutal mentality of attack being the best defense. Then came the era in which the social control in terms of mechanical solidarity creped in the society and the offence against an individual belongs and from this era, due to advent of concept of collective responsibility clan or tribe started replacing the victim's right. The third stage started with the advent of strong monarch after medieval period. In this stage on one hand criminal law saw far reaching change in all its discipline but on other the hand position of victim right to compensation remained unheard due to advent of more strong institution named state and crystallization of a notion that King/State is parent of his subjects and Crime is breach of peace of King or State. So it was King/State who had the right to punish and get monetary compensation. This position remained as it is even with advent of democracy and the cause of victim remained unnoticed until 1950 and after that a movement stared in U.S. and European countries and the concept again got prominence. Theoretically radical criminologist championed the idea of cause of victim, which was result of reaction against the then criminological thinking that was only concern with criminals and not the victims.<sup>7</sup>

The victim is the forgotten man of our criminal justice system. He sets the criminal law in to motion but then goes into oblivion. Crime affects the individual victims and their families. Many crimes also cause significant financial loss to the victims. The impact of crime on the victims and their families ranges from serious physical and psychological injuries to mild disturbances. The Law Commission of India, 1996

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<sup>7</sup> *Supra* Note 1

The Law Commission in its report in 1996, states, The State should accept the principle of providing assistance to victims out of its own funds, (i) in cases of acquittals; or (ii) where the offender is not traceable, but the victim is identified; and (iii) also in cases when the offence is proved<sup>8</sup>. The Justice V. S. Malimath Committee<sup>9</sup> has made many recommendations of far-reaching significance to improve the position of victims of crime in the CJS, including the victim's right to participate in cases and to adequate compensation. Some of the significant recommendations include: The victim, and if he is dead, his or her legal representative, shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years' imprisonment or more; In select cases, with the permission of the court, an approved voluntary organization shall also have the right to implead in court proceedings; The victim has a right to be represented by an advocate and the same shall be provided at the cost of the State if the victim cannot afford a lawyer; The victim's right to participate in criminal trial shall include the right: to produce evidence; to ask questions of the witnesses; to be informed of the status of investigation and to move the court to issue directions for further investigation; to be heard on issues relating to bail and withdrawal of prosecution; and to advance arguments after the submission of the prosecutor's arguments; The right to prefer an appeal against any adverse order of acquittal of the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation; Legal services to victims may be extended to include psychiatric and medical help, interim compensation, and protection against secondary victimization; Victim compensation is a State obligation in all serious crimes. This is to be organized in separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration.<sup>10</sup>

### **THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2008 MADE THE FOLLOWING CHANGES IN THE CODE OF CRIMINAL PROCEDURE, 1973 PERTAINING TO THE CRIME VICTIMS AND THEIR RIGHTS**

Under Section 2(wa) of the Code of Criminal Procedure 1973, *victim* means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir.

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<sup>8</sup> Law Commission of India Report, 1996

<sup>9</sup> The Justice Malimath Committee on Reforms of Criminal Justice System (Government of India, 2003)

<sup>10</sup> Kumaravelu Chockalingam, Measures For Crime Victims In The Indian Criminal Justice System

Under Section 24 of the principal Act, in sub-section (8), a proviso was inserted, namely to authorize the Court to permit the victim to engage an advocate of the choice to assist the prosecution.

Under Section 157 of the principal Act, in sub-section (1), after the proviso, a new proviso was inserted to help the victims of rape in preserving her privacy, as follow:

*‘Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.’*

Similarly use of audio/video for recording statements of victims has been provided in section 161 of the principal Act, in sub-section (3), the following provisos was inserted, as follow:

*‘Provided that statement made under this sub-section may also be recorded by audio video electronic means.’* Likewise in section 164 of the principal Act, in sub-section (1), for the proviso, the following provisos was substituted,

*‘Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence.’*

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

Investigations of Child Sex Abuse to be done in time bound under sec. 173 of the principal Act, under the following sub-section which was inserted,

(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station;

b) In sub-section (2), after clause (g), the following clause was inserted, (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code.

