THE RIGHTS OF VICTIMS IN INDIAN CRIMINAL JUSTICE SYSTEM

DISSERTATION

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Date:.....

Place: Lucknow

ABHISHEK SINGH CHAUHAN

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TABLE OF ABBREVIATIONS

- ACC - Accident and Compensation Cases
- AIHC - All India High Court Cases
- AIR - All India Reporter
- ALLMR - All Maharashtra Law Reporter
- ARC - Allahabad Rent Cases
- ALT - Andhra Law Times
- BC-SC - Banking Cases with court
- BomCR - Bombay Cases Reporter
- CLT - Cuttack Law Times
- DLT - Delhi Law Times
- ESC - Education and Service Cases
- Ind.Cas. - Indian Cases
- ILR - Indian Law Reports
- JCC(SC) - Journal Of Criminal Cases (SC)
- RArJ - Recent Arbitration Judgments
- SCC - Supreme Court Cases
- SCC (Supp) - Supreme Court Cases (Supp)
- SCR - Supreme Court Reporter
- J&K - Jammu and Kashmir
- Cr.P.C - The Code of Criminal Procedure, 1973
- I.P.C - Indian Panel Code
- H.C.- High Court
- I.A.C.- Indian Appeal Cases
- S.C.A.- Supreme Court Appeals
- S.C.J - Supreme Court Judgements
- Ibid.- It means in the same place.
- Supra- Means above or on the upper side. Whenever an authority has been fully cited in preceding footnotes, the "supra" is used.
- Gaz. - Gazette

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26. Unnikrishnan J.P. v. State of Andhra Pradesh, AIR 1993, SC 2178, SC 2178 (1993) 1 SCC 645.

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28. Lakshmi Kant Pandey v. Union of India, (1984) 2 SCC 244

29. Bhandu Mukti Morcha v. Union of India, (1984) 3 SCC, 161,185.

30. M.C.Mehta v. State of Tamil Nadu, AIR 1997, sec 699

31. S. Subramaniam, Human Rights International Challenges, 1997, vol.1. p.3

32. Samatha v. State of A.P., AIR 1997 SC 3297

33. Jolly G.Varghese v. Bank of Chochin, AIR 1980 SC 470

34. Inder Singh v. State, AIR 1978 SC 1091

INTRODUCTION

INTRODUCTION

India is the World's largest democracy. But unfortunately, over the period of the time its shine is diminishing because of defective criminal justice system. Therefore, we are in a critical juncture of time, there is need to again rethought and reformulate the justice system to address the challenges of the present day. Because of strong spur in demand of justice. There are some lacunae, which necessitate the development of various techniques, & strategies that can be effectively incorporate into the policy framework. Therefore, in order to better understanding of criminal justice system it is worth examine the object of the criminal justice system.

The offender, the nature of the punishment awarded to him for the offence committed by him, his reformation and rehabilitation; has always been the cynosure of the criminal justice system. All the effort is being put in understanding the personality and behavioural patterns of the offender and the social, political and other factors which contributed towards his criminal behaviour. Hardly any heed is being paid to the victims of crime. They seem to be the forgotten lot in this whole picture. However, in the recent decades, the impact of victimization on the affected persons drew the attention of the criminologists and criminal law systems across the globe so as to cajole them that the victims needed to be treated with much compassion as well as their dignity and basic rights must be recognised and protected. The expression 'victim of crime' is simply to mean a person who as a consequence of crime has suffered physical or emotional harm, property damage or economic loss. The source of the concept of 'victim' is the ancient societies where the victim covered persons or animals put to death as a notion of sacrifice ordinarily during a religious ceremony in order to quench some supernatural power or deities. Eventually it was being commonly being put in use for individuals who suffered injuries, losses or hardships for any reason. Other than victims of crime persons can be victims of accidents, diseases, natural calamities, social and political problems, war, terrorism, despotism and other forms of injustice.[1]

Victimology is a sub-discipline of Criminology, which is the scientific study of victims of crime. Academically the term embodies two elements: -

[1] 'Victimology- Concept and History of Victimology'- Md. Atiqur Rahman (from Institute of Social and Welfare Research).

¬ ‘Victim’, which emanates from the Latin word ‘Victimia’.

¬ Secondly the word ‘logos’ which means a system of knowledge, the direction of something abstract, the direction of teaching, science and a discipline. Until the end of the Second World War, ‘victim of crime’ as a subject of criminological research was unheard. Albeit, the writings about crime had appeared in the works of criminologists like Beccaria, Lombroso, Ferri, Sutherland, Garofalo, Von Hentig, Nagel, Henry Ellenberger, Schafer and Wolfgang but Bejamin Mendelsohn1 has been given the credit to be the first to study the relationship between the victim and the offender and together they have been termed as ‘Penal Couple’ by him. The Penal Couple concept has projected the opinion that there are two partners who contribute to the taking place of a crime. One being the offender and the second being the victim who spares a chance to the offender to commit the crime. Thus being a participant in the penal couple the victim must bear some responsibility for the respective crime. But this concept stands obsolete in the modern victimological studies, being more or less similar to the theory of ‘Victim Precipitation’ used to portray victim as ‘hapless dupes who instigated their own victimization’.[2]

Before studies on crime victims could be made in India in late 1970’s, studies were there on victims of dacoit gangs in the Chambal Valley in 1978, victims of motor vehicle accidents and homicide in 1981. For the first time in 1984, a seminar on victimology was organised in the University of Madras (Chockalingam, 1985). In August 1992, the foundation of Indian Society of Victimology (ISV) was laid down with the impetus of dissipating knowledge and awareness regarding the plight of the victims and marshalling support for the creation of new law for victims.

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 Canadian Centre of Justice Statistics states that about one third of violent crimes resulted in victims having their day-to-day activities disrupted for a period of one day (31%), while in 27% of incidents, the disruption lasted for two to three days (Aucoin & Beauchamp, 2007). In 18% of cases, victims could not attend to their routine for more than two weeks. A majority of incidents caused emotional impact (78%). Irrespective of the type of victimization, one-fifth of the victims felt upset and expressed confusion and or frustration due to their victimization. Overall, victims

[2] Notably used by Mendelsohn, Hentig, and Wolfgang in 1940’s

felt less safe than non-victims. For example, only a smaller proportion of violent crime victims (37%) reported feeling very safe walking alone after dark than non-victims (46%). Just less than one-fifth (18%) of women who had been victims of violence reported feeling very safe walking alone after dark when compared to their male counterparts.

During ancient times, victims had many rights and they used to play a crucial role in the criminal justice system. This was true during the reign of Hindu kings as well as the Muslim Period. Even though their system of criminal trial and punishment was harsh and in many cases absolutely barbaric (for instance, trial by ordeals), the main aim was to impart justice to the victims.

However, with the emergence of the 'adversarial system of justice', the plight of the victims became worse and they became forgotten people except for their minor role in the criminal justice system as a prosecution witness. It was believed that the claim of the victim was sufficiently satisfied by the conviction and sentencing of the offender. This assumption is neither fair nor just. Justice demands that when society and the State are resorting to every possible measure of correction and rehabilitation of offenders, equal concern must be shown for the victims by at least providing compensation to them for their loss, agony, physical and mental torture.[3]

It thus became important to gain knowledge about victims of crime, the struggles faced by such people in coping with the adverse effects of a criminal act, and how could the Justice System compensate and rehabilitate such victims.

The study of victims or victimology is a relatively new field of academic research. Until few decades ago it would have been difficult to have found any criminological agency (official, professional, voluntary or other) or research group working in the field of victims of crime, or which considered crime victims as having any central relevance to the subject apart from being a sad product of the activity under study, i.e., criminality.[4]

Victimology has from its inception adopted an interdisciplinary approach to its subject matter. The purpose of the study of victimology is:

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[3] Randhawa, Gurpreet Singh, Victimology and Compensatory Jurisprudence, 1stEd., Central Law Publications, Allahabad, 2011, p. 123

[4] Williams, Katherine, S., Textbook on Criminology, 3rd Ed., Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2001 (Indian Reprint), p. 98

- To enhance our understanding regarding victims and impact of crime on them.
- To analyse the magnitude of the victim's problem
- To explain causes of victimization, and
- To develop a system of measures to reduce victimization.

We are passing through a precarious period of world history under the shadows of catastrophic and impending dangers. Never before did we feel more strongly that we are leading a nefarious and neglected life. Is this the defective legal system; the corrupt role of police; the unfair use of the legislative Acts; the weak economic or political perspectives or the prevailing corruption in the judicial system which gives thrust to the administration of criminal justice and devoured everything worthwhile in respect of the victim perspective. It is well documented that criminal justice system worldwide had a complete tilt in favor of the accused ; hence pre and post trial rights have been recognized for them. India is not an exception to this above stated global position. However, peculiar to India have been the status-quo in its position as compared to other nations of the world. This has further been supported by the adversarial system of criminal justice to which India has opted. Our country has recognized the pre and post trial rights of the offender both constitutionally and procedurally. The important unit of the criminal justice mainly the victim has no place in Indian system except that it has been relegated to the witness that too when necessary. However, certain thunderous pronouncements by the apex court in India have made it possible to create an environment of "take off" relating to victim justice so much that latest amendments in Criminal Procedure Code[5] are indicators in this direction. That is evident by the existing definition of "victim" in Sec.2 (wa).

The main objective of criminal justice system in any country is to protect the rights of the individual and the state against intentional infringement of the basic norms of the society by unscrupulous persons. This objective is sought to be achieved by ensuring that the accused is punished in accordance with law, in the process of which every measure is taken to ensure that the rights of the accused is safeguarded. However it is disgusting to note that the system do not give much similar concern for the victims of crime, who are the "bye products of the crime".[6] It is always presumed that when the offender is convicted and punished, the victim's claims are sufficiently satisfied.

[5] See Amendments of Cr.P.C. (2008).
[6] KD Gaur, Justice to victims of crime: A human rights approach, in Criminal justice: A Human rights perspective of the criminal justice process in India 350, (, KI Vibhute ed , 2004)

However the reality is far from true. In any criminal case, the victim is considered only as an informant for the material source of evidence and in most cases, as an informant, he sets the criminal process in motion by reporting the crime to the police. But after that he has no further role to play unless the police[7] consider it necessary. Even if it is decided to proceed, in most cases he is harassed under the guise of collecting adequate information.[8]

Later in the trial stage, where he is required to participate as a prosecution witness, his position becomes more vulnerable because of several factors like frequent adjournments, indifferent attitudes of judges, questioning by prosecutor and the defence lawyer etc. Moreover as he is the material source of information, he has to identify the suspects which again put him at the risk of being intimidated by the accused/suspects. His life and safety is put at peril. Thus victim in the criminal justice system feels not only dejected but becomes a victim of "secondary victimisation" by the criminal justice system. Hence modern victimologists argue that the traditional presumption that victim's justice is satisfied on the conviction of the offender is farce and it is unjust, unfair and inequitable.[9] They argue that the state's primary responsibility is to protect the life, limb and property of its subjects and the crime victim suffers because of state's failure in protecting his life, limb and property. Hence State has an obligation to ensure equal fairness and justness to the crime victim as that of the offender.

It is really a matter of solace that the recent trends of criminal justice policy in most countries exhibit a victim centric perspective in their criminal justice. In fact in recent times, there is an exponential expansion in victim related norms in international human rights law which points to the prominent position they have assumed in the present scenario. Though there are some debates as to victim's participatory rights in trials and sentencing procedures, there is wide consensus as to their protective rights and reparative rights. Victim's compensatory rights have assumed maximum prominence in the modern criminal justice system that almost all the developed countries have comprehensive legislation in this area. In this article, an attempt has been made to analyse how far right to compensation of victims of crime is materialised in India in the light of legislative provisions and precedents.

For the first time in the year 1985 in the general assembly of United Nations, a declaration was made on basic principles of Justice for victims of Crime. This declaration is otherwise called a

[7] Police has exclusive domain regarding investigation of his complaint
[8] It is lamentable that in most cases, he is treated like an accused.
[9] Ibid

kind of Magna Carta of rights of victims of the world. The import of Article 21 of the constitution of India has been amplified in its application by the catena of decisions of the Honorable Apex court of India. Right of the victim was also derived from the said article. The necessity of the right of victim was felt by the courts when it was found that the victim, otherwise called as the initiator of the litigation, is losing confidence on and interest in the process of adjudication. The victim developed a kind of detachment from the adjudicating process when it was found that the human rights of the accused became well protected either by legislation or adjudication in comparison to the protection of the right of the victim. The victim is not a passive object but an active component in the judicial process. The victim deserves similar kind of protection and attention from the court like that of an accused. Punishment to the accused is a signal to the accused as well as to the society not to commit an offense. But by this the victim is not going to gain anything.

To make a balance between the human rights of the accused and the victim by plethora of decisions the Honorable Supreme court of India attempted to restore the dignity of the victim and to heal up the wounds sustained by the victim.

CHAPTER-1

THE CRIMINAL JUSTICE SYSTEM

Chapter-1

THE CRIMINAL JUSTICE SYSTEM

1.1 INTRODUCTION:

The Constitution of India and the criminal justice administration have a reciprocal relationship. While the Constitution sets certain ideals of securing justice to the people and maintaining unity and integrity of the nation, the criminal justice administration plays a crucial role in their achievement. The criminal justice administration comprises of the police, bar, judiciary and prisons. These agencies constantly depend on the constitutional support to their principles and procedures. The people cannot enjoy their constitutional rights freely in an atmosphere of distrust, hatred, fear and insecurity. Since it is the responsibility of the criminal justice administration to prevent violation of people's rights and maintain order, its performance has a direct impact on the process of achieving the aims and objectives of the Constitution. Failure of the criminal justice administration not only vitiates the constitutional guarantees but also jeopardizes the whole civil society leading it towards a chaotic situation where the Constitution will be nothing but a mockery.

The Constitution was framed by men of great learning and erudition after intense deliberations in the Constituent Assembly. The framers of the Constitution gave India not merely a legal document to govern the country but an instrument of establishing a just society. Dr. Shankar Dayal Sharma, the then President of India, while addressing Parliament on 9th December 1996 on the occasion of the 50th anniversary of the first sitting of the Constituent Assembly said:

"It was our beloved leaders who belonged to masses, individuals with deep knowledge and learning and imbued with the values of our civilization, who were elected to participate in the Constituent Assembly. They had broad global vision which encompassed all humanity and sought to harmonize the great spiritual values of our culture with the modern dynamic approach of other traditions."[10]

'Justice' is at the top among the aims and objectives to be achieved by the Constitution as enshrined in the Preamble. The objective of 'justice', social, economic and political is directly

[10] Records of the Lok Sabha Secretariat, New Delhi.

incorporated in article 38[11]. As observed by Seervai, the famous jurist, article 39 amplifies the concept of justice.[12] The Supreme Court has held that social justice would include 'legal justice' which means that the system of administration of justice must provide cheap, expeditious and effective instrument for realization of justice by all sections of the people irrespective of their social or economic position or their financial resources.

The framers embodied a number of provisions relating to justice and its administration in the Constitution so that they are not abrogated by ordinary legislation. A few of the provisions relating to criminal justice administration were incorporated in the Constitution even though analogous provisions were available in the existing Cr.P.C., 1898. This discloses that the framers had given special emphasis on criminal justice and its administration.

With the Constitution coming into being, the hopes of the people for a safer society and speedy criminal justice enhanced significantly. This required a qualitative improvement in the performance of various agencies involved in the administration of criminal justice. However, the statistics indicate that the situation has deteriorated in post-republic period instead of improving.

1.2 Evolution of Criminal Justice System:

Like in every civilized society, in India too a criminal justice system evolved. Socio-economic and political conditions prevailing during different phases of the history of India influenced its evolution. Accordingly, the objectives of the criminal justice and methods of its administration changed from time to time and from one period of history to another. To suit the changing circumstances the rulers introduced new methods and techniques to enforce law and administer justice. In early society the victim had himself (as there was no State or other authority) to punish the offender through retaliatory and revengeful methods; this was, naturally, governed by chance and personal passion. Even in the advanced Rig-Vedic period there is a mention that punishment of a thief rested with the very person wronged.[13] Gradually, individual revenge gave way to group revenge as the man could not have grown and survived in complete isolation and for his very survival and existence, it was necessary to live in groups. Group life necessitated consensus on ideals and the formulation of rules of behaviour to be followed by

[11] Article 38 of the Constitution of India which inter alia provides: "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."
[12] Seervai, H.M., Constitutional Law of India, Vol. I, p. 280.
[13] The Gazetteer of India, Vol. II, pp. 145-46;

its members. These rules defined the appropriate behaviour and the action that was to be taken when members did not obey the rules. This code of conduct, which governed the affairs of the people, came to be known as Dharma or law. In course of progress man felt that it was more convenient to live in society rather than in small groups. Organizations based upon the principle of blood relationship yielded, to some extent, to larger associations—the societies. In the very early period of the Indian civilization great importance was attached to Dharma. Everyone was acting according to Dharma and there was no necessity of any authority to compel obedience to the law. The society was free from the evils arising from selfishness and exploitation by the individual. Each member of the society scrupulously respected the rights of his fellow members and infraction of such rights rarely or never took place. The following verse indicates the existence of such an ideal society.

There was neither kingdom nor the King;
neither punishment nor the guilty to be
punished. People were acting according to
Dharma; and thereby protecting one another[14]

However, the ideal stateless society did not last long. While the faith in the efficacy and utility of Dharma, belief in God and the God fearing attitude of people continued to dominate the society, the actual state of affairs gradually deteriorated. A situation arose when some persons began to exploit and torment the weaker sections of society for their selfish ends. Tyranny of the strong over the weak reigned unabated. This situation forced the law abiding people to search for a remedy. This resulted in the discovery of the institution of King and establishment of his authority over the society, which came to be known as the State. As the very purpose of establishing the State and the authority of the King was the protection of person and property of the people, the King organized a system to enforce the law and punish those who violated it. This system later came to be known as criminal justice system. Although the Indus-valley civilization suggests that an organized society existed during pre-Vedic period in India, traces of the criminal justice system can only be found during the Vedic period when well defined laws had come into existence. The oldest literature available to explain the code of conduct of the people and the rules to be followed by the King are Vedas. Therefore, while discussing the evolution of the criminal justice system the history of India is covered from the Vedic period onwards dividing it into three periods—Ancient India (c. 1000 B.C. to A.D. 1000), Medieval

[14] Jois, op. cit., p.576,quoting Mahabharata, Shanti Parva, 59-14: Naiv rajyam na raja-assinnh dando na cha dandikah; Dharmenaiv parjah sarva rakshanti sma parsparam.).

India (A.D. 1000 to 1757) and Modern India (A.D. 1757 to 1947). ANCIENT INDIA (c. 1000 B.C. to A.D. 1000) This period of Indian history is also known as Hindu period because of the prevalence and dominance of Hindu law. The elements of state administration signifying rule by a King with the help of his advisers or assistants may be traced back to the early Vedic period. In the Rig-Veda the King is called Gopa janasya or protector of the people. This implies that he was charged with the maintenance of law and order. According to the Dharma sutras and the Arthashastra, it was the duty of the King to ensure the security and welfare of his subjects. Each state was divided into provinces and the provinces into divisions and districts. For each province, governors were appointed. District officers were entrusted with the judicial and administrative functions. According to Kautilya's Arthashastra, the administration of towns was entrusted to the Nagarka. He had not only to look after the maintenance of law and order but had also to enforce various building and sanitary regulations and to prepare census of the citizens.[15] Apart from cities and towns, there were a large number of villages. In fact, the village was the basic unit of government. Each village consisted of a village headman and Village Council or Panchayat. The office of the village headman was mostly hereditary. In villages he represented the King's administration.[16]

The most remarkable feature of the early Vedic polity was the institution of popular assemblies, of which two, namely, the Sabha and Samiti deserve special mention. In the later Vedic period, the Samiti disappeared as popular assembly while the Sabha became a narrow body corresponding to the King's Privy Council.

The beginning of a regular system of state judicial administration may be traced to the pre-Mauryan age. The Mauryan period (c. 326-185 B.C.) fills a gap between two great epochs of administration of criminal justice in ancient India, namely, that as mentioned in the Dharma sutra on the one hand and that of Manu's code on the other. The few references in Megasthenes' Indica to the penalties for offences current in Chandragupta's time breathe the spirit of the penal law of the preceding period. From Pillar Edict IV of Ashoka, we learn that even after his conversion to Buddhism he continued the death penalty for crimes, only softening its rigour by giving the convicts three days' respite before execution. The system of justice of the preceding period appears to have been continued by the Mauryas. The old division of urban and rural judiciary was continued in Ashoka's reign. The few references in the records of Mauryas point

[15] Ibid
[16] The Gazetteer, op. cit., pp 153-54.

to the continuance of the state police of the preceding period. The jail administration of the earlier times appears to have been continued.[17]

The rule of the foreign dynasties of the pre-Gupta period is an important episode in the history of ancient Indian administration. Some of the Indo-Greek Kings organized their Indian dominions under provincial governors bearing Greek titles. The Kushanas (c. A.D. 120-220) brought with them an exalted conception of monarchy. They introduced two new grades of military or judicial officers, Mahadandanayaks and Dandanayaks, to make the justice system more effective.[18]

The Guptas (c. A.D. 320-550) created afresh a system of administration on imperial lines after the downfall of the Mauryan empire. The civil administration apparently was in the charge of the Mantri as before. In the branch of provincial administration the Guptas adopted the older models with changed official nomenclature and some striking innovations. The Municipal Board consisted of four members, namely, the Guild-President, the Chief Merchant, the Chief Artisan and the Chief Scribe. This marks a bold attempt to associate popular representatives with local administration.

After the Guptas, in Northern India, King Harshvardhana (A.D. 606-47) created a sound and efficient administration. The contemporary Chinese Buddhist pilgrim Hiuen Tsang gives high praise to Harshvardhana for his love of justice, his unremitting industry in the discharge of his duties and his piety and popularity. However, on the other hand, the penal law was marked by a certain degree of harshness in strong contrast to exceptional mildness under the Imperial Guptas. In the Deccan, the administration of the Imperial Chalukyas of Vatapi (A.D.540-753) was marked by the usual characteristics. The administration of Rajput states of Northern India was of the bureaucratic type.

Salient features of the criminal justice system as evolved and prevailed during ancient India are described below.

Concept of Dharma (Law)

The Hindu legal system was embedded in Dharma as propounded in the Vedas, Puranas, Smritis and other works on the topic. Dharma, i.e. law, constituted the blue print or master-

[17] Jois, op. cit., p. 8, quoting Manu VIII-15: Dharma ev hato hanti dharmo rakshti rakshita, Tasmadharmo na hantvyo ma no dharmo hato-avdheet
[18] Ibid., p. 10.

plan for all round development of the individual and different sections of the society. The following verse describes the importance of the Dharma (law): Those who destroy Dharma get destroyed. Dharma protects those who protect it. Therefore Dharma should not be destroyed. The law was recognized as a mighty instrument necessary for the protection of the individual's rights and liberties. Whenever the right or liberty of an individual was encroached upon by another, the injured individual could seek the protection of the law with the assistance of the King, howsoever powerful the opponent might be. The power of the King to enforce the law or to punish the wrong doer was recognized as the force (sanction) behind the law, which could compel implicit obedience to the law.

Sources of Dharma

The Veda was the first source of Dharma in ancient India. The Dharma sutras, Smritis and Puranas were the other important sources. Subsequently the Mimamsa (art of interpretation) and the Nibandhas (commentaries and digest) also became supplementary sources of law. Whenever there was conflict between Vedas, Smritis and Puranas, what was stated in the Vedas was to be taken as authority.[19]

The source of the Vedas was believed to be divine. The Vedas are four in number, viz. the Rig Veda, the Yajur Veda, the Sam Veda and the Atharva Veda. As per Wilkins, among the Vedas, the Rig-Veda is the oldest, next in order was the Yajur-Veda, then the Sama-Veda and last of all the Atharva-Veda. MaxMuller gives the probable date of the mantras, or hymn portion of the Vedas, from 1200 to 800 B.C., and the Brahmanas from 800 to 600 B.C, and the rest from 600 to 200 B.C. Each of the Vedas consists of two main parts: a Samhita, or collection of mantras or hymns; and a Brahmana, containing ritualistic precept and illustration. Attached to each Brahmana is an Upanishad containing secret or mystical doctrine.[20] The Dharmashastras laid down the law or rules of conduct regulating the entire gamut of human activity. This necessarily included civil and criminal law.

The earlier works, which laid down the law in the form of sutras, were divided into three classes, viz. Srauta sutras, Grihya sutras and Dharma sutras. The Dharma sutras dealt with civil and criminal law. The important Dharma sutras, which were considered as high authority, were

[19] Kumar, Dr. Surendra, Manu Smriti, published by Arsh Sahitya Prachar Trust, 455, Khari Baoli, Delhi110 006, pp. 6-7
[20] Smith, op. cit., pp.94, 141.

of Gautama, Baudhayana, Apastamba, Harita, Vasista and Vishnu. These Dharma sutras, therefore, can be regarded as the earliest works on Hindu legal system.

The next important source of the Hindu law was the Smritis. The compilation of the Smritis resembles the modern method of codification. All the legal principles scattered in the Vedas and also those included in the Dharma sutras as well as the custom or usage which came to be practised and accepted by the society were collected together and arranged subject wise in the Smritis. The Smritis dealt with constitution and gradation of courts, appointment of judges, the procedural law for the enforcement of substantive law, etc. They disclose a well developed legal and judicial system. The important Smritis are the Manu Smriti, the Yajnavalkya Smriti, the Narada Smriti, the Parashara Smriti and the Katyayana Smriti.

The eighteen sub-divisions of law, which cover civil as well as criminal law, are the special features of the Manu Smriti. All the law writers, from the 2nd Century A.D. onwards, appear to have attached great importance to the Manu Smriti and it came to be recognized as the most authoritative work.[21] However, in a research it has been found that out of 2685 verses (shlokas) in the Manu Smriti only 1214 verses are original and remaining 1471 verses are interpolated. The researcher has described how the interpolated verses of the Manu Smriti either contravene the views of Manu as expressed in other verses or are irrelevant to the subject matter where they are placed.[22]

Puranas were also a source of law in ancient India. Each Purana is devoted to the praise of some special deity, who, according to its teaching, is supreme. The deities, described in other Puranas in equally extravagant language, are slighted, and in some cases their worship forbidden. It seems to prove that these books must have been written at different times and in different places, and probably by those who were ignorant of what others had written. All the 18 Puranas are classified into three categories—

(i) those which are devoted to Brahma viz. the Brahma, the Brahmanda, the Brahmavaivarta, the Markandey, the Bhavishya, and the Vaman;

(ii) those devoted to Vishnu viz. the Vishnu, the Bhagavata, the Naradiya, the Garuda, the Padma, and the Varaha; and

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[21] Ibid., P.47 quoting J.J.Meyer as cited by R.P.Kangale in The Kautilya- Arthashastra, Part II, Vol.III, p. 191).
[22] .Jois, op. cit., pp. 46-48.

(iii) those devoted to Siva, viz. the Siva, the Linga, the Skanda, the Agni, the Matsya, the Kurma.

Kautilya's Arthashastra was considered to be another important and authoritative source of law during ancient India from the Mauryan period onwards. Kautilya, also known as Vishnugupta or Chankya, was a Minister of Chandragupta Maurya (c. 322-298 B.C.).40 He has given a detailed description of the legal system. According to Kautilya, an essential duty of government is maintaining order. He defines this broadly to include both maintenance of social order as well as order in the sense of preventing and punishing criminal activity. Kautilya has mentioned the law of procedures; the law of evidence in civil as well as criminal cases; procedure of criminal investigation; and quantum and method of punishments for various types of offences. Prisons, lockups and welfare of prisoners are also the subject matters of the Arthashastra. Kautilya has prescribed code of conduct for Judges and for the King. However, some of the provisions in the Arthashashra relating to punishments have also been found to be interpolations.

To understand the real meaning of the provisions of the authoritative texts, the adoption of Mimamsa (art of interpretation) became inevitable. In addition to the Mimamsa, the contemporary jurists contributed by Nibandhas (commentaries and digests) to the development of law. It is pertinent to note that some of the Nibandhas which were accepted and followed by the society and enforced by the courts in the past are recognized even at present in India such as Mitakshara by Vijnaneswara and Dayabhaga by Jimutavahana.[23]

Dharmashastras did not confer on or recognize any legislative power in the King. Under the Hindu jurisprudence, though the law was enforceable by the political sovereign—the King, it was considered and recognized as superior and binding on that sovereign himself as is clear from the following verse.

Law is the king of kings; nothing is
superior to law. The law aided by the
power of the king, enables the weak to
prevail over the strong.[24]

[23] .Jois, op. cit., p.17 (quoting Brishpatii).
[24] Jois, op. cit., p. 489.

However, the above position changed with passage of time as it came to be recognized that in case of conflict between the law laid down in the Shrutis (Vedas) or the Smritis and the Dharmanyaya, i.e. King's law, the latter prevailed.[25]

In addition to the literary works of the Hindu law, the customs and usages were also considered as law to administer justice. The Gautama sutra declared: "Administration of justice shall be regulated by the Vedas, the institutes of the sacred law; the Vedangas and the Puranas. The customs of the countries, castes and the family which are not opposed to sacred laws have also the authority."[26] The Katyayana Smriti also provided that in the absence of a provision in the texts, a King should follow the usage. The Yajnavalkya Smriti prescribed that where two Smritis conflicted, principles of equity as determined by popular usages should prevail. The Narada Smriti mentioned: "When it is impossible to act up to the precept of sacred law, it becomes necessary to adopt a method on reasoning because custom decides everything and over-rules the sacred law."[27] From these provisions in the Smritis it is inferred that a practice had evolved to recognize the prevailing customs and local usage as authority during ancient India. As time elapsed the customs and usage had not only become the laws but also achieved superiority over the sacred law as found in the Vedas.

As regards the residuary matters, the power was vested with the King. It was provided that in cases where no principle of law was found in the Shruti, Smritis or custom, the King should decide according to his conscience. As acknowledged by the Smritis themselves, they were based partly on usage, partly on regulations made by the rulers and partly on decisions arrived at as a result of experience.

The criminal justice system in India has evolved over a period of three thousand years. Initially, the Law or Dharma, as propounded in the Vedas was considered supreme in ancient India for the King had no legislative power. But gradually, this situation changed and the King started making laws and regulations keeping in view the customs and local usages. The punishments during ancient India were cruel, barbarous and inhuman. As regards the procedure and quantum of the punishments there were contradictions between various Smritis and in certain cases even among the provisions found in one Smriti itself. The system of awarding punishments on the basis of varna contravened the concept of equality of all human beings as propounded by the

[25] Ibid., pp. 490-93.
[26] The Gazetteer , Vol.II, p.153.
[27] Kulshreshtha, op. cit., p. 6. (quoting S. Varadachariar,The Hindu Judicial System,p.88).

Vedas. The discriminatory system of inflicting punishments and contradictory provisions in different legal literature made the criminal justice system defective and confusing.

The British after assuming power in India found the then prevailing criminal justice administration defective decided to bring about drastic changes in it. Lord Cornwallis made detailed studies of the existing conditions of the criminal justice administration. He introduced many reforms to revamp the whole system. Lord Hastings took special interest in reorganizing the police force to deal with the criminals and maintain law and order in the country. Lord Bentinck created the post of District and Sessions Judge and abolished the practice of sati. In 1843, Sir Charles Napier introduced a police system on the lines of Royal Irish Constabulary. He created the post of Inspector-General of Police to supervise the police in the whole province. Subsequently, the Indian Police Act of 1861 was enacted on the recommendations of a Commission which studied the police needs of the Government. They codified the existing laws; established the High Courts and Prisons Laws. Thus, the British introduced reforms wherever necessary. They adopted new principles by modifying the existing laws wherever required and made new laws where they felt it was a must. The institutions of police, magistracy, judiciary and jails developed during the British period still continue without significant changes in their structure and functioning. However, the British rulers also, while restructuring the criminal justice system, did not fully implement the concept of equality. The reforms introduced by them treated all Indians and non-British Europeans equally but the British always enjoyed special privileges. It was only with the Constitution of India coming into being that the right to equality before law was fully recognized and incorporated in the Constitution as a Fundamental Right.

1.3 The Constitution and Criminal Justice System:

Constitutions are intended to preserve practical and substantial rights, not to maintain theories. - Oliver Wendell Holmes

In a democratic country the Constitution guarantees certain basic rights and liberties to the people while criminal justice administration protects them by enforcing laws and punishing the offenders. If the Constitution is a chariot then the four components of the criminal justice system, viz. the police, bar, judiciary and correctional services are its horses. Harmonious efforts of all these four agencies are essential for moving the Constitution towards its goal of establishing a just society in India.

The Constitution of India was framed by the Constituent Assembly which comprised members elected through Provincial Legislative Assemblies and representatives of Indian Princely States and Chief Commissioner's provinces. While deliberating upon the Draft Constitution, the distinguished members of the Constituent Assembly, many of them being advocates and legal luminaries, discussed at length and expressed their views freely and frankly on subjects of vital importance.

Although the Indian Constitution was made during December 1946 to November 1949, most of its enduring values were shaped during the national movement for independence.[28] Granville Austin observes: "The Constitution was to foster the achievement of many goals. Transcendent among them was that of social revolution. Through this revolution would be fulfilled the basic needs of the common man, and, it was hoped that this revolution would bring about fundamental changes in the structure of Indian society—a society with the long glorious cultural tradition, but greatly in need, Assembly members believed, powerful infusion of energy and rationalism. The theme of social revolution runs throughout the proceedings and documents of the Assembly."[29]

The framers of the Constitution were committed to bringing about a social change by removing social disabilities and providing every citizen opportunities for his all-round development. The core of this commitment lies in Part III and Part IV of the Constitution which deal with the Fundamental Rights of the people and Directive Principles of State Policy. According to S.P. Sathe, in a society known for its hierarchical social structure based on inequality, the right to equality and liberty were indeed going to trigger a great revolution. In the Directive Principles of State Policy, the Constitution envisions profound social and economic change to be ushered into through state intervention.

Most of the Fundamental Rights are protection against arbitrary and prejudicial State action while some aim at protecting the individual against the actions of private citizens. Constitutional rights without a remedy for their enforcement do not serve the intended purpose. Therefore, the framers decided to provide the remedy in the Constitution itself. The remedy for enforcement of Fundamental Rights or, to put in other words, against violation of Fundamental Rights, may be divided into two parts, namely, (i) approaching the Supreme Court and High

[28] Sathe, S.P., "Review of the Constitution: Need to Keep an Open Mind", Economic and Political Weekly, September 16, 2000, p. 3395.
[29] Austin, Granville, The Indian Constitution:Cornerstone of a Nation, p. xvii.

Courts under articles 32 and 226 respectively; and (ii) approaching the police or subordinate courts. Since the Constitution declares violation of some of the Fundamental Rights offence under articles 17 and 23 punishable under law, the criminal justice administration has a direct responsibility to enforce these rights and curb their violation. Contravention of some other Fundamental Rights such as right to life and personal liberty is offence under existing criminal laws the enforcement of which is the responsibility of the criminal justice administration. While granting rights and liberties to the people, the framers also envisaged adequate provisions for maintaining public order, morality, decency, security of the State, etc. They empowered the State, which includes the authorities of the criminal justice administration as defined under article 12, to impose reasonable restrictions on some of the Fundamental Rights for ensuring protection of these national interests. Thus, the criminal justice administration, by enforcing the Fundamental Rights and safeguarding unity and integrity of the nation, plays an instrumental role in facilitating the process of achieving the aims and objectives of the Constitution. The success of the Constitution largely depends upon the efficiency and effectiveness of the criminal justice administration. On the other hand, without constitutional support the principles and policies of the criminal justice administration can not survive and hence, there is a reciprocal relationship between the Constitution and the criminal justice administration. Keeping in view the importance of the criminal justice administration, the framers incorporated in the Constitution itself many provisions relating to the administration of criminal justice. They intended to establish a just society in India by ensuring fair and speedy criminal justice to the people. This required a qualitative improvement in the performance of the criminal justice administration. However, the rising violent crimes; huge pendency and inordinate delay in disposal of criminal cases; and declining conviction rate during the last four decades indicate that the performance of the criminal justice administration in post-independence period has been constantly deteriorating, instead of improving. It is, therefore, imperative to find as what has gone wrong and how. Whether the framers failed to make adequate provisions for a sound criminal justice administration or the State authorities and the people did not pay desired attention to enhance its efficacy.

An analysis of the constitutional provisions, done in the context of the Constituent Assembly Debates, may reveal how the framers while adopting various provisions emphasized the importance of the criminal justice administration and its role in working the Constitution.

Fundamental Rights and the State

For the purpose of Part III, i.e. Fundamental Rights, the 'State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities as defined in article 12 of the Constitution. The authorities involved in the administration of criminal justice, such as police and judiciary, are the 'State' and therefore, bound to ensure free exercise of Fundamental Rights by the people. Article 13 prescribes that any law, ordinance, order, bye-law, rule, regulation and notification, etc. which takes away or abridges any Fundamental Right shall be void. However, the State authorities such as the police and Executive Magistrates, under article 19, may impose reasonable restrictions on the exercise of certain Fundamental Rights in the interests of decency or morality, public order, security of the State, etc. When the above articles came up for consideration before the Constituent Assembly, an honourable member, Mahboob Ali Baig Sahib Bahadur, objected to the inclusion of local or other authorities in the definition of the 'State'. He was of the view that in the light of that definition a Magistrate or even a petty officer in authority could rightly claim to have authority to abridge a citizen's rights.207 However, Dr. Ambedkar explained that the object of the Fundamental Rights was two-fold. First, that every citizen must be in a position to claim those rights, and secondly, they must be binding upon every authority which had got either the power to make laws or the power to have discretion vested in it. The authority which is under obligation to make available the rights to the people should also have the authority vested in it to make laws relating to the Fundamental Rights. After this clarification by Dr. Ambedkar, the articles were adopted with minor modifications.[30] It is in accordance with these provisions that Executive Magistrates or police officers are empowered, under various laws such as the Cr.P.C., the Bombay Police Act, etc., to impose reasonable restrictions on the exercise of certain Fundamental Rights of the people by promulgating orders to prohibit assembly of persons, movements and certain other actions to maintain, decency, public order, etc.

Prohibition of Discrimination

Article 15 of the Constitution inter alia deals with the provisions of prohibition of discrimination on grounds only of religion, race, caste, sex or place of birth. The article provides two things—(1) It requires the State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) It provides that no citizen

[30] Ibid., p. 610.

shall be subject to any disability, liability, restriction or condition with regard to (a) access to shops, hotels, etc., and (b) the use of wells, roads, places of public resort, etc. maintained wholly or partly out of State funds or dedicated to the use of general public. Clause (1) prohibits the State from causing discrimination whereas clause (2) requires the State as well as general public not to subject any citizen to disability, etc. Clause (3) of the article provides that nothing shall prevent the State from making any special provision for women and children. Subsequently, clause (4) was added[31] which allows the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. With a view to making sure that the concerned State authorities or private persons refrain from causing any discrimination, Shri. Mohammed Tahir moved an amendment to provide that any contravention of the provisions of this article should be an offence punishable in accordance with law.[32] But Dr. Ambedkar pointing out the provisions of article 17 (which abolishes untouchability and makes its practice an offence) explained that the Constitution contained ample provisions in that regard. After this. Shri Tahir did not press his amendment and the article was adopted without any penal clause. However, it is to be noted that though Shri Mohammed Tahir, while moving his amendment to add the penal clause to article 15, had referred to the discriminations being practised against the people of scheduled castes, his amendment also covered discrimination on other grounds also such as religion, race, sex, place of birth, etc. If the article had a penal clause, like that of article 17, the aggrieved persons would have got an easy remedy to approach the police or the lower criminal courts to lodge complaints and set the State machinery in motion. In the absence of such a provision, a person who is subjected to discrimination, as described in article 15 has to approach either the High Court or the Supreme Court for redressal of his grievance. As approaching the Supreme Court or the High Court entails a cumbersome and expensive procedure, the poor people are not able to make effective use of this remedy.

Abolition of Untouchability

Article 17 provides, "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable with law." To give effect to this article, Parliament enacted the Untouchability (Offences) Act, 1955. This Act, as amended and amended in 1976 as the Protection of Civil Rights Act, 1955,

[31] The Constitution (First Amendment) Act, 1951, section 2
[32] C.A.D., pp.654-55.

declares certain acts as offences and prescribes punishment thereof.[33] Subsequently, Parliament enacted another law, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989.

Rights Regarding Freedom of Speech, etc.

Article 19 provides that all citizens shall have the right—(i) to freedom of speech and expression; (ii) to assemble peaceably and without arms; (iii) to form associations or unions; **(iv)** to move freely throughout the territory of India; (v) to reside and settle in any part of the territory of India; and (vi) to practise any profession, or to carry on any occupation, trade or business. The article allows the State to make laws to impose reasonable restrictions on the exercise of the right conferred by this article in the interests of security of the State, public order, decency or morality, etc. The word 'State' includes the local and other authorities, and the word 'law' includes any order, rule, notification, etc. as defined in article 13. Originally, the word 'reasonable' was not there in the article of the Draft Constitution. But during the debates, Pandit Thakur Das Bhargava observed that under the provisions as suggested by the Drafting Committee if the State enacted a law saying that its object was to serve the interests of the public or to protect public order then the courts would be helpless to come to the rescue of the nationals of this country in respect of the restriction. He suggested to put the word 'reasonable' before the word 'restrictions' so that the court would have powers to see whether a particular law was in the interests of the public and whether the restrictions imposed were reasonable, proper and necessary in the circumstances of the case.[34]

Dr. Ambedkar agreed to the suggestion of Pandit Bhargava and accordingly the article was amended to put the word 'reasonable' before the word 'restrictions'.[35] This change was of great significance as it allowed judicial review of the State action of imposing restrictions on the freedoms described in article 19. Thus, the Constitution placed a major restriction on the scope of legislative competence, for the judges may review the reasonableness of restrictions imposed on the Fundamental Rights and thus have mutatis mutandis the same power in relation to article 19 which the American Judges enjoy generally under the clause of due-process-of-law.[36]

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[33] The Protection of Civil Rights Act, 1955 (Act 22 of 1955) Originally the Untouchability (Offences) Act, 1955 which came into effect on 8th May 1955.
[34] C.A.D., Vol. VII, pp. 738-40.
[35] Ibid. , p. 779.
[36] Austin, op. cit., p. 74 (quoting Alexandrowicz, Constitutional Development of India, p.46).