In section 275 of the principal Act, in sub-section (1), the following proviso was inserted,

*‘Provided that evidence of a witness under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.’*

In Camera Trials and identity protection is ensured under Section 327 of the principle Act, (a) in sub-section (2), after the proviso, the following proviso was inserted,

*‘Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate’*

(b) in sub-section (3), the following proviso was inserted,

*‘Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.’* Regarding the victim’s right to Compensation, after section 357 of the principal Act, the following section was inserted,

*“357A. (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.*

*(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section(1).*

*(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.*

*(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.*

*(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.*

*(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”*

As to the Right to appeal for the Victim against the verdict of the Trial Court, in section 372 of the principal Act, the following proviso was inserted,

*‘Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.’*

A perusal of the above cited newly added provisions shows that the present CrPC is sensitive to the plight of the victims.

## **JUDICIAL RESPONSE TO CRIME VICTIMS IN INDIA**

The Indian judiciary has invoked the Constitution of India more particularly the Article 21 that guarantees the right to life and personal liberty, apart from the relevant provisions of the Cr.P.C. and other laws to order compensation to the crime victims.<sup>11</sup>

In *Rudul Sah v. State of Bihar*<sup>12</sup>, the petitioner was kept in jail for a period of fourteen years after he was acquitted, on the specious ground that he was insane. He was directed to be released by the Supreme Court in a petition for habeas corpus moved on his behalf. In addition to release, the detenu also claimed compensation on account of the deprivation of his fundamental right guaranteed by Article 21. The question arose whether the Supreme Court has power to award compensation on account of such deprivation in a petition under Article 32? It was answered in the following words by Chandrachud, C.J., speaking for a Bench of three Judges (at p. 1086),

*“Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal*

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<sup>11</sup> *Bodhisattwa Gautam v. Subhra Chakraborty* AIR 1996 SC 922

<sup>12</sup> AIR 1983 SC 1086

*detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation, Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers...."*

Accordingly, a total sum of Rs. 35,000/- was awarded by way of compensation.

In *Sebastian, M. Hondray v. Union of India*<sup>13</sup> a writ of habeas corpus was issued directing the Union of India, secretary, Ministry of Home Affairs, and the 21<sup>st</sup> Sikh Regiment, Phungrei Camp, to produce two persons who were taken to Phungrei Camp by Jawans of 21<sup>st</sup> Sikh Regiment on 10.03.1982. The respondents were directed to produce the persons before the Supreme Court on 12.12.1983. They were not produced on the plea that they were not in the custody or control of the said respondents. It was also stated that in spite of extensive search, they could not be traced. The court concluded, on the basis of the material placed before it, that the said two persons must have met an unnatural death, and that prima facie it would be an offence of murder. The Court could not, however, say who was responsible for the offence. The question that faced the Supreme Court was as, what is the relief to be granted in that petition for issuance of a writ of habeas corpus, where the respondents were clearly found guilty of willful disobedience to the writ issued? The Court directed that a measure of exemplary costs as is permissible in such cases, respondents Nos. 1 and 2 shall pay Rs. 1 lakh to each of the aforementioned two women (wives of the missing persons) within a period of four weeks from today. The basis of the said award is, however, not Article 21, but willful disobedience to the process of the Court amounting to contempt of Court. The said amount was awarded as a measure of exemplary costs.

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<sup>13</sup> AIR 1984 SC 1026

In *Bhim Singh v. State of J&K*<sup>14</sup> a Member of the Legislative Assembly was arrested by police officers while he was on his way to Srinagar to attend the Legislative Assembly Session. He moved a writ of habeas corpus and, on an examination of relevant facts; the Supreme Court found that Bhim Singh was deprived of his constitutional rights guaranteed by Articles 21 and 22(2). This is what Chinnappa Reddy, J. said, speaking for the Court (at p. 499):

*“The police officers...acted deliberately and mala fide and the Magistrate and the Sub-Judge aided them either by colluding with them or by their casual attitude. We do not have any doubt that Shri Bhim Singh was not produced either before the Magistrate on 11<sup>th</sup> or before the Sub-Judge on 13<sup>th</sup>, though he was arrested in the early hours of the morning of 10<sup>th</sup>. There certainly was a gross violation fo Shri Bhim Singh’s constitutional rights under Articles 21 and 22(2),.... We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of the Court in Rudul Sah v. State of Bihar<sup>15</sup>, and Sebastian M. Hongray v. Union of India<sup>16</sup>. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000/- within two months from today...”*

In *State of Gujarat v. Hon’ble High Court of Gujarat*<sup>17</sup>, the Supreme Court took cognizance of the rights of crime victims to restorative justice by making the following observations:

*One area which is totally overlooked in the above practice is the plight of the victims. It is a recent trend in sentencing policy to listen to the wailings of the victims; rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A*

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<sup>14</sup> AIR 1986 SC 494

<sup>15</sup> *Supra* Note 12

<sup>16</sup> AIR 1984 SC 1026

<sup>17</sup> AIR 1998 SC 3164 at para 46-49



*glimpse at the field of victimology reveals two types of victims. First type consists of direct victims i.e. those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime. Second type comprises of indirect victims who are dependents of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner.*

Restorative and reparative theories have developed from the aforesaid thinking. In the ‘Oxford Handbook of Criminology’, Andrew Ashworth, Prof, of Oxford University center for Criminological Research has contributed the following instructive passage:

*“Restorative and Reparative theories: These are not theories of punishment. Rather, their argument is that sentences should move away from punishment of the offender towards restitution and reparation, aimed at restoring the harm done and calculated accordingly. Restorative theories are therefore victim-centered (see e.g. Wright 1991), although in some versions they encompass the notion of reparation to the community for the effects of crime. They envisage less resort to custody, with onerous community-based sanctions requiring offenders to work in order to compensate victims and also contemplating support and counseling for offenders to reintegrate them into the community. Such theories therefore tend to act on a behavioral premise similar to rehabilitation, but their political premise is that compensation for victims should be recognized as more important than notions of just punishment on behalf of the State. Legal systems based on a restorative rationale are rare, but the increasing tendency to insert victim orientated measures such as compensation orders into sentencing systems structured to impose punishment provides a fine example of Garland’s observation that institutions are the scenes of particular conflicts as well as being means to a variety of ends, so it is no surprise to find that each particular institution combines a number of often incompatible objectives, and organizes the relations of often antagonistic interest groups”.*

Section 357 of the Criminal Procedure Code, 1973 provides some reliefs to the victims as the court is empowered to direct payment of compensation to any person for any loss or injury caused by the offence. But in practice the said provision has not proved to be of much effectiveness. Many persons who are sentenced to long term imprisonment do not pay the compensation and instead they choose to continue in jail in default thereof. It is only when fine alone is the sentence that the convicts invariably choose to remit the fine. But those are cases in which the harm inflicted on the victims would have been far less serious. Thus the restorative and reparative theories are not translated into real benefits to the victims.



It is a constructive thinking for the State to make appropriate law for diverting some portion of the income earned by the prisoner when he is in jail to be paid to deserving victims. In the absence of any law for that purpose we are prevented from issuing a direction to set apart any portion of the prisoner's earned wages for payment to the victims because of the interdict contained in Article 300A of the Constitution. Hence we suggest that the State concerned may bring about legislation for the purpose.

In *Delhi Domestic working Womens Forum v. Union of India*<sup>18</sup>, public interest litigation invoked the benign provision of Article 32 of the Constitution of India, at the instance of the petitioner Delhi Domestic Working women's Forum to espouse the pathetic plight of four domestic servants who were subject to indecent sexual assault by seven army personnel. The apex court after hearing the victims and their plight made the following observations which are self-explanatory,

*"We have given our careful consideration to the above. It is rather unfortunate that in recent times, there has been an increase in violence against women causing serious concern. Rape does indeed pose a series of problems for the criminal justice system. There are cries for harshest penalties, but often times such cries eclipse the real plight of the victim. Rape is an experience which shakes the foundations of the lives of the victims, For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behaviour and values and generating endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings."*<sup>19</sup>

*"We will only point out the defects of the existing system. Firstly, complaints are handled roughly and are not given such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had had to suffer as a result of the rape itself. As stated in Modem Legal Studies Rape and the Legal Process by Jennifer Temkin<sup>20</sup>, "It would appear that a radical change in the attitude of defence counsel and judges to sexual assault is also required. Continuing*

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<sup>18</sup> (1995) 1 SCC 14 : JT 1994 (7) 183

<sup>19</sup> Ibid at para 13

<sup>20</sup> 1987 Edition, page 7

*education programmes for judges should include re-education about sexual assault. Changes in the substantive law might also be helpful in producing new ways of thinking about this type of crime.*"<sup>21</sup>

## VICTIM AND CRIMINAL JUSTICE ADMINISTRATION

One important and basic factor in the administration of criminal justice is the victim's decision as to whether he should invoke the judicial process. There are a number of motives and factors responsible for the wide gap between the actual volume of the crime and the reports made to the police about it. Only in the 1940's did scholarly interest in the criminal-victim relationship develop, although the founders of criminology had been aware of how crucial it was *Hans Von Henting, Benjamin Mendelsohn, and Henry Ellenberger*, the last in his study of the psychological relationship between the criminal and his victims.