Protection of Life and Personal Liberty

Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Although the right to of life and personal liberty is most important, it can not be absolute. With a view to maintaining order and securing criminal justice, the State authorities in certain circumstances have to deprive the people of their personal liberty and life by arresting or executing them in accordance with the provisions of law. The only protection the Constitution can ensure is the legal procedure which governs such arrests and executions. There were two options available before the Constituent Assembly, namely, 'procedure established by law' and 'due process of law'. There were long debates as which of these principles would suit India most. Finally, the Assembly adopted the principle of 'procedure established by law'. It is to be noted that the Advisory Committee on Fundamental Rights,[37] appointed by the Constituent Assembly, had suggested the principle of 'due process of law' as available in the American Constitution. But the Drafting Committee preferred to include "procedure established by law' in the Draft Constitution. When the article came up for consideration in the Constituent Assembly, Kazi Syed Karimuddin moved an amendment to substitute the words "without due process" for the words "except according to procedure established by law".[38] Distinguished members like Pandit Thakur Das Bhargava, Shri Chimanlal Chakkubai Shah, Shri Krishna Chandra Sharma, Shri H.V. Pataskar, Shri K.M. Munshi, Shri Z.H. Lari who spoke at length to support the amendment.

Prior to the decision of the Supreme Court in Maneka's case (1978) , article 21 was construed narrowly only as a guarantee against executive action unsupported by law. But, the Supreme Court in this case widened the scope of article 21. Subsequently, the apex Court, in Francis v. Union Territory, further clarified the principle and observed: "Maneka's case has opened up a new dimension and laid down that it imposed a limitation upon law making as well, namely, that while prescribing a procedure for depriving a person of his life or personal liberty, it must prescribe a procedure which is reasonable, fair and just."[39] Thus, the Supreme Court has expanded the scope and ambit of the right to life and personal liberty enshrined in article 21

[37] C.A.D., Vol. III, P. 328. The Honourable Sardar Vallabhbhai Patel, Chairman of the Committee submitted interim report on Fundamental Rights. The Right at Sr. No. 9 reads as under: "No person shall be deprived of his life, or liberty, without due process of law, nor shall any person be denied the equal treatment of the laws within the territories of the Union."
[38] Ibid., Vol. VII, pp. 842-43.
[39] C.A.D., op. cit., Vol. IX, pp. 1498-1501.

and sowed the seed for future development of the law enlarging this most fundamental of the Fundamental Rights.

Prohibition of Traffic in Human Beings

Article 23 of the Constitution provides that traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. A part of this article was enforced by the Suppression of Immoral Traffic in Women and Girls Act, 1956 (called the Immoral Traffic (Prevention) Act since 1986). However, to give effect to the provisions relating to forced labour it took a long time to enact the law. Parliament in the year 1976 enacted the Bonded Labour System (Abolition) Act, 1976 prescribing certain acts as offences and procedures to deal with the problem of bonded labour in India.

From the foregoing analysis of the constitutional provisions, it is observed that the ideals of equality, liberty and dignity of the individual were kept constantly in view while framing the Constitution. The framers gave top priority to 'justice'. They made several provisions for criminal justice and its administration in the Constitution itself. While recognizing rights of the people, the imperatives of security, unity and integrity of the State were also kept in view constantly. The Constitution allows the State, which includes the police and magistracy, to impose reasonable restrictions on some of the Fundamental Rights of the people in certain circumstances to maintain order, decency, morality, etc. Thus, the Constitution contains adequate provisions for fair administration of criminal justice. However, for achieving desired results, the provisions need to be implemented meticulously obeying the spirit behind them and not just the letter. It may be proper to recall the following remarks of Dr. Rajendra Prasad, the first President of India. While speaking in the Constituent Assembly on 26th November 1949, he said: "If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country.''[40]

[40] Ibid., p. 993

1.4 Components of Criminal Justice System:

I. POLICE

Police, being a front- line segment of the criminal justice system, have a very vital role in administration of the justice. Therefore, for understanding the criminal justice system is a prelude to understanding the police. Under Article 246 The Constitution of India places the police, public order, courts, prisons, reformatories, and other allied institutions in the State List.[41] Now the next looming question towards is, that how to make accountable to police? Which is vital part of the Indian Criminal Justice system?

Accountability of police

Indian police Act of 1861, is outdated law which, made in regime of the colonial system with the aim of suppressing the people. Unfortunately, instead of the continuous demand of The National Police Commission, Indian government is unwilling to do any change in this colonial law.

Further, in the Police Act, 1861 there is no as such provision of the accountability of the police unlike in the UK, in which the Independent Police Complaints Commission (IPCC) supervises and investigates public complaints against the police and can take over the supervision or investigation of any complaints case4 . Whereas in Indian Police Act, is lacking in this aspect. It can be clearly evident from the matters involving the atrocities of the police often come before the court some are as follow:

Central Bureau of investigation v. Kishore singh and others[42]

In instant case Hon'ble Justice Markandey Katju stated that, what should be done to policemen who "Bobbitt" a person in police station and think that they can get away it? That is the question decided in the case. Court held that in our opinion, policeman who commit criminal act deserve harsher punishment that other person who commit such act, because it is duty of the policemen to protect the people, and not break the law themselves. If the protector becomes the predator civilized society will cease to exist. As the Bible says, "If the salt has lost its flavor, wherewith shall it be salted?"Or as the ancient Roman used to say "who will guard the praetorian guards?"

[41] Chenthilkumar Paramasivam, Police organization of India, Common Wealth Human Rights Initiative
[42] (2011) 6 SCC 371 Supreme court cases weekly , 2011 Vol 6

Hence, the police are supposed to protect the people and uphold the law, but if they themselves become criminals, then it's a difficult task to ensure the protection of the human rights.

Mehboob Batcha and others v. state represented by superintendent of police Judges Markandey Katju and Gyan Sudha Mishra . [43]

In instant case Supreme Court held that, as murder by policemen in police custody is rarest of rare case. They deserve for death penalty and we give a warning to all country that this will not be tolerated. Further, court upheld that custodial violence in police custody is in violation of this court's directive issued in **D. K. Basu v. State of WB.**

Judiciary view on Arbitrary arrest and illegal detention

The power of the police to arrest is also often very grossly abused. This can be analyzed by following cases. There are numbers of the cases where Apex Court directed various guide lines regarding the arrest for example in D.K Basu v. State of West Bengal[44] in instant case court streamlined the procedure relating to the arrest. Court reiterated in this case that, protection from arbitrary arrest is flow from Article 21 and 22 (1) of the constitution and are to be enforced strictly. The Supreme Court in Joginder Kumar v. State of the U.P.[45] has put clear restrictions on the powers of police to make arbitrary arrests.

The above cases are really, a path breaking judgments. Therefore, it is high time to look into the power of the President provided in Art. 372 (2)[46] of the India Constitution. Which empower the President to amend the law in compliance with the Constitution?

II. JUDICIARY

The judiciary has a very vital role in implementation of rule of law. The primary and most important duty of the courts is to protect and enforce the human rights, as well as provide the relief to the victim. Such duty and obligation is indispensable for a democratic country. The present criminal justice system in Indians courts is to give more attention to the accused and

[43] (2011) 7 SCC 46
[44] (1998) 6 SCC 380.
[45] (1994) 4 SCC 260
[46] Article 372(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law

try to protect all his/her rights i.e. Presumption of the innocence, legal right against arrest, and double Jeopardy etc. no doubt accused are entitled of all these rights but now in changing situation, it is also expected from the courts focus upon the Victim as well as witness.

Role of the court during the criminal proceeding: Ensuring the humane condition of the investigation Here the pertinent question is that, what should be the role of court in reformation of the criminal justice system? Because we already discussed that, it is the Judiciary which has a vital role in implementation of rule of law. Further, it is noticeable that, there are some provisions in legislation itself, the proper realization of which can bring the remarkable change in the field of the criminal Justice system. The analysis of such provisions dealt in the following section of the article.

1. Limitation on the power of the arrest The criminal Procedure Code, 1908 confers fairly extensive powers of the arrest mainly to the police in various Sections i.e Sec. 41, 42, and 151 of the code. There are number of the instances, which shown how the police officers are misusing this power? Therefore, the concept of the arrest procedure must be flow from Art. 21 and 22 of the Constitution of India. Hence, it is the duty of the magistrate to satisfy himself all the requirements of the arrest has been fulfilled. A new Section 436-A of the Cr.P.C. which deals with the "Maximum period for which an under trial prisoner can be detained". The purpose of this Section is to ensure the human rights of the arrested person. Now it is up to on judiciary for full realization of this right. Moreover, court should also keep in mind the Section 310 of the Cr.P.C. this runs as follow: "Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed,… Inspection" Therefore, it is clearly evident from the above Section that magistrate has an ample amount of power for proper realization of human rights at any stage of any inquiry.

2. Limitation on the adjournment of the cases Now a day the concept of the granting of the adjournment in cases became the rule instead of the exception. This is also one of the major factors of delay in disposal of the cases. However, there is express prohibition on adjournment more than three times (Order XVII, Rule1 of the Civil procedure code, 1908), but still in practice there is no serious concern about it. Therefore, all the Courts should keep in mind all this provision to ensure the early disposal of the cases.

3. Judge should be sensitize: There is need that Judges should take a more proactive role in the administration of the justice. They can use their discretion in the process where they found necessary in interest of the justice. There are some judges who disqualify themselves from advancing the criminal justice system because they have old fashioned attitude. The old fashioned judge looked to the letter of the statute and their believe is that, justice can only be done according to strict interpretation of the law. That is why judges should look out through the window in order to see the effects of their judgment on the ordinary men and women. Therefore, justice does not reside in the judge's intellect only. It also resides in his heart. It is the blending of the heart and the intellect that result in justice.[47] Therefore now a day's criminal justice reform is a matter of the serious concern, and for effective enforcement of it activeness of judges is very much required.

4. Due care and causation in case of the bail application and remand order At the outset there is no hard and fast rules regarding the grating and refusing the bail. Each case should be decided in the light of their own facts. But it should be decide for judicious exercise of the discretion of the courts. In Cr.P.C Section 436 provides the law relating to bailable offences. Similarly, Sec. 437 dealing with non-bailable offences. Now it is the duty of the courts to take care of due caution and care when granting and denying the bail. 5. Power to grant the Remand Under Section 167 of the Cr.P.C. Magistrate is empower to grant the remand either in police or Judicial custody, for a period not exceeding fifteen days at a time (in case of police custody, only for initial fifteen days). Judicial authorization of detention amounts to curtailment of personal liberty and, therefore, due caution should be exercised while authorizing detention of an accused in police or judicial custody on production of the accused. Therefore, it is duty of the magistrate to examine the case diary as well as all the material fact before granting the order.

III. PRISON

Violation of the right's of the prisoners: The condition of the prisoners remained deplorable in the India. The law enforcement personnel were responsible for widespread violation of the human rights in including the arbitrary deprivation of the life in alleged encounters, deaths in custody and indiscriminate use of the firearms. According to the national crime records Bureau of the Government of the India, eight persons died in the custody and 42 civilian died in police

[47] Hon'ble Justice Enoch dumbutshena (Zimbabwe), Role of the Judge in advancing Human rights, 1300, Heinonline, common wealth law bulletin.

firing during 2005. Besides, at least 87 persons were killed in alleged encounters between January and March 2005 alone, while the figure stood at 238 in 2004 and 214 in 2003.[48] Therefore, it is the duty of all Courts to make regular visit as well as the surprise visit of the prison to ensure the human condition of the prisoners.

1.5 Evaluation of Criminal Justice Administration

The first and foremost objective of the criminal justice administration is to create an atmosphere of security by maintaining law and order. In pursuance of this objective the functionaries of the criminal justice system follow the principle 'protect the good and punish the wicked'. Succinctly, the criminal justice administration attempts to decrease criminal behaviour.

Like in every civilized country, the people of India are entitled to enjoy certain basic rights such as right to life, personal liberty, property and dignity of the individual. The Constitution and many criminal laws aim at securing these rights of the people. Criminal acts put these rights in jeopardy and thereby undermine the authority of the Constitution and other laws. Therefore, to keep crime under control and ensure swift and certain punishment to the criminals are the primary duties of various agencies of the criminal justice administration.

To achieve the final goal of establishing a just society, various components of the criminal justice system, viz. the police, bar, judiciary and correctional services, are expected to work harmoniously and cohesively. Success of one component may not endure unless other components too achieve success of almost similar degree. For example, in a case, the police may succeed in arresting an accused and submitting a charge-sheet with sufficient evidence, however, if the prosecution is not able to present the case efficiently before the court, or if the court fails to assess the evidence in proper perspective, the accused will be set free and the efforts of the police will go in vain. Even if all these three components perform their parts well and the accused is convicted and sentenced to undergo imprisonment, it is not going to have a desired effect unless the sentence is executed properly. The jail authorities, instead of reforming the convict, may, unwittingly, aggravate the criminality in him by harassing him. They may also make the punishment ineffective by providing him such facilities and comforts to which he is not entitled. Thus, like in a relay race, all components of the criminal justice system have

[48] Id. at 184

to play their role by supplementing the efforts of each other. Therefore, the criminal justice administration needs to be evaluated as a whole and not its components separately.

CRIME TRENDS

Any act or omission punishable by any existing law is called offence. Offences with element of force or moral turpitude are generally termed as crimes. Weaknesses such as greed, passion, envy, lust, vengeance, etc. compel the weak lot of the people to cross the moral and legal boundaries and commit crime. Unemployment, income disparities, inequality, poverty, decline in moral values, etc. are also important factors that cause increase in crime.

Crime puts life, liberty, dignity and property of the people in danger and creates law and order problems. The law and order problem may spread its wings to disturb public peace and bring normal civic life to a grinding halt. This may, sometimes, pose a threat even to national security. Thus, crime is not just a concern of the victim or the criminal justice authorities; the hidden potential in it may harm the whole society or even the nation. In other words, crime undermines the 'rule of law' and thus digs out the very root of democracy. This is the reason that in India, as in most of the democratic countries, crimes are considered as injuries to the State.

With the growth in population, increase in the incidence of crime is a natural phenomenon. Population based crime rate—which denotes incidence of offences per lakh population per year—is, therefore, considered as a more realistic indicator of crime situation in a particular area than the other methods. This method of calculating crime rate is universally recognized.[49]

Crimes in India are broadly divided into two categories, namely, cognizable offences and non-cognizable offences. Cognizable offence means an offence for which a police officer may, in accordance with the First Schedule of the Code of Criminal Procedure, 1973 or under any other law for the time being in force, arrest without warrant.[50]

Cognizable offences are further divided into two groups, namely, crimes under the Indian Penal Code and crimes under the Special and Local Laws. Crimes under the I.P.C. affect human body, property, security of the State, etc. and hence, they are considered more serious than the S.L.L. crimes. Offences under most of the Special and Local Laws are of regulatory nature. Therefore, an analysis of crime trends of only I.P.C. crimes, specially the heinous crimes of

[49] UNCJIN, loc.cit
[50] Section 2(c) of the Cr. P.C., 1973.

murder, rape, dacoity, etc. may give a fair idea of the criminal behaviour of the people and effectiveness of the criminal justice administration in controlling the crime.

PENDENCY AND DISPOSAL OF CASES

After crime prevention efforts, the next important function of the criminal justice administration is the criminal justice process, i.e. investigation of crimes, filing charge-sheets in suitable cases, holding trials and executing punishments. Swift arrest, prompt trial, certain penalty and at some point finality of judgement deter the people from committing crime. On the other hand inordinate delay in disposal of the criminal cases and meagre chances of punishment embolden the criminals.

The police register the cognizable offences which either come to their notice or are reported to them by members of the public. After registration, the police investigate the cases to collect evidence. Investigation of a case can be refused under section 157, Cr.P.C. if it appears to the officer-in-charge of the police station that there is no sufficient ground to entering on an investigation. In true and detected cases, the police, after completion of investigation, has two options, namely, (i) submit charge-sheet to the court if evidence is sufficient; and (ii) close the case if the evidence is not sufficient to prove the guilt of the accused.[51] Unsolved cases are either closed or kept pending investigation for a certain period. In the event of any reliable evidence coming forward, a closed case can be opened at any time. In charge-sheeted cases, the court scrutinizes the police charge-sheet and papers annexed to it for framing the charge. At the time of framing charge, if the accused pleads guilty, the court may convict him without holding trial. However, where the accused pleads not-guilty, the court has to follow the procedure of holding a trial or summary proceedings to decide the case. In case the court feels that the charge-sheet does not disclose a cognizable case or the case is otherwise not fit[52] for trial/summary proceedings, it can reject the charge-sheet.

As the saying goes, justice delayed is justice denied, it is necessary that the cases are disposed of by the courts without delay. The right to speedy trial is properly reflected in section 309 of the Cr.P.C., 1973. The Supreme Court, while delivering its constitutional bench judgement in A.R. Antulay v. R.S. Nayak,[53] declared that right to speedy trial is implicit in article 21 of the

[51] Section 169 of the Cr.P.C., 1973. The accused, if in the custody, shall be released on executing a bond, with or without sureties.
[52] For example, a case of time bar under section 468, Cr.P.C., 1973.
[53] A.R.Antulay v. R.S.Nayak, A.I.R. 1988 S.C. 1531.

Constitution and thus constitutes a Fundamental Right of every person accused of a crime. While deciding this case the Supreme Court laid down a number of propositions meant to serve as guidelines. Similarly, in Hussainara Khatoon v. Home Secretary, State of Bihar, the Supreme Court observed:

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial is an integral and essential part of the Fundamental Right to life and liberty enshrined in article 21."[54]

In another important case, Sheela Barse v. Union of India,[55] wherein a petition was filed for the release of all children, below the age of 16 years detained in various jails in different States, the apex Court observed that the problem of children under detention would more easily be solved if the investigation and trial in respect of the charge against them could be expedited. The Court directed the State Government to take steps for completing the investigation within three months in cases lodged against children below the age of 16 years and to establish adequate number of courts to expedite trial of such cases.

As regards delay in disposal of cases by courts, the Law Commission, in its 77th, 124th, 125th and 142nd Reports, showed grave concern and made detailed suggestions to face the challenge. The 124th Report of the Commission reveals that out of 4191 criminal appeals pending in the Supreme Court of India, as on 1st October 1987, more than half were pending for more than three years and over 500 appeals were more than seven years old. In case of the High Courts the situation was still worse as there were numerous cases more than five years old.[56] The Commission in its 142nd Report observed:

"Grievances have been vented in public that disposal of criminal trials in the courts of the Magistrates and District and Sessions Judges takes considerable time. It is said that the criminal trials do not commence for as long a period as three to four years after the accused was remitted to judicial custody. …It is said that in several cases the time spent by the accused in jails before the commencement of trials exceeds the maximum punishment which can be awarded to them if they are found guilty of offences charged against them."

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[54] Hussainara Khatoon v. Home Secretary, State of Bihar, A.I.R. 1979 S.C. 1377.
[55] Sheela Barse v. Union of India, (1986) 3 S.C.C. 632
[56] Law Commission of India, 124th Report, pp. 10-19.

Despite the above observations of the Law Commission and directions of the Supreme Court, it was noticed that in 1994 over two crore cases, both civil and criminal, were pending all over India, tribunal cases excluded. High Courts had over 22 lakh cases on their rolls. Taking a serious view of delay in disposal of criminal cases, the Supreme Court in Rajdeo Sharma v. State of Bihar (1998) directed all High Courts in the country to decide criminal cases within 3 years.[57] Again in November 2000 a three Judge Bench presided over by the Chief Justice of India voiced concern over huge pendency of cases, both on the civil and criminal side, in the subordinate courts of the country.[58] The Rajya Sabha was informed in November 2000 that there were more than two crore cases pending in District/Subordinate Courts including 1,32,59,319 criminal cases. Rajya Sabha was also informed in April 2001 that there were 8,29,345 cases pending over 10 years in District/Subordinate Courts while in High Courts over five lakh cases were more than 10 years old.[59]

CONVICTION RATE

Fear of punishment is an effective deterrent to the people inclined to commit crime. It is only after conviction in a criminal case that the court sentences an accused with punishment in accordance with law. In some cases the court instead of sentencing punishment releases the accused after admonishing him and on executing a bond of good behaviour for a certain period commonly known as 'probation'. However, in such cases also the concerned person stands convicted and the conviction in a criminal case is generally regarded as a blot on one's character. Hence, irrespective of the fact whether the accused is awarded a punishment or not, conviction itself is an effective instrument to deter people from committing crimes. India, in most of the trials, follows the adversarial system which requires the prosecution to prove the charge levelled against the accused beyond reasonable doubt. Conviction rate (number of criminal cases ending in conviction per hundred cases in which trials have been completed and judgements pronounced by the trial courts) indicates the efficiency of the criminal justice administration in general, and the police and the prosecution in particular.

However, the acquittal is also justice to the innocent persons entangled falsely with malafide intentions of the opposite parties. But the police have the powers to close a false case and in suitable cases may also initiate action against those who lodged false F.I.R. The police are also

[57] Rajdeo Sharma v. State of Bihar, A.I.R. 1998 S.C. 3281.
[58] Rajya Sabha Secretariat, reply to Rajya Sabha Starred Question No. 34, dated 21.2.2000 quoting the order dated November 1, 2000 in R.D. Upadhyay v.State of Andhra Pradesh in Writ Petition (C) No. 554/1994.
[59] Rajya Sabhha, op. cit., Reply to Rajya Sabha Unstarred Qestion No. 4042 dated, 23.4.2001.

authorized not to charge-sheet a cases if the evidence is not sufficient to prove the charge against the accused. Therefore, failure of charge-sheeted cases, which are contested by the prosecution for conviction, is a reflection on the ability of investigation as well as prosecution agency. However, it is a common experience that despite sufficient supporting evidence and all possible efforts of the police and prosecution to rove the charges the cases fail because the key witnesses turn hostile. Hence, the police and prosecution may not be responsible for failure of the cases. But, acquittals in true cases certainly indicate that the criminals have gone scot free. This causes frustration in the minds of the victims and erodes people's faith in the whole criminal justice administration. Therefore, declining trend of conviction of I.P.C. cases reflects inability of the criminal justice administration in punishing the crime.

OBSERVATIONS OF LAW COMMISSIONS

The genesis leading to the appointment of the First Law Commission after India became independent lies in a non-official Resolution moved in the Lok Sabha on 19th November 1954.[60] Pursuant to this Resolution the First Law Commission was appointed in 1955 under the chairmanship of Mr. M.C. Setalwad, retired Attorney General of India. The Commission not being a permanent body is reconstituted every three years and so far 15 Law Commissions have been constituted. The 15th Law Commission under the chairmanship of Justice B.P. Jeevan Reddy came into existence with effect from 1st September 1997.[61]

The Commission undertakes studies of the existing laws and justice delivery system, and submits its report to the Government of India. Since 1955 the Law Commissions have submitted 174 reports to the Government of India. Out of these, 71 reports have direct or indirect bearing on the criminal justice system.[62] The reports of the Commission are recommendatory in nature and the Government of India is not bound to accept them and effect the recommended changes. However, the reports of the Commission are kept in view while formulating policies and enactment of new laws. The terms of references of many Law Commissions entailed review of various criminal laws and criminal justice system. The Commissions have evaluated the working of various components of the criminal justice administration and recorded the findings in their reports. Some of the reports are examined here to know how various Commissions have viewed the functioning of the criminal justice

[60] Law Commission of India, 124th Report, p. 8
[61] India 2001, Publications Division, Government of India, pp. 627-28
[62] Law Commission of India, List of Reports Forwarded (1955 – 2000).

administration. The First Law Commission found flaws in the existing judicial system and recommended, in its 14th Report, large scale reforms in the judicial administration. The Fifth Law Commission, mainly concentrated on the matters relating to criminal justice system. The Commission noticed lacunae in substantive as well as procedural law of India and accordingly submitted its reports to the Government. In its 41st Report, the Commission recommended large scale changes in the Code of Criminal Procedure, 1898 pointing out various flaws in it. These two reports on "Reforms in Judicial Administration" and the "Code of Criminal procedure, 1898", submitted to the Government in 1958 and 1968 respectively, led to the enactment of new Code of Criminal Procedure, 1973.[63]

The Eighth Law Commission, under the chairmanship of Justice H.R. Khanna, in its 77th Report observed:

(i) The problem of delay in law courts has of late assumed gigantic proportions. It has shaken the confidence of the public in the capacity of the courts to redress their grievances and to grant adequate and timely relief.498

(ii) The police quite often deliberately refrain from producing all material witnesses on one date, the object being to clear up the lacunae in the prosecution evidence after the defence case becomes manifest by cross-examination. This practice is unfair and not warranted by the Criminal Procedure Code, and results in prolongation of the trial.

The Law Commission, in its 124th Report, observed: "In an adversarial system, the legal profession has a vital role to play in the administration of justice. There is recurrent phenomenon of strike by the legal profession paralyzing the court work, heaping insufferable hardship on the litigating public. It appears as if the two limbs concerned with the administration of justice in an adversarial system have not only ceased to be partners sharing any joint responsibility or a common concern but they have almost developed a confrontation."[64]

1.6 Need of Reform in Criminal Justice System

In today's era, Change is constant but even in that changing phase of the society "criminal justice system" of India is yet to improve. These all are the reason of the lack of

[63] Sharma, D.P., "Speedy Justice and Indian Criminal Justice System", I.J.P.A., July-Sep.1999, pp. 356-57.
[64] Ibid., 124th Report, p. 20

accountability, ineffective enforcement of the law, and delay in disposal of the cases, lack of trained police, an overburdened court system and Poor prison conditions. These all are the significant problems in the criminal justice system.

The main criminal laws—the Indian Penal Code, 1860; the Indian Evidence Act, 1872 were enacted in the later half of the 19th Century and continue almost entirely in their original form, barring some peripheral changes. Even the Code of Criminal Procedure, 1973 is almost a replica of the earlier Code of 1898. In addition to these major criminal laws there are thousands of other Central and State criminal laws, mostly more than hundred years old. Since enactment of these laws, a sea change in socio-economic and political situation has taken place, many of them cry for changes. In the case of the I.P.C., there is a need to incorporate in it a number of newly emerged offences and elimination of some, which have lost their relevance. The punishment for many offences also deserves revision. Similarly the Cr.P.C., the Indian Evidence Act and many other laws need to be revised. The criminal procedures prescribed by the Cr.P.C. are found to be cumbersome and time consuming. The Evidence Act still continues the British legacy of distrusting the police treating most of the statements recorded before them inadmissible in evidence. The Law Commission also, in its 154th and 156th Reports, has recommended revision of the Cr.P.C. and the I.P.C. substantially. Therefore, a review of the existing criminal laws be taken to repeal those which have become obsolete, make amendments in those which need changes to cope with the present situation and enact new laws to cover newly emerged areas of criminal activity. The criminal laws and procedures need to be made simple so that a common man can easily understand and make effective use of them to protect his rights and liberties.

Adopt Inquisitorial System for Trial of Heinous Offences

India mostly follows the accusatorial or the Anglo-Saxon system of trial under which the burden of proof lies entirely on the prosecution, and an accused, even if he may have committed the most serious crime, is deemed innocent till proved guilty. Justice Bhagavati Commission observed: “It is not unusual to find the Anglo-Saxon obsession with technical rules of evidence defeating the cause of truth and justice”.525 The National Police Commission has also observed that, in the Indian System, the Judge is merely a neutral “umpire between two contesting parties”.526 On the other hand in many European countries, inquisitorial system is followed under which the judge literally searches for the truth, grilling the accused and even the witnesses.527 Since, in India, the existing

accusatorial system of criminal justice has not been found effective enough and people's faith in the whole criminal justice administration is eroding, it will be appropriate to consider the inquisitorial system. To begin with, this system may be introduced, by changing the procedural laws, for trial of heinous offences such as murder, rape, dacoity, robbery, etc., and gradually other offences may be brought under it.

Punish Perjury

Perjury is one of the main reasons of failures of prosecution cases in courts. Police during investigation examines witnesses and record their statements. All or some of such witnesses are called for deposing before the court during the trial. At the time of trial, in many cases, witnesses do not reveal the truth or turn hostile denying having ever made the statement to the police as recorded by them. This, instead of supporting the prosecution case, helps the accused. In some cases, even the complainants who lodged F.I.R. change their stand refusing to support the case.

Introduce Plea Bargaining

One of the reasons for pendency of criminal cases in courts is the lengthy procedure of trial. There are provisions under section 260, Cr.P.C. to try certain offences, in the discretion of trial Magistrate, in a summary way. There is also a provision under section 252, Cr.P.C. of conviction on plea of guilty in petty cases. Despite such clear provisions of law, trials are held in such cases, which consume a lot of time of the courts, and others concerned.

Amend the Police Act

The Police Act of 1861 was enacted in the wake of the Revolt of 1857 to reorganize the police and to make it a more efficient instrument for the prevention and detection of crime.533 But the Indian Police Commission of 1902 found the police force far from efficient; defective in training and organization; inadequately supervised; and that it utterly failed to secure the confidence and cordial co-operation of the people.534 Despite these observations, the Police Act of 1861, which prescribes structures, functioning and powers of the police, was continued to be in force without any significant change. It still continues in India without any significant changes. After India became republic, enormous changes have occurred in socioeconomic and political spheres which cast a paramount obligation and duty on the police to function in accordance with the objectives of the Constitution. The police being an agency to help people in distress, it is a must that the people have faith

in its working and judgements. Therefore, it is necessary that the role and functions of the police are re-defined and suitable mechanism devised to ensure that it functions independently and objectively in the best interest of the people as well as the nation.

Organize Training for Prosecutors and Legal Advisors

In view of the instrumental role of prosecutors in achieving success in criminal cases, it is of paramount importance that they are expert and efficient in their work. Increasing rate of failure of prosecution cases inter alia reflect inefficiency of the prosecutors. Therefore, it is necessary to organize specialized training for prosecutors to sharpen their legal knowledge and teaching them how to present the cases effectively and efficiently and face trained and experienced defence advocates during the trials.

Enforce Professional Conduct of Advocates

Legal profession is supposed to shoulder serious responsibilities of helping the judiciary in reaching to the truth. This calls for not merely a high level of learning but also good conduct. The profession of a lawyer should be considered more as an act of public service than as a business to make profits. It imposes a stringent code of ethics and a moral obligation on the members of the profession to behave in a decent and honest manner. However, with the growth of complexity of laws, opportunities and temptations—where a lawyer can depart from the path of right conduct—also increase. Therefore, there must be an ethical code which draws the attention of the members of the profession and prevent them from being distracted.

Deterioration in the efficiency and effectiveness of the criminal justice administration not only endangers the life, liberty and property of the people but also poses a serious threat to the very survival of the Constitution, nay, the whole civilized society. Unpunished crime and prevalence of injustice are the root causes of all evils in the society. It would be befitting to remember Aristotle who said:

"Man, when perfected, is the best of animals, but if he is isolated from law and justice, he is the worst of all"

It is, therefore, hoped that the State, the criminal justice functionaries and the people will take the above suggestions in right spirit and resolve to improve the efficacy of the criminal justice administration. A sound criminal justice machinery is not only necessary for preventing and punishing crime but also to pave the way for achieving the aims and objectives of the Constitution as enshrined in the Preamble.

CHAPTER-2

VICTIMOLOGY

Chapter-2

VICTIMOLOGY

2.1 INTRODUCTION:

During ancient times, victims had many rights and they used to play a crucial role in the criminal justice system. This was true during the reign of Hindu kings as well as the Muslim Period. Even though their system of criminal trial and punishment was harsh and in many cases barbaric (for instance, trial by ordeals), the main aim was to impart justice to the victims.

However, with the emergence of the 'adversarial system of justice', the plight of the victims became worse and they became forgotten people except for their minor role in the criminal justice system as a prosecution witness. It was believed that the claim of the victim was sufficiently satisfied by the conviction and sentencing of the offender. This assumption is neither fair nor just. Justice demands that when society and the State are resorting to every possible measure of correction and rehabilitation of offenders, equal concern must be shown for the victims by at least providing compensation to them for their loss, agony, physical and mental torture.[65]

It thus became important to gain knowledge about victims of crime, the struggles faced by such people in coping with the adverse effects of a criminal act, and how could the Justice System compensate and rehabilitate such victims.

The study of victims or victimology is a relatively new field of academic research. Until few decades ago it would have been difficult to have found any criminological agency (official, professional, voluntary or other) or research group working in the field of victims of crime, or which considered crime victims as having any central relevance to the subject apart from being a sad product of the activity under study, i.e., criminality.[66]

Victimology has from its inception adopted an interdisciplinary approach to its subject matter. The purpose of the study of victimology is:

- To enhance our understanding regarding victims and impact of crime on them.

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[65] Randhawa, Gurpreet Singh, Victimology and Compensatory Jurisprudence, 1stEd., Central Law Publications, Allahabad, 2011, p. 123

[66] Williams, Katherine, S., *Textbook on Criminology*, 3rd Ed., Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2001 (Indian Reprint), p. 98

- To analyse the magnitude of the victim's problem
- To explain causes of victimization, and
- To develop a system of measures to reduce victimization.[67]

At present, a crime victim or a complainant is only a witness for the prosecution. Whereas the accused has several rights, the victim has no right to protect his or her interest during criminal proceedings. Sometimes, even the registering of a criminal case in the police station depends upon the mercy of the police officer: victims suffer injustice silently and in extreme cases, take the law into their own hands and seek revenge on the offender.

Though no separate law for victims of crime has yet been enacted in India, the silver lining is that victim justice has been rendered through affirmative action and orders of the apex court. Besides, many national level Commissions and Committees have strongly advocated victims' rights and reiterated the need for a victims' law. Studies on crime victims by researchers started in India only during the late 1970s. Early studies were on victims of dacoit gangs (i.e. gangs of armed robbers) in the Chambal valley (Singh, 1978); victims of homicide (Rajan & Krishna, 1981); and victims of motor vehicles accidents (Khan & Krishna, 1981). Singh and Jatar (1980) studied whether compensation paid to victims of dacoits in Chambal Valley was satisfactory or not. Since the 1980s, many scholars have conducted studies in Victimology, which have been published.

2.2 Meaning, Nature and Scope of Victimology

Meaning:

Victimology may be defined as the **scientific study** of victimization, including the relationships between victims and offenders, the interactions between the victims and the criminal justice system; that is, the police and courts, and correctional officials. It also includes connections between victims and other social groups and institutions, such as the media, businesses and social movements.[68]

[67] Randhawa, *supra* note 1, p. 32
[68] Paranjape, Dr. N.V., ***Criminology and Penology with Victimology***, 15th Ed., Central Law Publications Ltd., Allahabad, 2011, p. 663

In a narrow sense, victimology is **empirical**, factual study of victims of crime and as such is closely related to criminology and thus maybe regarded as a part of the general problem of crime.

In broader sense, victimology is the entire body of knowledge regarding victims, victimization and the efforts of society to perverse the rights of the victim. Hence, it is composed of knowledge drawn from such fields as criminology, law, medicine, psychology, social work, politics, education and public administration.

The term 'victim' in general parlance refers to all those who experience injury, loss or hardship due to any cause and one of such causes maybe crime. Therefore, victimology may be defined as a study of people who experience injury or hardship due to any cause. It involves study of victim characteristics and maybe called '**victim profiling**'.

Some Definitions:

Schultz (1970)-

"Victimology is the study of degree of and type of participation of the victim in the genesis or development of the offences and an evaluation of what is just and proper for the victim's welfare."

Drapkin and Viano (1974)-

"Victimology is the branch of criminology which primarily studies the victims of crime and everything that is connected with such a victim."

Victimology has thus emerged as a branch of criminology dealing exclusively dealing exclusively with the victims of crime who need to be treated with compassion and rendered compensation and assistance under the criminal justice system.

Nature:

- **Whether victimology is part of criminology?**

There is a constant strife on this topic. According to Kirchhoff, "there is a criminology that calls itself victimology when analyzing problems from a victim's perspective." But victimology is not criminological victimology. Historically, however, victimology bloomed in

criminology but victimologists started asking different questions and they developed different strata of interests and explanations. Though victimology has close connection to the concept of crime, the focus of victimology is the victim and not the whole social structure and role of crime and criminal law in it. Hence, victimology is now evolved into an independent subject matter of study.

- **The Science of victimology**

In the first symposium of Victimology held in Jerusalem it was stated that,

"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 the correctional officials, and the connection between victims and other societal groups and institutions, such as the media, businesses and social movements.[69] Victimology as a science cannot be isolated from reality, even difficult realities. Science needs to go beyond the purely observable 'fact' of victimization. Therefore, victimology as a science requires an analysis and interpretation of victimization.

- **Whether victimology is science or service?**

The Vienna Declaration on Crime and Justice in 2000 declared that "We establish 2000 as a target date for states to review their relevant practices, to develop further victim support services and awareness campaigns on the rights of victims and to consider establishment of funds for the victims, in addition to developing and implementing witness protection policies."[70] Thus, victimology is also a service.

- **Whether victimology is blaming the victim?**

One aspect of victimology is blaming the victim for his own plight. However, most victimologists reject theories of "victim blaming". They simply explore the process of victimization with the goal of understanding it and preventing it.

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[69] Ibid., p. 38

70 Vienna Declaration on Crime and Justice: Meeting the challenges of the Twenty-First Century, General Assembly Resolution A/55/593, 17.01.2001, Para 21

Scope of Victimology

The victim is the forgotten party in the criminal justice system. It would be factually wrong if this type of criticism would still be maintained today.[71] Victimology has come of age. Victims, their needs and their rights, are being consistently acknowledged in words, if not in deeds.

1. Victimology is study of crime from victim's point of view:

Victimology is study of crime from victim's point of view. After the Second World War the plight of victims was seriously considered by many criminologists in Europe. B. Mendelsohn developed this branch of criminology as there was growing concern for the plight of victims of all crime. The First International Conference on Victimology under the auspices United Nations was held in Jerusalem in the year 1973 followed by another conference in Boston in 1976. There are many seminars and studies on victimology at the regional, national and international level highlighting the problems of victims, legal position of victims in criminal proceedings, compensation for victims.[72]

2. Victimology analysis the victim-offender relations and the interactions between victims and the criminal justice system:

The process of being a victim involves two dimensions, individual and societal. It is therefore incumbent upon victimology to develop theoretical models that cut across levels of analysis and which incorporate the dynamics of normal social intercourse as a basis of understanding how victims cope and in addressing victim needs. There are three interfacing roles:

- Victim
- Persecutor
- Rescuer

The victim requires a 'persecutor' the one who victimizes and the process is complete when there is a 'rescuer', one who saves the persecutor.

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71 Lehner-Zimmerer, Michaela, Future Challenges of International Victimology,African Journal of Criminology and Justice Studies, Volume 4, No. 2, April 2011, p. 14

72 Randhawa, supra note 1, pp. 44-45

3. Victim of abuse of power:

Term 'victim of abuse of power' is such a broad and ambiguous concept that sometimes it is argued that this concept includes, for example, abuse of power between States or between races, and even economic exploitation of employees and consumers by large enterprises. An important object of the criminal justice system is to ensure justice to the victims, yet he/she is not given any substantial right, not even to participate in the criminal proceedings. To achieve this goal, training and education in victimology by trained professionals of criminal justice will help.[73]

'**Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' (UN, 1985)** also defines the victims of abuse of power like the victims of crime. The suffering through impairment of fundamental rights is included. The Declaration makes it clear that far more victimization occurs as a result of the actions of governments and business institutions than ever arises from what are defined as crimes under national laws.[74]

4. Victimology is study of restitution and compensation of the damages caused to the victim by the perpetrator of crime:

Modern state is a welfare state in which the welfare of its citizens is of paramount importance. With new developments in the field of victimology, the victims of crime have assumed a significant role. Now, efforts are made to provide restitution to the victims. Compensation is given with the object of making good the loss sustained by the victims or the legal representatives of the deceased.

5. Victimology is the study of Victimological clinic:

If we look at clinical victimological work, the treatment of victims, we have not only to look at hospitals; we have to look at whole array of victim assistance organizations who are actively working to alleviate the burden of victimization.

Thus, it is important to understand:

- Victim's crime-related mental health problems
- What aspects of the criminal justice system process are stressful to victims?

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[73] Randhawa, supra note 1, p. 45

[74] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN, 1985)

- What can be done to help victims with their crime-related health problems and stress regarding the criminal justice system?[75]

2.3 Concept and Classification of Victim

Concept of Victim

The scientific study of crime victims is called 'victimology', after Benjamin Mendelsohn who coined the term in 1947. Comparable to criminology, where the offender plays a central role, the focus of victimologists lies with the victim and the different aspects of victimization. Victimology is:

> *"The scientific study of the extent, nature, and causes of criminal victimization, its consequences for the persons involved and the reactions hereto by society, in particular the police and the criminal justice system as well as voluntary workers and professional helpers."*[76]

Frederick Wertham, an American psychiatrist coined the term "Victimology" in 1949.[77] The initial ideas which gave the impetus to the development of victimology arose in the late 1940s. Benjamin Mendelsohn coined the term 'victimology' in 1940 and Hans Von Hentig's "The Criminal and his Victim" was published in 1948. It was while preparing for the trial of Stephen Codreanu occurred in 1945 for a crime passionnel that Meldelsohn began to elaborate the discipline of victimology. The accused had with premeditation killed his wife and her lover. He had for several years lived with his wife after divorce. He was always invited by her to stay on the first and the fifteenth day of the month, under the pretext of preparing lessons with their daughter, whom he adored. He would eat with the family and she poured out all her sweetness to keep him for the night, but the next day she would turn him out of the house, having first of all taken all his money. The lover a young soldier would ridicule him. He was sentenced to twelve years but the sentence was mitigated and he was released after 5 or 6 years. There can be no doubt that, had it not been for the perversity of his former wife, he would never have

[75] Randhawa, supra note 1, pp. 47-48

[76] H.J. Schneider, 'Victimological developments in the world during the past few decades I: A study of comparative victimology', International Journal of Offender Therapy and Comparative Criminology 45(4) 2001, 449-468. Another definition, proposed by Daigle, defines victimology as: the study of the etiology (or causes) of victimization, its consequences, how the criminal justice system accommodates and assists victims, and how other elements of society, such as the media, deal with victims (L.E. Daigle, Victimology: A Text/Reader, Los Angeles: SAGE 2012, p. 1).