A movement for the recognition of the modern victim of crime as deserving more effective remedy than the traditional practice of bringing civil suits was begun by the English penal reformer *Margery Fry* in 1955<sup>22</sup>. Her call for reform was heeded in New Zealand in 1963, when that country's parliament established the first crime compensation tribunal. This board has discretionary power to award public compensation to the victim or his dependents in the case of certain specified offences. The next year, Great Britain's Tory government announced a similar but non statutory program. In the United States the first jurisdiction to adopt the compensation principle was California; which enacted its programs in 1965 and put it into operation two years later. Since that time, similar or related programs have been established in some thirty states in the United States and in all the Canadian, provinces. Financial restitution by the offender to the victim represents another development in the legal handling of the victim, in the United States, at least forty normal restitution programs are in operation.

Section 377(1) of the United States Code is in respect of Crime victims' Rights Act (CVRA). The Rights of Crime Victims are set out thus;

(a) Rights of Crime Victims, a crime victim has the following rights:

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<sup>21</sup> *Supra* Note 18 at para 14

<sup>22</sup> Margery Fry (1874-21 April 1958) was a British prison reformer as well as one of the first women to become a magistrate. After the First World War, she lived with her brother Roger and began the work on prison reform in which she was to be involved until the end of her life. In 1918, she became secretary of the Penal Reform League, which merged with the Howard Association in 1921 to form the Howard League for Penal Reform.

- (1) The right to be reasonably protected from the accused.
- (2) The rights to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony as that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

## COMPENSATING THE VICTIM

Following the dictum set out by Justice Benjamin Cardozo<sup>23</sup>, *"justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true"*, the Court held that the victim impact statement would not per se be barred under the Eighth Amendment.

Thus, a State may legitimately conclude that evidence about the victim and about the impact of the murder on the victim's family is relevant to the jury's decision as to whether or not the

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<sup>23</sup> *Snyder v. Massachusetts* 291 U.S.97 (1934) Benjamin Nathan Cardozo ( May24,1870- July 9, 1938) was an American jurist who served on the New York Court of Appeals and later as an Associate Justice of the Supreme Court. Cardozo is remembered for his significant influence on the development of American common law in the 20<sup>th</sup> century. His work *The Nature of the Judicial Process* is recognized as one of the best legal literature in the world.

death penalty should be imposed. There is no reason to treat such evidence differently than other relevant evidence is treated.

In the case *Nilabati Behera*<sup>24</sup> the Supreme Court enjoined Court to evolve new tools and mould the remedies for harm done variously. In that case death of a son of 22 years in police custody entitled a mother to compensation as an heir of the “victim” by way of monetary amends and redressal by the State since the death constituted violation of the Fundamental Right to Life by the State’s instrumentalities or servants.

Payment of compensation to the victims of crime, for the injury caused to him, has not been institutionalized in the Penal Law of India; or any legal right to be compensated, and has been created in favour of the victim. In case of irreversible injury monetary compensation is the sole effective remedy. In India there is neither a comprehensive legislation nor a statutory scheme providing for compensation by State to offender to victims of crime. The legislative vacuum of a legal right to monetary compensation for violation of human rights has been supplemented by the higher judiciary by developing a parallel constitutional remedy. The Supreme Court for the first time in *Rudal Sah v. State of Bihar*<sup>25</sup> made it categorically clear that the higher judiciary has the power to award compensation for violation of fundamental rights through the exercise of writ jurisdiction and evolved the principle of compensatory justice in the annals of human rights jurisprudence<sup>26</sup>.