[77] Ezzat.A.Fattah, " Victimology: Past, Present and Future" 33:1 Criminologie 8 (2000)

been guilty of two crimes.[78] Mendelsohn was intrigued due to the relationship that existed between victims and offenders. Mendelsohn would ask a detailed and probing questionnaire to be completed by the victims, witnesses, bystanders in the situation before preparing the case. Based on the responses he received, he found that there existed 'a strong interpersonal relationship between victim and offenders'. Based on the information and data received, Mendelsohn made a six step classification of victims. This classification was based on the degree of the victim's blame.[79]

Victimology is the scientific study of victims of crime, a sub discipline of criminology. It seeks to study the relationship between victim and offenders, the persons especially vulnerable to crimes and the victims. Placement in the criminal justice system. (CJS). Benjamin Mendelsohn has done pioneering work in this field. Mendelsohn is credited with being the first study to the relationship between victim and doer (offender) and taken together, he termed to else PENAL COUPLE.

Mendelsohn studied victims on the basis of their contributions to crimes and classified them into the following categories.

Completely innocent victims, e.g. Child, Persons in sleep.

- Victims with minor guilt and victims of ignorance such as pregnant womenwho go to quacks for procuring abortions
- Voluntary victims, such as the ones who commit suicide or are killed byeuthanasia.
- Victims who are guiltier then offenders such as persons who provoke others to commit crimes. The criminal type of victims who commits offences against others and get killed or hurt by others in self-defence.

The **UN Convention on Justice and Support for Victims of Crime and Abuse of Power** defines the victims in **Article 1** as

(1) 'Victims' means natural persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering or economic loss or violations of fundamental rights in relation to victimizations identified under 'scope'.

[78] Paul Rock (ed.), Victimology 239 (Dartmouth Pub, England, 19974)
[79] William G. Doerner and Steven P.Lab, Victimology 6 (Lexis Nexis, Newark, 2008)

(2) A person is a victim regardless of whether the crime is reported to the police, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and victim. The term 'victim' also includes, where appropriate, the immediate family or dependents of the direct victims and persons who have suffered in intervening to assist victims in distress or to prevent victimization."[17]

In **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."[80]

Classification of Victim:

(i) Primary Victim: Any person, group or entity who has suffered injury, harm or loss due to illegal activity of someone is called a primary victim. The harm may be physical, psychological or financial. Primary victimisation comes from being a victim of crime itself. For example physical, psychological and financial damage caused through victimisation.

Primary Victimization is an element which comprises of the effects and consequences of the crime along with the impact which it has on the victim which might include physical, financial, emotional and psychological effects.

(ii) Secondary Victim: There may also be secondary victim who suffer injury or harm as a result of injury or harm to the primary victim. It stems from the reaction of the victims from social milieu. This includes suffering from stigmatisation, social isolation, ostracisation and degrading questioning etc.

Secondary Victimization entails the response of individuals and institutions to the victims, the way he/she is treated in the society, workplace, and other realms of life. It may result in the complete denial of the human rights to victims, their dignity and reputation, which they earlier had.

(iii) Tertiary Victim: Tertiary victim are those who experience harm or injury due to the criminal act of the offender. He is another person besides the immediate victim, who is victimized as a result of the perpetrator's action. It means the assumption and internalisation of the role of victim through repeated primary and secondary victimisation. The repeated

[80] Section 2(wa) of the Code of Criminal Procedure, 1973 [Inserted by Amendment Act of 2009 Act 5 of 2009)]

confrontation of the victims with the offence and the offenders in the context of police, prosecution and court examination as well as questioning in the context of in the main proceeding in some cases through numerous court instances can further secondary and tertiary victimisation

Re-victimization or Repeat Victimization may result either by staying in association with the offender for a continuous period of time or by staying close to the concentration of the potential offender.

Self-Victimization as the name suggests is a category where the victim gets victimized by committing an act himself by adopting bad habits or by being in a wrong company etc. which might result into his victimization.

Example, in case of rape, the woman raped is the primary victim, while a child, if born out of such rape, is the secondary victim because he/she suffers from lack of paternity. But the general shame and disgrace which the entire family of the raped victim has to suffer at the hands of the society and the system makes them tertiary victims. However, it cannot be assumed that secondary and tertiary victims are less traumatized than the primary victims.[81]

Abdel Fattah's mode of classification of victims:

The noted Canadian Criminologist, Abdel Fattah has classified victims of crime into five categories as follows:

Non-participating victims are those who are completely innocent. For example, foeticide, a crime against being born, which is punishable under Sections 315/ 316 of the Indian Penal Code, 1860.

Latent victims are those who have fallen prey to a crime but do not know that they are in any way affected by it, example, blackmailing

Provocative victims example, victims of dowry death who are provoked by the offender to commit suicide

Participating victims example, prostitution, cyber crimes on internet

[81] Paranjape, supra note 4, p. 666

Retaliating victims. Certain crimes by their very nature are such that the victim does not readily yield to the offence and retaliates to the extent possible to see that the offence is not committed by the perpetrator, but eventually fails in his effort to avoid the occurrence of crime. Example, victims of robbery, etc.[82]

2.4 Theories of Victimology

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

In other words, as people move about, there must be opportunities (suitable targets), and it must appear that no one will be present, or that no one will intervene if they do observe the crime. “Capable guardians" refers to citizens who are watchful and who would take effective action if the saw criminal activity. Of course, even if there were opportunities and no one to observe activity, crime would not occur if they were not motivated to commit a crime.

Routine activities theory accounts for the increase in crime since the 1960s as a function of changes in activities. For example, the traditional neighbourhood in the city has declined as many people have left for the suburbs, leaving fewer capable guardians. There are less people at home. Partly this is because more women have entered the workforce rather than staying home, but perhaps more importantly more people have automobiles and more places available for them to go, and simply stay home less. The volume of wealth that can be easily transported has increased. Such changes have meant that there are more opportunities for crime as a function of people's daily routines. Most of Western Europe, Australia, Canada, and the United States have all experienced increases in crime in the latter part of the 20thcentury, and many of these changes have occurred in these countries.

[82] Ibid., p. 668-69

- ## 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:

• Prevention
• Preparation
• Action, and
• Reappraisal

The result component of the coping model is concerned with: (i) either the elimination, (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.

- ## Victim Services

The development of new programs and legislation has resulted from the study of victims. Such programs have included:

• Victim compensation programs, in which the state pays some of the financial costs of the victim, particularly with respect to violent crime

• Court services, which provide information and assistance to victims

• Crisis intervention and counselling programs for victims, particularly in the case of rape

• Self-protection programs that teach people how to avoid victimization (target hardening) and how to mobilize as a community to prevent victimization (such as neighbourhood watch).

There has also been an ongoing debate about victim's rights, and what those rights ought to be. Should relatives of victims be allowed to speak and discuss the impact of the crime at parole hearings or at death penalty hearings? (many states now provide for this measure). Should citizens be warned when an ex-felon moves into their neighbourhood? Some people believe that they should have the right to know and protect themselves. Others believe that the felon has completed his punishment and should be allowed the opportunity to rehabilitate himself without potential harassment from others. This issue has been particularly debated with respect to "Meghan's Law," a law proposed by the parents of a child murdered by a child molester. The perpetrator had a prior history of molestation, and lived in Meghan's neighbourhood. The parents maintained that had they known of his past, they would have taken more precautions. The proposed law, which has been passed in some states, allows neighbourhood residents to be informed when a sex offender moves into their neighbourhood. There has been controversy because some former offenders have been driven from neighbourhoods, and have difficulty finding a place to live and who have served their sentences. These issues are far from resolution.

2.5 Impact of Victimization

During last two decades researchers in social sciences have focused on issues such as social exclusion, impact of globalisation and liberalisation on crime, caste and ethnic conflict and development induced crime which has highlighted new patterns of victimisation. We are witness to growth of crimes not merely in quantity but more so in quality. The threats posed by present –day dimensions of crimes and particularly their sophistication, to personal and public security are matters of serious concern. Crimes are presently taken as business ventures, operated in syndicate styles and with' profit' as the motive, practically emulating the current economic development in this one respect Organised Crimes as they are called have been

transcended borders to constitute Organised Transnational Crimes. Victimisation Surveys undertaking by UN indicate that the growth of crime and the indirect costs as a result of these largely in terms of the level of general insecurity of the citizen, constituting the indirect kind. Based on empirical and interview –based approach, a cross-section of urban population of 50 countries principally, the first round of study showed that more than half the urban populations world-wise have been victimized by a crime at least once during the period 1990-94. If development is the process of building societies that work, crime acts as a kind of 'anti-development' destroying the trust relations on which society is based. Crime destroys social capital and devises precious human resources overseas. Fear of crime restricts mobility, which interferes with social and economic interactions, as well as education, access to health care, and other development services.

While the direct impact of crime on poor victims is great, the indirect effects of crime have a far wider reach. Victimisation or fear of victimisation can cause people to withdraw from social interaction in order to limit their exposure. This can interfere with commercial, recreational, and educational activities. Crime negatively affects quality of life, and can drive skilled labour overseas. Development experts agree that one of the key elements needed for economic development is a skilled workforce, and thus have encouraged developing countries to invest in education. This investment is largely lost, however, when the best and the brightest chose to emigrate. Several countries in this region are among those listed by the World Bank as suffering from some of the highest rates of skilled emigration in the world.

The impact of crime on victim may be physical, financial or psychological.

Physical Impact:

The victim is likely to experience a number of physical reactions to crime to which he has fallen a victim. The victim may also suffer from mental trauma. Another significant impact on the victim is physical injury which may be apparent and immediate or may be realized by the victim at a later stage.

Financial Impact:

The financial impact of crime on the victim may be in any one or more of the following forms:

- Costs and expenses incurred in medical treatment for physical injuries

- Damages to property or articles in possession
- Litigation cost incurred in fighting against the crime and criminal, i.e. the perpetrator
- Financial suffering due to loss of earnings
- Funeral or burial expenses, if any.

Psychological Impact:

Where the victim is confronted with the crime perpetrator immediate reaction will be anger or fear depending on his strength and capacity to face the misfortune. Shock and mental trauma follow immediately after the crime has been committed, for example, the Post-traumatic stress disorder (PTSD).

The psychological impact of victimization is clearly reflected in the behavioural responses of the crime victim, which may include increased alcoholism, excessive use of drugs, avoidance of social relationships and social withdrawal, etc. This is very much true in case of rape victims when people blame her for having walked alone or dressed provocatively.

There may, however, be some victims who are able to shed aside their distress and shock and return to normal life.[83]

At the International arena, the adoption by the General Assembly of the United Nations at its 96th Plenary on November 29, 1985, of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, hereafter UN Declaration) constituted an important recognition of the need to set norms and minimum standards in international and national legal framework for the rights of victims of crime. The UN Declaration recognised four major components of the rights of victims of crime: (i) access to justice and fair treatment; (ii) restitution (iii) compensation (iv) rehabilitation.

i) Access to justice and fair treatment This right includes access to the mechanisms of justice and to prompt redress, right to be informed of victim's rights, right to proper assistance throughout the legal process and right to protection of privacy and safety.

ii) Restitution: including return of property or payment for the harm or loss suffered; where public officials or other agents have violated criminal laws, the victims should receive restitution from the State.

[83] Paranjape, supra note 4, pp. 671-72

iii) Compensation: when compensation is not fully available from the offender or other sources, State should provide financial compensation at least in violent crimes, resulting in bodily injury for which national funds should be established.

iv) Assistance: victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary and community based means. Police, justice, health and social service personnel should receive training in this regard.

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 Canadian Centre of Justice Statistics states that about one third of violent crimes resulted in victims having their day-to-day activities disrupted for a period of one day (31%), while in 27% of incidents, the disruption lasted for two to three days (Aucoin & Beauchamp, 2007). In 18% of cases, victims could not attend to their routine for more than two weeks. A majority of incidents caused emotional impact (78%). Irrespective of the type of victimization, one-fifth of the victims felt upset and expressed confusion and or frustration due to their victimization. Overall, victims felt less safe than non-victims. For example, only a smaller proportion of violent crime victims (37%) reported feeling very safe walking alone after dark than non-victims (46%). Just less than one-fifth (18%) of women who had been victims of violence reported feeling very safe walking alone after dark when compared to their male counterparts.

2.6 Emerging Trends in Victimology

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 have been elaborately detailed in the UN Handbook on Justice for Victims.[84]

The newly generated interest in crime victims has led to certain trends and policies, some of them are as follows:

[84] Chockalingam, Kumaravelu, Measures for Crime Victims in the Indian Criminal Justice System, Resource Material Series No. 81 , p. 101

- It is being increasing realized that the victim must be treated with dignity and respect by the criminal law agencies, viz. The police and the courts. Often **secondary victimization** results because of the indifferent and callous attitude not only of the criminal law agencies but also of the people in vicinity, hospitals and mass media as well. In the USA and some European countries, statutory guidelines in the form of "Victims Bill of Rights" are being provided.
- A victim has hardly any role in the criminal justice system though there is an increasing awareness now that the victim must be given rightful participation in the trial. For instance, in USA under the Witness Protection Act, 1982, victims are to be consulted in the plea bargaining process. In Germany, compensation is now payable to a victim if the charges are dropped against an offender.
- Innovative use is being made of certain sentencing techniques like probation to provide relief to the victims. An offender, in appropriate circumstances, may be released on probation, if willing to compensate the victim. For instance, in England, under the Criminal Justice Act, 1982, as amended in 1988, the court must specify the reasons for not making an order for compensation.
- In certain kinds of situations where the guilt of the offender is clear, efforts are made to bring the victim and wrong-doer together in order to lead them to agreement or adjustment for the restoration of losses to the victim, there being a greater potential in this kind of approach rather than the mere punishment of the offender.[85]

Position in India:

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 criminal justice system 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.

[85] Siddique, Ahmad, Criminology, 5th Ed., Eastern Book Company, Lucknow, 2005, p. 556

The UN 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 are not practiced in the criminal courts in India. With regard to the role of the judiciary in justice for victims, though judges are by and large sympathetic towards victims, on many of the requirements, such as separate waiting halls, information about the criminal proceedings, special services and support, ordering of restitution to victims, victim participation, victim protection etc. we have a long way to go to realize victim justice in India.

However, in the last decade, there is greater awareness on the part of the higher judiciary of the need for a better treatment of crime victims by the criminal justice agencies at different stages in India and this is reflected in the recommendations of the different committees and commissions calling for reforms in the criminal justice system.[86]

Recommendations of Commissions and Committees on Justice to Victims in India

During the last decade, there has been significant change in the thinking of the judiciary about the human rights of victims. The concern of the courts and the judicial commissions and committees about the need to have a law on victim compensation or a comprehensive law on victim justice has been reflected in their judgments and reports.

- **The Law Commission of India, 1996**

The Law Commission, in its report in 1996, stated that, the State should accept the principle of providing assistance to victims out of its own funds,

- in cases of acquittals; or
- where the offender is not traceable, but the victim is identified; and
- also in cases when the offence is proved

The Justice Malimath Committee on Reforms of Criminal Justice System

[86] Chockalingam, supra note 22, p. 102

The Justice V. S. Malimath Committee has made many recommendations of far-reaching significance to improve the position of victims of crime, 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 legal representatives shall have the right to be impleaded as a party in every criminal proceeding where the charge is punishable with 7 years imprisonment or more.
- The victim has a right to be represented by an advocate of his choice, provided that if the victim is not in a position to afford a lawyer, the State would provide him with so.
- The victim's **right to participation** in a criminal trial shall, inter alia, include:
- To produce evidence, oral or documentary, with leave of the court and/or to seek directions for production of such evidence
- To ask questions to the witnesses or to suggest to the court questions which may be put to the witnesses
- To know the status of investigation and to move the court to issue directions for further investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in search of truth
- To be heard in respect of the grant or cancellation of bail
- To be heard whenever prosecution seeks to withdraw
- To advance arguments after the prosecutor has submitted arguments
- To participate in negotiations leading to settlement of compoundable offences
- The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting him for a lesser offence, imposing inadequate sentence or granting inadequate compensation
- Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This should be organized in a separate legislation by the Parliament.
- The victim compensation law will provide for the creation of a **Victim Compensation Fund** to be administered possibly by the Legal Services Authority.[87]

[87] Randhawa, supra note 1, pp. 153-54

Recommendations of 154th Law Commission of India

The 154th Law Commission Report on the Cr.PC. devoted an entire chapter to 'Victimology' in which the growing emphasis on victim's rights in criminal trials was discussed extensively as under:

"1. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.

9.1 The principles of victimology has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for "securing the right to public assistance in cases of disablement and in other cases of undeserved want." So also Article 51- A makes it a fundamental duty of every Indian citizen, inter alia 'to have compassion for living creatures' and to 'develop humanism'. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology.

9.2 However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section 357 of the Code of Criminal Procedure incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims.

11. In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds…" Definition of Victim The connotations of term 'victim' vary in different legal, social, psychological or criminological contexts. The penal codes of the erstwhile USSR describe the victim as follows. [88]

1. Those who have as a direct result of a crime suffered moral physical or material damage;

[88] Supra note 43 at 12

2. Those who have suffered physical, moral, or material damage throw and attempted offence;
3. Those whose material damage caused by the crime was made good after the crime, either by the criminal himself or with the help of Militia or of an individual action;
4. Close relation of person who died as a result of a crime.

According to Fattah (1966),[89] "the Victim may be specific such as physical or moral person (Corporation, State, and Association) or non specific-and an abstraction." Quinney (1972) defines "The victim is a conception of reality as well as an object of events. All parties involved in sequence of actions construct the reality of the situation. And in the larger social contacts, we all engage in common sense construction of the crime, the criminal, and the victims"49 . Separovic (1975) states "We consider a victim as anything, physical or moral person who suffers either as a result of ruthless design or accidentally. Accordingly we have victim of crime or offence and victims of accidents." .Castro (1979) says "A Victim is a variable of crime or is an accident producing factor for others and for him." In wider perspective defined by Roy Lambron (1983-84) "A person who has suffered physical or mental injury or harm, mental loss or damage or other social disadvantage as result of conduct.

1. In violation of national penal laws, or
2. deemed a crime under international laws; or
3. constructing a violation of internationally recognized human rights, norms, protecting life, liberty and personal security; or
4. which otherwise amounts to "an abuse of power" by persons, who, by reason of their position of power by authority derived from political, economic or social power, whether they are public officials, agents or employees of the state or corporate entities, are beyond the reach of the loss which;
5. Although not prescribed by national or international law, causes physical, psychological or economic harm as severe as that caused by abuses of power constituting a violation of internationally recognized human rights norms and create needs in victims as serious as those caused by violations of such norms"

Thus the term 'Victim' means a person who has been victimized by another person against whom legal action may be taken for compensation and allied relief. Victim in relation to criminal justice administration means victims of rape, victims of murder, victims of cheating, victims of criminal breach of trust etc. i.e. victims of crime only.

[89] Id at 13

Justification For Victim Compensation

Victim compensation is a novel idea and if successfully meted out it retains the equity between the injured and the injurer. Victim's ego gets satisfied and he feels sense of belongingness and security in the society. The modern world has almost discouraged the reimbursement to the victim by offender or his family because the state sponsored punishment supplanted victim and family reparations. The restitution has replaced by punishment.[90] As justice should not only be done but it must be seen to have been done, therefore according to punishment to the offender or violator of the rights be it may legal rights, fundamental rights or human rights, of an individual is just the former part of justice i.e. the justice has been done by punishing the culprit. But the later part that it must be seen to have been done still requires something more to be done. It requires just not only punishment to the accused but caring for the victim and protection of his rights and supporting him in times of distress. The idea of victim and compensation to such victim is not new but was existing in the ancient time, which got lost in the later period when the state emerged focusing primarily on retribution on behalf of a victim by itself. The later criminal justice system due to its' over emphasis on the offender and his rights, lost right of the victims. After Independence, we the people of India devised for our self and excellent piece of state craft in the form of constitution of India, wherein due to the commitment to the human dignity, we classified certain rights as fundamental rights was done and granting of power to the various wings governing "we the people" under the expectation that they shall never toy with these basic rights, took place. Apart from it, India became signatory to various international covenants and conventions with regard to the human rights which also warrant the state to take care of the human rights and other rights mentioned therein which are primarily indispensable so far as the human being is concerned.[91]

[90] Rai, H.S. "Compensation Jurisprudence and Victims of Crime" 334, Cr.L.J, (2004).
[91] Ibid

CHAPTER – 3

THE RIGHTS OF THE ACCUSED AND VICTIMS

Chapter-3

THE RIGHTS OF THE ACCUSED AND VICTIMS

3.1 Definition of Victim and Victim Justice

The legal definition of victim includes a person who has suffered direct or threatened physical, emotional or pecuniary harm as a result of the commission of crime; or in the case of victim being an institutional entity, any of the harms by an individual or authorised representative of another entity.102Thus victim of crime refers to any person, group or entity who has suffered injury, or loss due to illegal activity and the harm may be physical mental or economic.[92]

As per UN Declaration of Basic principles of justice for victims, 1985 Victim is defined as "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within the member states, including those laws proscribing criminal abuse of power."[93]

Thus any person who has suffered harm because of violation of criminal law is a victim. Harm may be physical, mental, economic or emotional in nature. The definition seems wide enough to include both natural and artificial persons, individual and collective groups and also the dependants of the victim. The Basic principles also stipulate that a person will be considered as victim even if the offender is not identified, apprehended or prosecuted.[94] Term victim also includes persons who have suffered harm as a result of assisting victims in distress or to prevent victimisation. The definition of victim in other international Human rights instruments are also in similar lines.[95] As per Code of criminal procedure, 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 includes guardians and legal heir of the victim.[96] This definition which was incorporated by the 2008 criminal procedure (Amendment) Act, 2008, is a step in positive direction. However the term "for which the accused is charged" shows the restrictive nature of this definition. The definition is narrow when compared to the definitions

[92] cf Dr Krishna Pal Malik, Penology, victimology and correctional administration in India,213 (2012)
[93] Principle A.1.
[94] Principle A2
[95] See United Nations Convention against Torture, Principle 8 of Basic Principles and guidelines on the right to remedy and reparation, 2006,etc.
[96] Sec 2(wa) inserted by The code of criminal procedure (Amendment) Act, 2008.

provided in other International human rights instruments. Moreover for every crime that is committed, there are at least two victims. One is the public/ society, who suffers due to the violation of criminal law and the other, is actual individual who has suffered injury to person, property or reputation.

The concept of victim is used in a great variety of senses, sometimes confusedly or abusively. It is not uncommon to notice that often the alleged perpetrator refers to himself as the victim. For the purpose of this study, it is therefore necessary to define this concept properly. The Oxford Advanced Learner's dictionary defines the term victim as a 'person who has been attacked, injured or killed as the result of a crime, a disease, an accident.'[97] The concept of victim cannot properly be defined without reference to victimology, that is, the 'study of the victim, the offender and the society'[98] or study of why certain people are victims of crime and how lifestyles affect the chances that a certain person will fall victim to a crime.16 In his article, 'victimology today: major issues in research and public policy', **Viano** defines victim as:

> An individual, or groups or bodies such as an organisation or social grouping of people, who is harmed or damaged by someone else and whose harm is acknowledged, and who shares the experience and looks for, and receives, help and redress from an agency.[99]

The concept victim is also defined in two UN instruments. Firstly, article 1 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines 'victims of crime' as:

> Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.[100]

The main criticism that can be made to this definition is its narrowness in that it excludes from the scope of victimhood the dependants of the direct victims. The drafters of the UN Basic

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[97] Oxford Advanced Learner's Dictionary International Student's Edition 7th edition 1640.
[98] Rika Snyman 'Overview of and concepts in victimology' in L Davis & R Synman (eds) Victimology in South Africa (2005) 7.
[99] EC Viano 'Victimology today: major issues in research and public policy' in PM Tobolowsky (ed) Understanding victimology: Selected reading (2000) 10.
[100] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. 40/34, annex, 40 U.N. GAOR Supp. (No. 53) at 214, U.N. Doc. A/40/53 (1985).

Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law have heeded this insufficiency and extended the scope of victims.

Victims' rights and related concepts

The concept victims' rights should here be understood as encompassing all the entitlements a victim can claim. It has within its scope concepts as redress, remedy, compensation, restitution, recovery, rehabilitation and the like.

Black's Law Dictionary defines redress as 'satisfaction for an injury or damages sustained damages or equitable relief.'[101] The Oxford Advanced Learner's Dictionary defines it as 'payment etc…that you should get for something wrong that has happened to you or harm that you have suffered' and then mentions compensation as synonym.[102] Compensation, in turn, means 'something especially money that somebody gives you because they have hurt you, or damaged something that you own; the act of giving this to somebody.'

Victims' rights in the domestic system

There are many different legal families throughout the world. Heikkilä distinguishes four families: the common law tradition, the civil law tradition, the Islamic law tradition and the socialist law tradition. However, only the common law and the civil law tradition will be discussed here.[103]

Victims' rights in the common law system

Heikkilä asserts that the common law system is viewed as less victim-friendly than the civil law tradition mainly because victims in common law system rarely participate in criminal proceedings. In this system, as a rule, victims are only seen as witnesses, which means that it depends on the prosecutor and the defence whether a victim will appear before the court or not.[104] In fact, the legal process is between the defendant and the State. It excludes the victim. Kelly points out that victims have no independent status, no standing in court, no right to choose counsel, no right to appeal, no control in the prosecution of their case or voice in its disposition. In some common law jurisdictions such the US Courts, victims can ask for compensation.

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[101] Black Law Dictionary, fifth edition (1979).
[102] Oxford Advanced Learner's Dictionary International Student's Edition 7th edition 1221.
[103] In fact, they are the ones that really inspire the drafters of the statutes of the international criminal tribunals.
[104] Heikkilä (n 4 above) 46

Victims' rights in the civil law system

Civil law jurisdictions are sometimes viewed as being more victim-friendly than common law jurisdictions. In fact, as Heikkilä points out, victims in many civil law jurisdictions have a recognised role in proceedings as victims. In the French system, they have the right to register as 'partie civile' which implies that they can take a significant part in the proceedings and ask for damages. The civil law reparation mechanism is the one that has inspired the drafters of the ICC Rome Statute.[105]

3.2 Judicial Contribution to Prison Reforms and Judicial Intervention in Accused's Rights Cases

Prison may serve as an institution for the reformation and rehabilitation of offenders. Prisonisation symbolizes a system of punishment and a sort of institutional placement of convicts, under trails and suspects during the period of trial. The isolated life in prison and incapacity of inmates to repeat crime while in the prison fulfils the preventive purpose of punishment. Prison reforms are initiated for the purpose of humanization of prisons. Human dignity is not to be ignored even in prisons, as stressed by the Apex Court.

The drawback and deficiencies in the prison justice system lead to a total eclipse of human rights. The condition of majority of prisons in India is bad even today and many offenders are languishing in jails without trial for several years. Prisons are not neat and clean and food served is not healthy and hygienic. Further, the non-availability of proper health facility for inmates, inhuman torture of prisoners, solitary confinement, handcuffing and fetters on under trials, overcrowding of prisons, criminality in prisons and non availability of adequate and separate prisons for women are the common problems of Indian prison system. The intention of reforming the prisons is to bring the inmates back to the main stream of the society as good citizens.

In this context, the role of judiciary in the recent past in introducing jail reforms in India has been commendable. Maneka Gandhi Case[106] was a landmark in Indian Jurisprudence. The Maneka Principle was extended to prison conditions. In the post – Maneka era, in Catena of cases, the Supreme Court has exposed the Cruelty of the system of Prison Administration and

[105] Bottigliero (n 3 above) 214.
[106] AIR 1978 SC 597.

has sought to humanize it. Some landmark judgments of the Apex Court on Prison Reforms include: concern for under trials[107] ; Bar against Handcuffing[108] ; Against Solitary Confinement[109] ; Habeas Corpus Writ[110] ; Against imposition of bar fetters[111] ; Meeting with Family Members[112] ; Custodial Torture in Prisons[113] ; Against Torture of Women Prisoners[114] ; Wages for prison labour[115]; Prisoners Health[116] . Thus, the Supreme Court‟s judicial activism for protecting the rights of prison inmates and detenus[117] are discernible from a series of cases decided by Court. Detention is no ground for the suspension of detenu‟s fundamental rights.[118] Further, the Apex Court held that the prison authorities should change their attitude towards prison inmates and protect their human rights for the sake of humanity[119] . Even if a person is in jail his fundamental rights are very much with him. All these developments have aimed at the modernization of prisons.

The need for prison reforms has come into focus during recent decades. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner‟s rights. The problem of prison administration has been examined by expert bodies set up by the Government of India. The most comprehensive examination was done by the All India Jail Reforms Committee of 1980-83, popularly known as the Mulla Committee. The National and the State Human Rights Commissions have also, in their annual reports, drawn attention to the appalling conditions in the prisons and urged government to introduce reforms.

Judicial Intervention in Accused's Rights Cases

In the beginning the judiciary has a conservative attitude towards the right to life and personal liberty and limited its scope to bodily restrains only. In A.K.Gopalan v. State of Madras personal liberty was held to mean liberty of the physical restrains of body only. In this case,

[107] Hussainara v. Home Secretary, State of Bihar, AIR 1979 SC 1819; 1979 CriLJ 1036
[108] Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535;1983 (5) SCC 526; Sunil Gupta v. State of Madhya Pradesh, 1990(3) SCC 119 ; Citizen for Democracy v. State of Assam, 1995 SCC 743.
[109] Charles Sobhraj v. Supdt. Central Jail, Tihar AIR 1978 SC 1514.
[110] Sunil Batra v. Delhi Administration, AIR 1978 SC 1675.
[111] Kishore Singh v. State of Rajasthan, AIR 1981 SC 625.
[112] Francis Coralie v. Union Territory of Delhi, AIR 1981 SC 746.
[113] State of Maharashtra v. Prabhakar Pandurung Sanzgir , AIR 1966 SC 424; D.B.M.Patnaik v. State of A.P., AIR 1974 SC 2092; Sunil Batra v. Delhi Administration, AIR 1978 SC 1514
[114] Sheela Barse v. State of Maharashtra, AIR 1983 SC 378
[115] State of Gujarat and another v. Hon'ble High Court of Gujarat, (1998) 7 SCC 392
[116] Anil Kumar v. State of M.P., 2000 (1) C.Cr.J 118(M.P)
[117] Prabhakar Pandurang v. State of Maharastra, AIR 1966 SC 424
[118] D.B.M. Patnaik v. State of A.P., AIR 1974 SC 2092.
[119] Sanjay Suri v. Delhi Administration, (1988) CrLJ 705 (SC)

the court held that the expression procedures established by law means procedure prescribed by the law of the State, if the following conditions are satisfied: (i) There should be a law‟ (ii) Law should be a valid law; and (iii) The procedure laid down by law should be followed. Court refuses to infuse in that procedure the principles of natural justice. But this restrictive interpretation of the Article 21 has not been accepted in subsequent cases. It was held that right to life means something more than mere animal existence.[120] The protection guaranteed under 21 extends to all persons, not merely citizens,[121] including even persons under imprisonment. A prisoner has the right to freedom of expression reading and writing except in so far as it is circumscribed by the fact of imprisonment.[122]

In Maneka Gandhi v. Union of India[123], the Indian Supreme Court pronounced a landmark judgment that the procedure contemplated by Article 21 should be in conformity with the principles of natural justice and it was so, it would be no procedure at all, the requirement of Article 21 would not be satisfied.

Prior to this decision in 1978, Article 21 was constructed as a guarantee against executive action unsupported by law, as was held in Gopalan Case. However, Maneka case opened up new dimensions. A great transformation has come about in the judical attitude towards the protection of human rights of persons. From Gopalan to Maneka, judicial exploration has completed its trek from North to South Pole. This process of development of law is so well illustrated by how from A.K. Gopalan to Maneka Gandhi, it took the Supreme Court of India more than a quarter of a century to read a new dimension into Article 21 of the Indian Constitution.

In Maneka Case, the Supreme Court has widened the scope of the words personal liberty and said the expression personal liberty in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and some of them have been raised to the status of district fundamental rights and given protection under Article 19.

The view of Justice S.R.Das in Gopalan‟s case stood for 28 years until it came to be overruled by Justice Bhagwati‟s judgment in Maneka Gandhi's case. This Judgment was largely influenced by the dynamic and creative approach of Justice Bhagwati and agreed by justice Chandrachud, justice Untwalia and Justice Fazal Ali and the judges insisted that the concept of

[120] Khark Singh v. State of U.P, AIR. 1963 SC 1295
[121] Anwar v. State of Jand K., AIR. 1971 SC 337
[122] State of Maharashtra v. Prabhakar, AIR. 1966 SC 424.
[123] AIR. 1978 SC 597

reasonableness must be projected into the procedure contemplated by Article 21. In this famous decision which according to many jurists marks a watershed in the history of the constitutional law of the Country the Supreme Court for the first time took the view that procedure under Article 21 has to include natural justice.

After Maneka‟s case the right to life has been given an expansive interpretation and the courts have come down hard in cases of violation of Human Rights. Supreme Court has held in Sunil Batra v.Delhi Administration[124] that fetters especially bar fetters shall be shunned as violative of human dignity. Bart fetters were held violative of human dignity in Charles Sobraj v.Supt. Central Jail[125] also. In Nandini Satpathy V.P.L. Dani[126] the Supreme Court held than an accused has the right to consult a lawyer during interrogation and that the right not to make self-incriminatory statements should be widely interpreted to cover the pretrail stage also. In Haskot v.State of Maharashtra23 the Supreme Court held that right to free legal aid is a fundamental right. Further in Suk Das v.Union Territory of Arunachal Pradesh24, it was held that failure to provide free legal aid to an accused at state cost, unless refused by the accused will vitiate the trail.

In Hussainara Khatoon v. State of Bihar[127] while considering the plight of the under trails in Jail, Speedy trail was held to be an integral part of the right to life and liberty contained in Article 21 of the Constitution of India. In Raj Deo Sharma v.State of Bihar26 the Supreme Court has issued guidelines for speedy disposal of criminal cases besides its earlier guidelines. In Kishore Singh v. State of Rajasthan27 Justice Krishna Iyer shows deep concern regarding police cruelty in the following words:

“Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our Constitutional culture than a state official running berserk regardless of human rights.” Further in D.K. Basu v. State of W.B, 28 it was observed by the apex court of India; “An accused has right against any form of torture or cruel or inhumane degrading treatment during investigation, interrogation or otherwise in respect of a criminal case.” Brutallites of police towards an accused to make confession was held violative of Article 21 of the Indian Constitution in Kaism Bahi v. State of Gujarat. Further it was held that use of third degree method by police is violative of Article 21.

[124] AIR. 1978 SC 1675
[125] AIR. 1978 SC 1514
[126] AIR. 1978 SC 1025
[127] AIR. 1979 SC 1360

Where a person is imprisoned, he does not lose all the fundamental rights belonging to all persons under Indian Constitution, excepting those which cannot be enjoyed to the fact of incarceration, such as right to move freely throughout the territory of India or to reside and settle in any part of the territory of India[128] and to practice any profession or to carry on any occupation trade or business. "Our state cannot bear the title of Hon‟ble fraud or glorious crime committed through its agent. Hence Hon‟ble Supreme Court and High Courts have from time to time passed rules and regulation through case law the mode of arrest, rules and regulation as to the arrest, treatment as to the person in custody to prevent abuse of police power, to prevent custodial violence, to prevent death in the custody. These basic rules restraining the custodial violence leading to custodial death are like Ten Commandments of the Holy Bible which commands‟ „thou shall not kill‟ (Exodus 20:13) has been enunciated in D.K. Basu v. State of West Bengal and includes guarantee against torture and „assault' by state or its functionaries any from or torture or cruel, inhumane of degrading treatment which would fall within the ambit of Article 21 irrespective of its occurrence either during interrogation or investigation"

In cases of custodial deaths, judiciary can issue a writ of mandamus directing the state to grant compensation to the victim‟s family; Rs. 5 Lakhs compensation was granted in a case of custodial death.[129] In recent years Supreme Court treats delay in execution of death sentence, as violation of Human Right. It was held that if Supreme Court finds that delay in execution of death sentence is undue.[130] The court would quash the capital Punishment and substitute for it the sentence of life imprisonment to that person.[131]

Judiciary has now laid down certain guidelines regarding right to bail of an accused. The grant, refusal or cancellation of bail is a judicial act and has to be performed with judicial care. Refusal to grant bail even in a murder case without reasonable ground would amount to deprivation of personal liberty under Article 21 of the Indian Constitution.[132]

In, State of Punjab v. B.Singh it was held that it is a basic right of the female to be treated with decency and proper dignity and search of women by a person other than a female officer is a clear violation of women‟s Human Rights. A recent judicial trend of awarding compensation, in the State-in-action resulting the harms to the people is highly commendable. In RM Gandhi

[128] Article 19 (1) (e) of the Constitution of India
[129] Ajab Sing v. State of U.P., (2000) 3 SCC 521
[130] What is Undue delay will depend up on all the circumstances of each case and no fixed period of delay can be laid down.
[131] Triveniben v. State of Gujarat, AIR. 1989 SC 361.
[132] Babu Singh v.. State of UP, AIR. 1978 SC. 527

v. Union of India Madras High Court has held that the state is liable to pay damages to the victims of Riots of 1984. A person has right to be protected by the state where there is thereat or danger of life.

Role of Indian Judiciary against Environmental Crimes

Judicial Activism has become pronounced today, because the executive has failed in its service of the people it claims to represent. It has failed because of corruption and because of incompetence. The Supreme Court of India has played an innovative and pivotal role in laying down the foundation of environmental jurisprudence in India. Some of the landmark judgments on environment have become a beacon light and guiding force to the environment movement in India. India judiciary has exhibited an enlightened judicial creativity and foresight whenever it had an opportunity to decide issues relating to environment.

The Indian courts have established their active role in protecting environment even by constitution committees to study ecological imbalances. In Rajiv Ranjan singh v. State of Bihar[133], the Patna High Court constituted an expert committee and based upon that committee's report framed a scheme for a distillery company for the discharge of chemical waters and sewage, in order to protect the environment. In General Public of Saproon Valley v. State of Himachal Pradesh[134], the Himachal Pradesh High Court constituted a committee to study the pollution of water and solid erosion of water by the mining of lime stone in the Saproon Valley. The Supreme Court, the protector of Indian Ecology in DN Pandey v. Union of India[135] , asked the Central and State Governments to undertake long term planning in order to protect the national wealth. It held that the greenery of India would perish and Thar Desert may expand its limits, if there is no planning of environmental protection. The Allahabad High Court in DD Vyas v. Ghaziabad Development Authority[136], held that the public parks is like that of lungs to human beings in crowed towns where resident gets only polluted atmosphere. A public park is a gift of modern civilization. An open space is an essential element of modern planning and development, as it greatly contributes to the improvement of social ecology. Section 3(3) of the Environment (Protection) Act, 1986 provides powers to the Central Government to create an authority or authorities with adequate powers to control pollution and protect the environment. The Supreme Court in Vellore Citizens Welfare Forum v. Union of

[133] AIR 1992 Patna 86
[134] AIR 1993 HP 52
[135] AIR 1987 SC 359
[136] AIR 1993 All 57

India[137] , citing the failure of the Central Government to create such an authority under Section 3(3) of the Environment (Protection) Act, 1986 the Court declared that "it is pity that till date no authority has been constituted by the Central Government. The work which is required to be done by an authority in terms of Section 3(3) read with other provisions of the Act is being done by this Court and the other Courts in the Country. It is high time that the Central Government realizes its responsibility and statutory duty to protect the degrading environment in the country". The Court directed the Central Government to take immediate action under the provisions of the Environment Act. This is a glaring example of Judicial Activism. The Supreme Court in F.B Taraporawala v. Bayer India Ltd.[138], and S.Jaganath v. Union of India[139], also directed the Central Government to constitute authority under Section 3(3) of the Environment Act for protecting the degrading environment.

3.3 Protection of Child Labour against Exploitation

Criminal jurisprudence aims to protect the children who have deviated from adolescent to criminality by imprisoning them within the structural framework of law to ensure their enlightened reformation and rehabilitation without labelling them. Juvenile delinquency is a gateway in adult crime. For juvenile delinquents, there should be some constructive atmosphere for their growth. So every society ought to evolve a proper education, training and guidance, to get their mirth in the society. The Apex Court shall have to be more active as regards the rights of the child. The directives of the Courts on many times, are not taken with due seriousness by the government departments or authorities concerned. For example, one can still find many juvenile delinquents behind the bars in flagrant violation of the highest court's directives. Moreover, the delay in the enforcement of Child Welfare Legislation shows lack of political will on the part of the Government which cannot be appreciated. Judiciary shall have to be active in finding out ways as how to deal with the situations when the Government adopts such delaying tactics. No doubt, judicial responses have made salutary impacts; however, these cannot fill the inherent policy enforcement vacuum. So, the judiciary should not rest with the order but it should see that the persons get justice through prompt imploration.

In India, it was only during the early 1980s in the wake of dowry and related problems, that crimes against women, especially the family violence against women, came to be recognized as an important social problem. Domestic violence includes physical, sexual, verbal, emotional

[137] AIR 1996 SC 2715
[138] 1996 (6) SCALE 592
[139] AIR 1997 SC 811

or economic abuses. Child sexual abuse includes implying, using, inducing or coercing any child to engage in illicit sexual conduct, it also includes the use of children in assisting with other persons to engage in explicit sex.[140]

Judicial activism has set right a number of wrongs committed by the States against inhuman treatment of children. The judiciary has always given a lead to save the child workers from exploitation and improve their working conditions. Some of the cases wherein the role of judiciary in India has been quite significant in promoting the child welfare are: People's Union of Democratic Rights v. Union of India[141]; Salal Hydro Project v. State of Jammu and Kashmir[142]; Rajanagam, Secretary, District Beedi Worker's Union v. State of TamilNadu[143] ; M.C.Mehta v. State of Tamil Nadu[144]; Bhandu Mukti Morcha v. Union of India[145]; Unnikrishnan J.P. v. State of Andhra Pradesh[146] ; Lakshmi Kant Pandey v. Union of India[147]; Bhim Singh v. State of J&K[148].