By the landmark judgment in *Hari Kishan’s case*<sup>27</sup> Supreme Court not only awarded compensation of Rs. 50,000/- to the victim, but also directed the subordinate criminal courts to exercise the power of awarding compensation to the victims of offences in such a liberal way that the victims may not have to rush to the civil courts for compensation to the victims. Unfortunately, the subordinate judiciary is rarely invoking this provision to award compensation to the victims, where the accused persons are acquitted of the charge on benefit of doubt or on any technicalities of laws. The Court also laid down that the quantum of compensation has to be determined by taking into account the nature of the crime, the justness of the claim made by the victim and the capacity of the accused to pay the same. The

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<sup>24</sup> *Nilabati Beher (Smt) alias Lalita Behera v. State of Orissa & Others* (1993) 2 SCC 746

<sup>25</sup> *Supra* Note 12

<sup>26</sup> *Ibid*

<sup>27</sup> *Hari Kishan Singh & State of Haryana v. Sukhbir Singh* (1998) 3 SCC (Cri) 541

amount of compensation, according to the Court, must be reasonable and will depend upon the facts and circumstances of each case.

Right of the rape victim to receive compensation flows from art.21 of the Constitution. Every court has jurisdiction to grant compensation not only at the final stage of trial but also to award interim compensation at any interlocutory stage of trial in view of reported judgment in *Bodhisattwa Gautam* case.<sup>28</sup> In *Delhi Domestic Working Women's Forum*<sup>29</sup>, the Supreme Court indicated a scheme to award compensation to rape victim both at the time of trial i.e., interim compensation to rape victim and at the end of the trial. The Supreme Court suggested the establishment of criminal injuries compensation Board under Art 38(1) of the Constitution of India. The rape victim shall be paid compensation by the Criminal Injuries Compensation Board of the court.

In *D. K. Basu*<sup>30</sup>, Supreme Court has laid down number of guidelines to prevent custodial violence including rape, and has recognized that custodial rape could be compensated as the same violated Rights of life and personal liberty guaranteed under Article 21 of the Constitution. In *Bodhisattwa Goutham*, Apex Court has held that the Court of Session have every authority to award interim compensation if prime facie case against the accused has been established that a person had sexual relationship with the prosecutrix on false assurance of marriage. Supreme Court has directed the guilty person to pay Rs. 1000/-pm as interim compensation to the prosecutrix during pendency of case. This judgment is a precedent for granting interim compensation to the rape victims. In case of *Madhukar N. Mardikar*<sup>31</sup> Supreme Court declared that even a prostitute has a right to privacy and no person can rape her just because she is a woman of easy virtue. In fact, these judicial interventions only lead to the amendment to the Criminal Procedure Code, providing a role to the victim also to play a vital part in the criminal justice administration.

## VICTIMOLOGY AND VICTIM COMPENSATION: CONCLUSION

The status of victim in criminal proceedings in India is dealt with in a few provisions of the Criminal Procedure Code, which are too insufficient to be considered fair in dispensing equal justice under law (Article 14)

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<sup>28</sup> *Supra* Note 11

<sup>29</sup> *Supra* Note 18

<sup>30</sup> *D. K. Basu v. State of West Bengal*, (1997) SCC (Cri) 92

<sup>31</sup> *State of Maharashtra & Others v. Madhukar Narayan Mardikar*, (1991) 1 SCC 57

If the victim of a cognizable offence gives information to the police, the police are required to reduce the information into writing and read it out to the informant. The informant is required to sign it and receive a copy of the FIR (Section 154 (1) and (2) of the Cr.P.C). If the police refuse to record the information, the victim –informant is allowed to send it in writing and by post to the Superintendent of Police concerned [Section 154(3)]. If the police refuse to investigate the case for whatever reason, the police officer is required to notify the informant of that fact [Section 157 (2)]. Alternatively, victims are enabled by section 190 of the Cr.P.C. to avoid going to the police for redress and directly approach the Magistrate with their complaint.

In the granting and cancellation of bail, victims have substantial interests though not fully recognized by law. Section 439(2) allows a victim to move the Court for cancellation of bail; but the action thereon depends on the stand taken by the Prosecution. Similarly, the prosecution can seek withdrawal at any time during trial without consulting the victim Section 321 CrPC. Of course, the victim may proceed to prosecute the case as a private complainant. However, the victim cannot challenge the prosecution decision to withdraw at the trial stage itself.