3.4 Human Rights and Gender Issues

Now women empowerment is a burning issue of India and this concept is in progress. This study also examines the issues of violence against women in the human rights framework and makes a comprehensive discussion on the judicial process to promote and protect women's human rights. Violence against women as human rights violation changes the perception of violence against women from a private matter to one of public concern and means that public authorities are required to take action. The 1980s saw this major transformation in the articulation of women's grievances, such as forced pregnancies, forced abortions, bride burning, dowry related abuses, intimate partner abuses, etc. until that the family was considered as a sacrosanct social institution and therefore violence within the home was dismissed as a private affair. Gender based violence is nearly universal, affecting women of every class, race, ethnicity and social background in all the pursuits of life and at every phase of the life cycle. They have been victims of violence, exploitation, disempowerment and discrimination – ranging from domestic abuse to female circumcision. Crimes against women such as rape,

[140] P.D.Mathews, Sexual Abuse of the Children and the Law, 1996
[141] AIR 1982 SC 1473
[142] AIR (1984) 3 SC 117,538.
[143] AIR 1993 SC 404
[144] AIR 1997, sec 699
[145] (1984) 3 SCC, 161,185.
[146] AIR 1993, SC 2178, SC 2178 (1993) 1 SCC 645.
[147] (1984) 2 SCC 244
[148] (1985) 4 SCC 677

molestation, child sexual abuse, custodial torture, domestic violence, sexual harassment at workplace etal continue worldwide today. Their control over their own bodies remains a debatable issue till date as is evident from the right to abortion debate. In most communities women are denied equal property rights too. The constitution of India confers a catena of human rights upon women. The spirit of gender equality, dignity and justice pervades the entire framework of Indian Constitution, which represent the constitutional remedies in favour of women (Arts.21, 19 and 32, Constitution of India). Article 32 of the Constitution confers a special status on the Supreme Court of India of the custodian of the Constitutional Rights and protector thereof.[149]

The human rights of women and of the girl-child are the inalienable, integral and indivisible part of human rights. Abuse of the girl child is a fortifying facet of female exploitation. Child-abusers come from all strata of society, including the victims‟ family itself. Female children are raped, sodomized and sexually abused and exploited in many ways. The law fails to provide relief to a victimized girl-child owing to an insensitive legal procedure and subsequent ostracizing by the society.

Justice V.R.Krishna Iyer in his article Humans Without Rights[150] opines that women in India continue to be degraded and this social depravity and massive manslaughter of Human Rights of womanhood is a daily reality. He observes: The Indian Woman is unjustly treated as unequal by society for the genetic sin of her discriminated sex. She suffers devaluation at home, at work, in literacy, in matrimony, in inheritance, in economic opportunity, public life and power process.

Women who face domestic violence are denied their fundamental rights to life, health, bodily integrity, privacy, shelter and food. Crimes against women appear to have been malignant in a patriarch ally superior society of India where women are viewed as second-class citizens and as sexual objects. Women eat less, work harder, and neglect their health to keep the home fires burning and keep the wolf from the door. Victims of sexual offences face more harassment during the course of investigation and trial, which is called secondary Victimization.

[149] D.K.Basu v. Union of India, AIR., 1997 SC.610

[150] Quoted in Dr.Chhaya Gala, Human Rights of Women, Journal of Minorities Rights, 2(1), 2011,pp.48-49.

3.5 Judicial Activism in the Field of Women Empowerment

The judiciary"s decisions set precedence and therefore it is important to focus on landmark exercises. The courts… decisions often shape the course of our nation's life…, as said by Archibald Cox[151] . Truly speaking there can be no two opinions about the need of gender sensitive judiciary to deal with crime against women. With the rise of crime against women judicial behavior displayed not only a greater sense of responsibility but also more sensitiveness. Judiciary is the last hope, where there is no law for the protection of women. Where there is no specific law for a specific offence in that case judiciary applies its activism role, which is popularly known as Judicial Activism.

Resorting to judicial activism, the Supreme Court has expanded the scope of right to life to new horizons by reading many more rights into it as integral and essential part thereof. Thus, women also have fundamental right to human (i.e., feminine) dignity[152] ; to privacy[153] ; to health[154]; to primary education[155] ; to free legal aid, also to speedy-trial[156] , etal as adjuncts to right to life.

Supreme Court in Vishakha v. State of Rajasthan[157], provided a landmark judgment on the area of sexual harassment against women and laid down number of guidelines to remedy the legislative vacuum. As in this particular aspect there is no law or enactment by the legislature that is why here the judiciary applied its activist power and provided some guidelines under Art. 32 of the Constitution.

Some of the guidelines are as follows:

1. Duty of employer or other responsible persons in work places and other institution to women employees to prevent the commission of acts of sexual harassment.
2. Court also defined sexual harassment. Sexual harassment includes: Such unwelcome sexually determined behavior as: i. Physical contact and advances; ii. A demand or request for sexual favour; iii. Sexually coloured remarks; iv. Showing pornography; v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

[151] Archibald Cox, The Court and the Constitution, Houghton Mifflin Co., August 1987.
[152] Francis Coralie v. Union Territory of Delhi, (1981) 1 SCC 608.
[153] People' Union for Civil Liberties v. Union of India, AIR 1997 SC 568.
[154] Indian Council for Enviro-Legal Action v. Union of India, (1996) (3) SCC 212.
[155] J.P.UnniKrishnan v. State of Andhra Pradesh, (1993) (1) SCC 546; AIR 1993 SC 2178
[156] Kadra Pahadia (1) v. State of Bihar, AIR 1981 SC 939
[157] AIR (1997) 6 SCC 241.

3. Court also provided guidelines to all employer-public or private for taking preventive steps.
4. What type of criminal proceeding is required for this offence that is also suggested by court.
5. Disciplinary action should be taken against the offender.
6. Complaint mechanism is also suggested by court.
7. Complaint committee is required.
8. There is a need of workers‟ initiative.
9. There is need of awareness among female employees about their rights.
10. Court provided the guidelines in case of third party harassment.
11. Central State Government are requested to enact the specific law in this regard.
12. These guidelines will not prejudice any rights available under the protection of Human Rights Act, 1993.

After providing the guidelines, the court said: The above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the rights to gender equality of the working women. These directions would the binding and enforceable in law under Art.11 of the constitution, until suitable legislation is enacted to occupy the field.

In appeal of the case[158], the Supreme Court held that, the Sexual harassment of a female employee at the place of work is incompatible with the dignity and honour of a female and need to be eliminated that there can be no compromise with such violation. At the time when the question regarding the sexual harassment of women in working places was raised, on this area there was no law and hence, judiciary by judicial activism declared some guidelines for the protection of women from sexual harassment in working place. This guideline was provided by Supreme Court in 1997 and the Bill titled as Protection of Women against Sexual Harassment at Workplace was produced before the Parliament in 2010, but Bill is still pending. That means the need of the society is realized by the Parliament after 13 years. In case of compensation jurisprudence also judiciary is realized the need to compensate the victim, but in criminal law there is no such specific law regarding the compensation jurisprudence. So, it is clear that through judicial activism judiciary is able to provide progress in the area of women empowerment. In Delhi Domestic Working Women's Form v. Union of India[159] , the Supreme Court directed that the victim (i.e., Complainant) of sexual assault cases be provided with legal

[158] Appeal Export Promotion Council v. A.K.Chopra , AIR 1999 SC 625.
[159] (1995) 1 SCC 14.

assistance at the concerned police station and also with legal representation. A list of advocates willing to act in these cases is also to be kept at police station for the victims to choose. In State of Karnataka v. Putturaja[160] , the Supreme Court has held that matters of sexual offences must be dealt with severity and with iron hands.

3.6 Rights of the Accused

"Justice should not only be done, but seen to be done" –

A maxim in Administrative Law and extended in other fields.

The protection of the accused is not a new concept. The landmark in the protection of the accused and people at large can be traced back down to the Habeas Corpus and Bills of Rights. Then gradually the concepts such as rule of Law and fair hearing developed. Many of these concepts are embodied in the broad doctrine of Natural justice.

After Independence protection afforded to an accused in the Indian system should be appraised within the Constitution and outside. A number of statues catered for the protection of the Accused and the Suspect. The protections are so important that the law requires the police to investigate fairly and according to law into offences i.e., according to the broad principle of fair trial, A procedure to be fair or just must embody the principle of Natural justice. Indian law before Independence and afterwards acknowledges the fundamental right of an accused person to get a fair trial, including the protection related to confession. Fundamental rights are sacrosanct Individual Freedom is one among the most essential freedoms. It is the situation of man who should not be arrested, detained, but who should enjoy his liberty of movement.

"Human Rights are those minimal rights which every individual must have against the State or other public authority by virtue of his being a member of the human family, irrespective of any other consideration …. Though the concept of human rights in as old as ancient doctrine of natural rights founded on natural law, the expression human rights is of recent origin emerging from (Post Second World War) international charters and conventions…."[161] After the conclusion of the Second World War movement for securing human rights, to all gained strength. Safety of life and liberty of a person are most significant Human Rights in any ordered society.

[160] AIR 2004, SC 433.
[161] Justice D.D.Basu, Human Rights in Constitutional Law, 1994, p.5

"All Human Rights derive from the dignity and worth inherent in the human person is the central subject of Human Rights and Fundamental Freedoms. In simple terms, whatever adds to the dignified and free existence of human beings should be regarded as human rights."[162]

According to Indian Supreme Court: "All Human Rights are derived from the dignity of the person and his inherent worth"[163]

In simple language, Human Rights are inherent in all human beings throughout their lives by virtue of their humanity alone and they are inalienable.

Justice Bhagwati and Justice Krishna Iyer emphasized that human dignity is an important aspect of liberty and hence while considering liberty people have to consider human dignity.[164] Justice Krishna Iyer took great pains to upload the human dignity and observed, "Spiritual basis of our Constitutional order is human dignity and social justice and not the sadistic cruelty of hard confinement for years"[165] A procedure to be fair or just must embody the principles of Natural justice. Natural justice intended to invest law with fairness and to secure justice, the law should be reasonable law and not merely an enacted law.

The progress of any society is dependent upon proper application of law to its needs since the society today realizes more than ever before its rights and obligations, the judiciary has to mould and shape the law to deal with such rights and obligations.

The vital issue of enforcing Human Rights is a paramount importance. The judiciary has been a Zealous guardian of Human Rights. Indian judiciary by virtue of the power vested in it under the Constitution is the protector of the Human Rights of persons.

3.7 Prisoners' Right to Life and Liberty

New tools were invented to give redress to the citizen, by the higher judiciary in India today. Article 21 has become the means by which to create new rights and entitlements. Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22 guarantees protection against arrest and detention in certain cases. It provides that no person who is arrested shall be detained in the custody without being informed, as soon as neither of the ground for such arrest nor shall be denied the right to consult, and to be defended by a legal practitioner of his choice. It requires that every person

[162] S. Subramaniam, Human Rights International Challenges, 1997, vol.1. p.3
[163] Samatha v. State of A.P., AIR 1997 SC 3297
[164] Jolly G.Varghese v. Bank of Chochin, AIR 1980 SC 470
[165] Inder Singh v. State, AIR 1978 SC 1091

who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest to the court of the magistrate and so such person shall be detained in custody beyond the said period.

The Court was called upon to articulate the rights guaranteed by the Constitution: a prisoner's right to humane treatment, a prisoner's right to speedy trial, and an accused criminals" right to legal aid emanated from the fundamental rights guaranteed by Articles 21 and 22 and the Directive Principles of State Policy contained in Article 39-A of the Constitution. The Supreme Court has established the basic principles of common law, by a serious of landmark judgments, described as judicial activism. In this regard the following decisions are referred to such matters as: the right to protection against solitary confinement;[166] the right not to be held in fetters;[167] the right of an indigent person to have legal aid; [168]the right to speedy trial; the right against handcuffing;[169] the right against custodial violence;[170] the right against public hanging;[171] and the right, in certain circumstances, to medical assistance.

In Vena Sethi v. State of Punjab[172], the Supreme Court identified itself as highly active when it ordered the release of children below the age of 10 years and under trial prisoners languishing almost for decades in different jails of the country of the basic rights of the child to speedy trial.

On the right to free legal aid to poor and the right to be defended by a legal practitioner justice P.N.Bhagwati in Khattri v. State of Bihar[173] has obliged the Magistrates or the Session Judge before whom the accused appears to inform that if he is unable to engage services of a lawyer on account of poverty, he is entitled to obtain free legal services at the cost of State. This imperative is applicable to children as well. The concept of Legal Services to the Society has been given a place of pride in Indian legal system by providing free legal aid to the eligible persons as per Legal Services Authorities Act, 1987, as amended. The creation of equal opportunity for the people irrespective of their economic condition of status in the realm of administration of justice is indeed essential, otherwise justice, in true sense, cannot be dispensed with equally and without hindrance" .

[166] Sunil Batra v. Delhi Administration, AIR 1978 SC 1675; Cri LJ 1741
[167] Shobraj v. Supdt. Central Jail, AIR 1978 SC 1514; 1978 Cr LJ 1534
[168] M.H.Hoaskot v. State of Maharashtra," AIR 1978 SC 1548; 1978 Cr LJ 1678
[169] T.Vatheeswaran v. State of T.N. AIR 1983 SC 361 (2); 1983 Cri LJ 481.
[170] Sheela Barse v. State of Maharashtra, AIR 1983 SC 378; 1983 Cri LJ 642.
[171] Attorney General of India v. Lachma Devi, AIR 1986 SC 467; 1986 Cri LJ 364
[172] AIR 1984 SC 1895
[173] AIR 1981 SC 928

The decision of the Supreme Court in the case of Kakoo v. State of A.P.[174] is important and relevant as it shows real judicial activism on the basic rights of the child. In this case, a boy of only 13 years of age committed rape on a small child of 2 years. Reducing the sentence on humanitarian consideration Justice Sarkaria observed that an inordinate long imprisonment is sure to turn juvenile delinquent into obdurate criminal and laid on emphasis that command a more humanitarian approach in relation to sentencing policy towards child offenders. Justice Krishna Iyer150 directed that the appellant, who was quite a young boy when the offence was committed, shall not be forced to wear convict costume provided his guardians supply his normal dress. The Supreme Court condemned and discouraged the detention of children below 16 years in jail is a very important decision when it observed: "on no account should the children be kept in jail and if a State Government has not got sufficient accommodations in its remand homes, the children should be released on bail instead of being subjected to incarceration in jail.[175] In another case, Justice Mohan of the same court discarded the admission of noncriminal mentally ill children and adults to jail as illegal and unconstitutional. Thus the Supreme Court in all these cases displayed its activism towards the protection of human rights of juvenile delinquents.

The Indian judiciary has also started taking suo motu cognizance of the wrongs that come to its notice through press or other media reports. This falls in domain of the exercise of high prerogative writ powers. There is, however, no power to take suo motu cognizance of wrongs done to the socially and economically handicapped persons in the courts at the District and other gross root levels.[176]

The Supreme Court of India initiated the development of custodial jurisprudence in D.K. Basu v. State of West Bengal.[177] The case came up before the Court through a writ petition under Article 32 of the constitution by a non-governmental organization. The executive Chairman of this NGO had written to the Chief Justice of India drawing his attention to news items published in the Telegraph regarding deaths in police lock-ups and in jail in the State of West Bengal. In this case, the Court outlined the requirements which should be followed in all cases of arrest or detention as preventive measures. If the requirements mentioned in this landmark judgment

[174] AIR 1976 SC 1991.
[175] Sheela Barse v. Union of India, AIR 1986 SC 177.
[176] AIR 1979 SC 1360
[177] AIR 1997 SC 610

are followed scrupulously, the phenomenon of custodial violence will be decreased and the violators will be identified.

Deaths in police lock-up are the most frequent phenomenon in these days. These occurrences are most often outcome of third-degree method. Torturing and applying third degree on accused or detenue in the manifest violation of human rights. Torture is a well established tool of investigation of the Indian police.[178] Torture of human being by any other human being is essentially an instrument to impose the will of the Strong over the weak by suffering or severe pain. Torture is a cruel, inhuman or degrading treatment or punishment. Third degree refers to the use of coercive measures including inflicting of physical violence on suspects for extracting confession. Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. Any act of torture, or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise.

In India, physical or mental torture of the accused/suspect including use of third degree method during investigation or otherwise have been prohibited by law. The Supreme Court has condemned on more than one occasion of the use of torture and third degree method, and held that custodial violence including torture and death in the lock-up strikes a blow at the rule of law and is in clear violation of Article 21 of the Constitution. The above discussion shows that the Supreme Court exhibited an immense degree of judicial activism. The avowed object was to promote social justice, and accordingly the Court accomplished the desired changes in law by cutting the deadwood and trimmed of the side branches obstructing the patch of justice[179].

In concluding part, it is submitted that there is nothing more fundamental than protection of Human Rights. But it is also an open fact that the police and almost all government administrative departments violate Human Rights of accused persons.

The role of Indian judiciary is commendable in expanding Human Rights and that it has found Article 21 as the most fruitful Article. In the comprehension of Indian Judiciary, the right to life and liberty includes right to human dignity, right to free legal aid, right to speedy trial, right of bail, etc., Supreme Court also recognises mental cruelty concept. As Supreme Court has held

[178] Dhiraj Kumar Mishra, Tortuure and Third – Degree Mehods: some Reflections, Nyaya Deep, Vol. XII, Issue 3, July 2011, p. 17.
[179] B.K.Gupta, Lord Denning – The Matchless, 3 SCC (1982) Journ.Sec.31.

that undue delay in execution of death sentence is violative to Article21 of the Indian Constitution.

Women have unique position in Indian Society, almost half of the Indian populations are women. In India, human right of women has been safeguard under the constitution and other laws. Various courts in India laid emphasis on the women dignity. Now Indian judiciary has imposed a positive obligation upon the State to protect the life of a person when there is threat to his life to riots etc., and if due to negligence of the State, or inaction the person suffer some damages, State has to compensate him.

The Courts seek to do justice from case to case in specific situations. The judicial process lays down law in individual cases. Further there are limits of judicial activism.[180] The role of Indian Superior Courts, especially the Supreme Court had been very dynamic and active. It has delivered some creative and forward looking judgments in the area of the rights of the accused. They have displayed concern for the unjust law on the topic at issue.

3.8 Victims' Justice: Compensatory Jurisprudence and Law Inadequate in favour of Victims

Unlike the accused, victims in India have virtually no rights in Criminal proceedings. Victims are left to either suffer injustice silently or seek personal retribution by taking the law into their own hands. Justice V.R.Krishna Iyer makes it clear that the criminal law in India is not victim oriented rather it is offender oriented and the sufferings of victim, often immeasurable, are entirely overlooked in misplaced sympathy for the Criminal. Denial of any role to victim is not only denial of justice to the victim but also would tantamount to negate rule of law, the fundamental of democracy and constitutionalism.

In numerous Supreme Court decisions, it was held that Right to Life is one of the basic human rights. A prisoner, be he a convict or under trial or a detenu, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights including the Right to life guaranteed to him under the Constitution. Prisoners on being convicted of Crime, still retain the residue of Constitutional rights.

[180] M.M. Mustazhar, New Dimensions of Emerging Human Rights, pp. 11-12.

Law Inadequate in favour of Victims

In India the accused has been treated as a privileged person. He gets all possible help from all the corners of the country. Not only he gets defence counsel at the costs of the State at the time of trial but he is also benefited after conviction. The aftercare reformative and rehabilitative programmes for the accused are also at the rise. The punishment can be considered more as treatment, rehabilitation, correction and resocialisation through probation, parole and after care community services. The modern criminal law overlooks the by-product of crime i.e., victim. The lack of victim-oriented jurisprudence is the main cause of deterioration of the conditions of victims and their family members. The victim sets the criminal into motion but then goes into oblivion.

Problems of Victims

India has largely ignored the protection of victim‟s rights, irrespective of whether the perpetrator is the State or a private individual. Victims in India face significant and sometimes insurmountable, hurdles during the investigation and prosecution of crimes. The filing of an initial complaint, in and of itself, is a challenging endeavour. The police failed to act upon victim complaints against other private individuals, as reported by People‟s Watch. Investigations in India are exclusively a police function, and therefore, victims play no role unless the police consider it necessary. Defective investigations are a serious problem throughout the country. As a result of faulty investigations, initiation of trials may be delayed for years because no charge sheet has been filed. The victim is merely a witness in a State versus case.

Victims of Crime face multifarious problems. Economic strain to the family is caused due to the death of the only earning member of the family. Sometimes physical disability caused by victimization, causing inferiority complex in the victim, which lead to frustration and sometimes to suicide. Victims of rape have to face the social stigma of the society as well. The impact of victimization is different from victim to victim.

CHAPTER-4

RECOMMENDATIONS OF COMMISSIONS AND COMMITTEES

ON JUSTICE TO VICTIMS IN INDIA

Chapter-4

RECOMMENDATIONS OF COMMISSIONS AND COMMITTEES ON JUSTICE TO VICTIMS IN INDIA

4.1 Recommendations of Commissions and committees

During the last decade, there has been significant change in the thinking of the judiciary about the human rights of victims. The concern of the courts and the judicial commissions and committees about the need to have a law on victim compensation or a comprehensive law on victim justice has been reflected in their judgments and reports.

1. The Law Commission of India, 1996:

The Law Commission, in its report in 1996, stated that, "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" (Law Commission of India Report, 1996).

2. The Justice Malimath Committee on Reforms of Criminal Justice System (Government of India, 2003):

The Justice V. S. Malimath Committee 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;

• The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. (Government of India, 2003).

3. The National Commission to Review the Working of the Constitution:

The Commission to review the working of the Constitution (Government of India, 2002) has advocated a victim-orientation to criminal justice administration, with greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes.

4.2 Amendments to the Code of Criminal Procedure in 2008:

The Code of Criminal Procedure was amended to bring in various victim-friendly provisions, such as:

Definition of Victim

The definition of Victim was added in **Section 2 (wa),** which states that, "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."

Victim's right to engage his advocate

Section 24 (8) gives the victim the right to engage his advocate, "provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution."

Recording of statement of rape victim under Section 157

In Section 157, a proviso has been inserted after sub-section (1), "Provided further that in relation to an offence of rape, the recording of statement of 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 guardians or near relatives or social worker of the locality." **Section 309 (1)** after amendment states that the inquiry and trial should be completed within 2 months.

Section 327, has been amended to the following effect, "Provided further that in camera trial shall be conducted as far as practicable by a woman judge or magistrate." Also that publication of trial proceedings relating to rape cases shall be prohibited, however, the ban on printing or publication can be lifted, subject to maintaining confidentiality of name and address of the party.

Investigation within three months in case of Child Rape

Section 173 (1A) provides that, "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."[181]

Compensation to victims

Section 357 (1) and **Section 357 (3)** Cr.P.C. vest power in the trial court to award compensation to victims of crime whereas similar power is vested in the Appellate and Revisional Court under sub-section (4). The Court may appropriate whole or any portion of the fine recorded from the offender to be paid as compensation to the victim of crime.

This compensation may be for costs, damage or injury suffered or loss caused due to death or monetary loss incurred due to theft or destruction of property, etc.

Sub-section (3) empowers the court, in its discretion, to order the accused to pay compensation to victim of his crime, even though no fine has been imposed on him.[182]

Section 357-A has been inserted after the 2008 Amendment, it provides that:

[181] Randhawa, supra note 1, pp. 159-160
[182] Paranjape, supra note 4, p. 679

"**Section 357-A Victim Compensation Scheme**–

(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 dependants who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever recommendation is made by the Court for compensation, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall decide the quantum of compensation to be awarded.

(3) If the trial court, at the conclusion of 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 victims or his dependants may make an application to the State or the District Legal Services Authority for the award of compensation.

(5) On receipt of such recommendation or on the receipt of application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry, award adequate compensation after completing the enquiry within 2 months.

(6) The said authority, 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 police officer not below the rank of officer in charge of the police station or a magistrate of the area concerned, or any other interim relief as the authority may deem fit."

The scheme contained in the section is indeed a progressive measure to ameliorate the woes of crime victims and providing them **restorative justice**.

The Code also provides compensatory relief to victims of unlawful arrest or detention by police without sufficient cause.[183]

183 Section 358 (1) of the CrPC

Where an accused is convicted of a non-cognizable offence on a complaint, the court may order him to pay costs to the complainant or in default, suffer simple imprisonment for a period not exceeding thirty days.[184]

Victim's right to appeal

Proviso to Section 372 gives right of a private appeal to a victim, thus providing the victim with a *locus standi*, however, the right to appeal against inadequacy of punishment is available only on two grounds:

- If accused has been convicted for a lesser offence, example, he was convicted for robbery instead of dacoity
- If inadequate compensation is given.
- The victim, however, cannot appeal on quantum of punishment.

4.3 The Criminal Law (Amendment) Act, 2013

The Criminal Law (Amendment) Act, 2013 is a result of the **Justice Verma Committee** Report which dealt in the rape laws and their amendment. This Committee was constituted in the aftermath of the brutal Delhi Gang rape case of 16th December 2012.

The Committee recommended that the gradation of sexual offences should be retained in the Indian Penal Code, 1860 (IPC).

The Committee was of the view that rape and sexual assault are not merely crimes of passion but an expression of power. Rape should be retained as a separate offence and it should not be limited to penetration of the vagina, mouth or anus. Any non-consensual penetration of a sexual nature should be included in the definition of rape.

The IPC differentiates between rape within marriage and outside marriage. Under the IPC sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape should be removed. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim

184 Section 359 (1) of the CrPC

and the accused should not be relevant. However, non-consensual sexual act within marriage is still not made punishable, even though the amount of punishment has been increased.

The Indian Penal Code (IPC) was amended to provide death penalty in rape cases that cause death of the victim or leave her in a vegetative state.[185] The Act also introduced several other new offences such as causing grievous injury through acid attacks, sexual harassment, use of criminal force on a woman with intent to disrobe, voyeurism and stalking.

In the case of *State (Govt. of NCT of Delhi) v. Ram Singh (deceased), Mukesh, Akshay Kumar Singh, Vinay Sharma and Pawan Kumar*,[186] Shri Yogesh Khanna, Additional Sessions Judge, New Delhi, awarded death penalty to the accused person as the facts showed a brutality of such a nature that it fell into the category of rarest of rare cases, the entire intestine of the prosecutrix was perforated, splayed and cut open due to repeated insertions of rods and hands. The convicts, in the most barbaric manner, pulled out her internal organs with their bare hands as well as by the rods and caused her irreparable injuries, thus exhibiting extreme mental perversion not worthy of human condonation. They brutally gang raped the prosecutrix, inflicted inhuman torture and threw the defenceless victims out of the moving bus in naked condition, profusely bleeding in a cold winter night.

The Court further held that, "These are the times when gruesome crimes against women have become rampant and courts cannot turn a blind eye to the need to send a strong deterrent message to the perpetrators of such crimes. The increasing trend of crimes against women can be arrested only once the society realize that there will be no tolerance from any form of deviance against women and more so in extreme cases of brutality such as the present one and hence the criminal justice system must instil confidence in the minds of people especially the women. The crime of such a nature against a helpless woman, per se, requires exemplary punishment."

Another amendment is the addition of **Section 326 A** regarding the acid attacks, the proviso clearly states that the fine which is imposed on the convict shall be such that it is just and reasonable to meet the medical expenses of the treatment of the victim of acid-attack. Such fine shall be imposed directly to the victim.

In the Code of Criminal Procedure **Section 357 B** and **Section 357 C** have been added.

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[185] Section 376 A of Indian Penal Code

[186] Unique ID No. 02406R0020522013, SC No. 114/2013 decided on 10.09.2013

Section 357B Cr.P.C. provides that, "The compensation provided under Section 357 A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the Indian Penal Code."

Section 357C Cr.P.C. provides that all hospitals, whether public or private, run by Central Government or State Government, local bodies or any other person, shall immediately provide the first-aid or medical treatment, free of cost, to the victim of any offence under Section 326 A, Section 376, Section 376 A to E of the Indian Penal Code, and shall immediately inform the police of such incident.

4.4 Affirmative Action by the Higher Judiciary

- **Restitution to Victims**– Despite the absence of any special legislation to render justice to victims in India, the Supreme Court has taken a proactive role and resorted to affirmative action to protect the rights of victims of crime and abuse of power. The court has adopted the concept of restorative justice and awarded compensation or restitution or enhanced the amount of compensation to victims, beginning from the 1980s.[187]
- **Justice for Rape Victims** – Guidelines for Victim Assistance in *Bodhisattwa Gautam v. Subhra Chakraborty*,[188] the Supreme Court held that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. The court, having satisfied the prima facie culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985:
    - The complainants of sexual assault cases should be provided with a victim's Advocate who has to explain to the victim the proceedings, and to assist her in the police station and in Court and to guide her as to how to avail of psychological counselling or medical assistance from other agencies;
    - Legal assistance at the police station while she is being questioned;

[187] Sukhdev Singh v. State of Punjab (1982 SCC (Cr) 467), Giani Ram v. State of Haryana (AIR 1995 SC 2452), Baldev Singh v. State of Punjab (AIR 1996 SC 372)

[188] (AIR 1996 SC 922)

- The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed;
- A list of Advocates willing to act in these cases should be kept at the police station for victims who need a lawyer;
- The Advocate shall be appointed by the Court, in order to ensure that victims are questioned without undue delay;
- In all rape trials, anonymity of the victims must be maintained;
- It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India, to set up a Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment;
- Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of the rape.
- **State Compensation for Victims of Abuse of Power**– As early as 1983, the Supreme Court recognized the need for state compensation in cases of abuse of power by the State machinery. In the landmark case of *Rudul Shah v. State of Bihar*,[189] the Supreme Court ordered the Government of Bihar to pay to Rudul Shah a further sum of Rs.30,000 as compensation, which according to the court was of a "palliative nature", in addition to a sum of Rs.5,000, in a case of illegal incarceration of the victim for long years. Similarly in *Saheli, a Women's Resources Centre through Mrs . Nalini Bhanot v. Commissioner of Police, Delhi Police*,[190] the Court awarded a sum of Rs.75, 000 as state compensation to the victim's mother, holding that the victim died due to beating by the police.
- **Victim's right to challenge bail**– In *Puran v. Rambilas*[191] and *P. Rathinam v. State*[192], the Apex Court interpreted Section 439 (2) Cr.P.C. in a way that the victim has a say in the grant of bail to an accused. The Court recognized the right of the complainant or

[189] AIR 1983 SC 1086
[190] AIR 1990 SC 513
[191] (2001) 6 SCC 338
192 (2000) 2 SCC 391

any ‘aggrieved party’ to move the High Court or the Court of Sessions for cancellation of a bail granted to the accused.

4.5 Other enactments regarding benefits to victims

The Protection of Women from Domestic Violence Act, 2005

This Act is a major achievement of the women’s movement towards protection of domestic violence victims after a struggle of 16 years. This Act aims to provide for more effective protection of the rights of women guaranteed under the Constitution. The definition of domestic violence is wide enough to include physical, sexual, verbal and emotional abuse. The unique feature of the Act is that it prohibits denying the victim “continued access to resources or facilities which the aggrieved person (victim) is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household”. A police officer, protection officer or a magistrate who has received a complaint of domestic violence has a mandatory duty to inform the victim of her right to obtain a protection order or an order of monetary relief and other rights.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

This is also an innovative law aiming to protect elders and prevent elder abuse and victimization, which is a growing problem in many countries, including India. Under this law, an obligation is created of the children or adult legal heirs to maintain their parents, or senior citizens above the age of 60 years who are unable to maintain themselves out of their own earnings, to enable them to lead a normal life. If children or legal heirs neglect or refuse to maintain the senior citizen, the Tribunal can pass an order asking the children or legal heirs to make a monthly allowance for their maintenance.

Protection of Children from Sexual Offences Act, 2012

This Act has been enacted with a view to prevent of child abuse and victimization. It makes any kind of sexual gratification from a child punishable with strict punishments.

Prevention of Caste-Based Victimization and Protection for Victims

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is an act to prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes. Under this Act, compensation to victims is mandatory, besides several other reliefs depending

on the type of atrocity. The victims are entitled to receive monetary compensation ranging from Rs. 25,000 to 200,000 depending on the gravity of the offence.[193]

Motor Vehicles Act, 1988

The victims of vehicular accidents or their legal representatives are entitled to compensation from the offender under Section 5 of the Act.

VICTIM'S RIGHTS IN INDIA

The general rights available to crime victims include:-

- **THE RIGHT TO ATTEND THE CRIMINAL JUSTICE PROCEEDINGS-** Which specifically imbibes the right of the victims and their families to attend the trial, sentencing, parole hearing of the offender as well as other proceedings. However the rule bars the witnesses being victims to attend the trial so as to prevent the witnesses from the influence of other witnesses while giving testimony in a case. Unless the police considers it necessary the victim pays no significant role since the law existing in India visualizes a prosecutor appointed by the state as a proper authority to plead on behalf of the victim.
- **THE RIGHT TO BE HEARD-** It is one of the most important rights available to victims, which thereby affects their interests because it is through this that he victim can play a proactive role in the criminal justice process. It is requisite before the final disposal of the case for the prosecutor to obtain the opinions of the victim and has to certify to the court that the victim has been duly consulted, before the prosecutor prays for his plea to be accepted.
- **THE RIGHT TO BE INFORMED-** It is necessary to notify the victims and their families about the scheduling, re-scheduling and cancellation of the criminal proceedings as well as the aftermath of such proceedings. Secondly certain legal rights must be made known to the victims including the right to attend the proceedings, to submit a victim impact statement, sue the offender for pecuniary damages, and to receive a an order from the court seeking protection of the victim from the offender or his family or associates.
- **THE RIGHT TO COMPENSATION-** The legislative framework regarding compensatory relief to victims in India consists of mainly four areas:- (a) The Code of

[193] Chockalingam, supra note 22, p. 104

Criminal Procedure. (b) The Probation of Offenders Act, 1958 (c) The Motor Vehicles Act, 1988 (d) The constitutional scheme in the form of Supreme Courts verdicts while interpreting fundamental rights or DPSPs1 or under Articles 32, 136 and 142 when the court may direct payment of compensation to the victims of crime.

- **THE RIGHT TO BE PROTECTED-** These protective measures may include:- (a) Police protection while escorting them to and from the court. (b) Witness protection (c) Relocation of address (d) Ensuring the separation of waiting areas for the victims from that of the accused or his family members or associates during court proceedings. (e) Denial of bail or imposition of specific conditions in case of bail release like no contact orders for defendants who appear to be a possible threat to a specific community.
- **THE RIGHT TO RESTITUTION-** It might be in the form of payment of damages or return or repair of property stolen or damaged during the crime being committed. However restitution may not cover sufferings like emotional trauma unlike possible future losses.
- **THE RIGHT TO SPEEDY TRIAL-** No unreasonable delay shall hinder the disposition of the case. The court however must consider the impact of delay on the victim before pronouncing the final decision.
- **THE RIGHT TO ENORCEMENT OF THE LEGAL REMEDIES-** The legal rights available shall not be meaningful unless and until they are being enforced.

CHAPTER- 5

CONCLUSION AND SUGGESTIONS

Chapter-5

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5.1 CONCLUSION AND SUGGESTION

There may be a number of rights defined for the victims but the reality remains to be somewhat different with inadequacy and enforcement issues with such rights. There are two sections in the society; one that is accused and the other being victims out which the accused rights, punishment and rehabilitation is being widely discussed but little heed is being paid to the victims needs. The present situation demands for the victim's rights to be treated as the basic human rights than just being considered as a part of the criminal justice process. A proper statutory scheme is required to deal with the victim's rights in comparison to the present situation where it is dealt in fragments. As per the research of the criminologists and victimologists the newly gained rights have short term impact and the plight of the victims remains the same. The hard truth is that the concept of victimology remains to be a paper work in our country while in reality it has little practical utility. Apart from the statutory scheme the role of courts and judges remain is greater value in leaving an impact through their decisions on the social order. In nutshell it can be said that the immediate requirements to restore the rights of victims include victim compensation, freedom to choose one's own lawyer and security of the victim.

Every crime depicts the failure on the obligation of the state to respect, protect and fulfil the human rights of its subjects. Not only that every single crime, evidences failure on the part of state, to maintain law and order, harmony and tranquillity in the society, to protect life and property of the people and to use its authority to suppress crime and punish offenders. Crime often entails substantive harm to people and not merely symbolic harm to the social order.[194] Therefore it is desirable that the structures of criminal justice as well as their theoretical bases should reflect the interests of individual victims as well as the broader interests of the state.[195] In fact law commission, National Commission to review the working of the constitution, Malimath Committee and also several decisions of the apex court have unanimously highlighted the need to provide justice to the victims including right to assistance and compensation in all stages of criminal justice process. It is not to be forgotten that if the victim chooses not to cooperative with the criminal justice system, the whole system will collapse.

[194] Supra note 4 at p385
[195] Supra note 24 at p158.

Hence there is an urgent necessity to streamline the criminal justice system by legitimately including victims' rights in the system, especially right to monetary compensation. It should be made available whether or not conviction of the accused take place or whether he is apprehended or trial has begun or not. In fact the contribution of judiciary with respect to providing compensation for violation of his human rights is really appreciable. With respect to sec 357 also the judiciary through its creative interpretation had attempted to provide remedy to the victim. It is now mandatory that court should determine in every criminal case the necessity as to awarding compensation. The criminal Procedure (Amendment) act, 2008 which incorporated Sec 357 a providing for victim compensation fund is a giant leap in this regard. The recent contribution of apex court in implementing this provision is also appreciable and that presently it has become obligatory on the part of court to provide interim compensation in deserving cases. Now that victim could get some solace by means of interim compensation provided under the scheme. It is not necessary that conviction of the offender must be recorded. Though Supreme Court has taken initiative to make the judicial members to be aware of this scheme, it is also necessary that common men also must be made aware of this provision. Legal awareness camps must be held in this regard. It is also important that wider publicity must be given in the media as to the availability of this scheme. At the same time it is also necessary that there should be uniformity as to the amount of compensation and that it is arbitrarily low in some states as lamented by Supreme Court in Suresh v. State of Haryana. Though the Honourable apex court has strived to achieve uniformity in this regard, it highlights an urgent requirement for a comprehensive legislation on victims' rights.

It is also pertinent to note that any compensation scheme would involve three major issues.[196] 1. Who should be paid compensation? 2. How much should be paid? 3. What should be mechanism? First issue involves which categories of victim or his dependents should get compensation like the cases in which the offender is not apprehended but victim is identified, or offender is below 7 years of age or insane, or where prosecution has not taken place or in sexual offences where the offender is acquitted etc[197] As to the second issue, it may involve determination as to how much amount is to be paid as compensation. It may cover loss due to permanent or temporary physical disability, mental agony, loss of employment, medical expenses etc suffered by the victims or his dependents. Compensation may also include interim one, to meet the emergency situation. As to the third issue, suitable mechanism must be there

[196] Rabindra K Mohanty & Satyajit Mohanty ,Text book on criminology, penology and victimology,454(2012)
[197] Ibid

to determine the amount of compensation, for expeditious disbursal of the amount, to decide about falsity of the claims, issues as to inflated demands. A mechanism which deals with all the issues relating to the claims of compensation must be there. It is advisable that the mechanism works at district, state and national level. All these again point towards the need for a comprehensive legislation which defines victim's rights covering in unambiguous terms all issues relating to claims of compensation. It is laudable that a beginning has already been made by staunch initiatives by judiciary. It is really a matter of solace that The Twentieth Law commission has undertaken a study on comprehensive review of criminal justice system in India. It may be hoped that the commission may come up with commendable recommendations in this aspect. It is pertinent to note that the criminal justice administration in any country will move towards a new direction of better and speedier justice only when victims' rights are recognised. It is now high time for the legislature to rise to the occasion and enact a comprehensive legislation on victims' rights in criminal justice so that victim feel that society care for him and that he is no longer a forgotten party in the criminal justice administration.

In the current decade of victimological research, there is a substantial interest in the study of impact of crime on victims and ways to assist them. Assistance to victims of crime is of great significance because victims have suffered irreparable damages and harm as a result of crime. The problems of crime victims and the impact of crime on them is varied and complex. Therefore, the agencies of the criminal justice system should be receptive to the needs of the victims of crime and address their issues sincerely and empathetically. Like in the United States, Europe and the other developed countries, both the Government of India and the State Governments should enact exclusive legislations for victims of crime, as the existing provisions in the criminal laws are not sufficient. A ray of hope is the recommendations of the Committee on Reforms of Criminal Justice System headed by Justice V. S. Malimath. The Committee has emphasized the need for a paradigm shift in the justice system. Hence, the Government of India may have to take eff orts to implement the recommendations of the Committee on Reforms of Criminal Justice System. There should also be a change in the focus from criminal justice to victim justice, but victim justice should be perceived as complementary and not contradictory to criminal justice.

A satisfactory sentiment arises from this study: the international community has irreversibly launched the war against impunity for the most serious crimes. The world will no longer be a safe place for dictators and other violators of human rights. Victims will no longer be left alone to heal their wounds; they shall be rendered justice. This mission is today carried out by the

international criminal tribunals and the ICC. They signify the end of what Morris and Scharf have identified as 'the unfortunate triumph of impunity over justice.'[198] Their unified campaign against impunity notwithstanding, the ad hoc international tribunals and the ICC approach the issue of victims' redress differently. The ad hoc tribunals do not award reparations to victims. Moreover, although their statutes allow them to order restitution of property unlawfully taken in the course of the wrongdoings or to refer the matter to domestic for an indirect form of reparation, these options have not been used either by the ICTY or by the ICTR. Efforts have been made to justify this lack of interest for victims' rights. It has, for instance, been strongly argued that reparation proceedings would be time-consuming (for overworked and short-lived tribunals) and that there exist quicker and simpler avenues for reparation.[199] Heikkilä has revealed that some lawyers with a common law background have warned that criminal proceedings in which victims have participatory rights threaten the accused person's right to fair trial by disturbing the delicate balance between the prosecution and the defence. And the ICTY and ICTR judges have strongly opposed the prosecutorial proposal to amend the statutes of the ad hoc tribunals so as to incorporate effective redress provisions. By contrast, the ICC will be able to grant reparation to victims. The ICC redress provisions grant victims three kinds of rights: participation, protection and reparation. The Rome Statute also establishes two structures dealing with victims' rights and concerns: the Trust Fund and the VWU. However, despite these historic achievements, there are some gaps in the ICC's victim-friendly regime. The beneficiaries of the Trust Fund and the assessment of reparation claims are for the moment unspecified. Furthermore, the ICC has not started functioning yet, so as it is very difficult to predict its shortcomings or to assess its ability to implement its numerous victim-oriented provisions.

Some NGOs, such as the Coalition for the ICC have launched a campaign for the worldwide ratification of the Rome Statute. It is hoped that this campaign succeeds and that non-state parties ratify and implement the Rome Statute. Only widespread ratification and domestication of the Rome Statute will allow the ICC to achieve its goals. Finally, states parties are urged to make generous financial contributions so as to allow the ICC and its Trust Fund to provide meaningful damages to victims of the most heinous crimes.

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[198] V Morris & M P Scharf, The International Criminal Tribunal for Rwanda, (1998) 5 ILSA Journal of International and Comparative Law 1.
[199] Heikkilä (n 4 above) 188.

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