"RIGHTS TO VICTIM IN CRIMINAL JUSTICE SYSTEMS"

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LIST OF ABRIVATION

1. AD	Action Dropped
2. AIR	All India Reporter
3. AWPS	All Women Police Station
4. Cr.L J	Criminal Law Journal
5. Cr.P.C	Criminal Procedure Code
6. CJS	Criminal Justice System
7. DSP	Deputy Superintendent of Police
8. EJC	Extra Judicial Confession
9. FIR	First Information Report
10. IEA	Indian Evidence Act
11. ICTY	International Criminal Tribunal for the former Yugoslavia
12. I.O	Investigation Officer
13. IPC	Indian Penal Code
14. IPS	Indian Police Service
15. NCRWC	National Commission to Review the Working of Constitution
16. NCPCR	National Commission for Protection of Child Rights
17. NGO	Non-Governmental Organization

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Chapter I

Introduction

The concept of victim dates back to ancient cultures and civilization. Its original meaning was rooted in the exercise of sacrifice - the taking of the life of a person or animal to satisfy a deity. Over the centuries the word victim comes to have additional meanings so as to include any person who experiences injury, loss or hardship due to any cause.

The ancient societies recognized the natural right of victim to inflict punishment on the wrongdoer by way of revenge. In the Hindu scriptures of Manusmriti a harsh punishment is prescribed for the violators of law. With the passage of time it was realized that the victim should not be allowed to take law into his own hands for this purpose. Instead of that, the state or the society should consider it to baits collective duty to ensure that the criminal or the wrongdoer gets suitably punished. The deterrent punishment was considered important to control crime during old days. Subsequently with the emergence of industrial revolution especially after French revolution a sea change was noticed in every walk of life and in every corner of planet. It was realized that the deterrent punishment was ineffective to control crime and deter the criminals from committing the crime. A result of study of crime from the stand point of criminals, it was felt that criminals are created by the society. Accordingly anxiety was shown from national and international forum for the treatment and restitution of the criminals so that they can come back to the main stream of society. Thus with the passage of time and increasing interaction with the western civilization the focus of the penologist, jurists, criminologist and government was shifted to the rights of the under trials and reformation of the convicts and hence the victims became the forgotten men of our criminal justice system.

The history of crime is as old as of mankind itself but in the primitive period "a tooth for a tooth", “an eye for eye” and “a life for a life” was the essence of criminal justice in those olden days. But when we talk about development of law, the Code of Hammurabi is considered one of the first known attempts to establish a written code of conduct. The noteworthy importance in the code was its concern for the right of victims.[1] In reality this code may have been the first "victim rights statute" in the history of criminal justice system. As the civilization developed new ideas regarding individuals rights and his corresponding

[1] H. Gurdon, Hammurabi's code: Quaint or forward looking, (Rinehart, New York) 1957.

Duty to his fellow human beings took shape. The crime was no longer considered an offence against the individual only, but a revolt against the norms of an organized society and an attack on the civilization of the day. Soon the state took upon itself the right to identify and punish the offenders.

In a modern welfare state, the purpose of criminal justice system is to protect the rights of individuals and punish the wrongdoer for the violation of basic norms of society. To insure that innocent persons may not be victimized the accused has been granted certain basic rights and privileges to prove his innocence. In case the accused found guilty he is punished and kept in prison with an object of reforming him. Courts have from time to time directed the state authorities to provide all necessary facilities and ensure that human rights of criminals are not violated. The Constitutional and legislative protections given to accused person to avoid any kind of injustice with him or he cannot become the scapegoat during the process of trial. In fact, it is a short coming of our criminal jurisprudence that crime do not attract due attention perhaps the criminal justice system is arbitrary and operates to the disadvantage of the victim. Krishna Iyer J. in Rattan Singh v. state of Punjab, [2] aptly highlighting the apathy of law to a victim of crime, observed:

"It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature."

1.2 Meaning of Victim

The term victim is lacking descriptive precision it implies more than the mere existence of an injured party, in that innocence or blamelessness is suggested as well as a moral claim to a compassionate response from others.

The term victim is defined in oxford English dictionary as:

"Victim is a person who is put to death or subjected to misfortune by another; one who suffers severely in body or property through cruel or oppressive treatment: one who is destined to suffer under some oppressive or destructive agency : one who perishes or suffers in health etc. from some enterprise or pursuit voluntarily undertaken."

[2] (1979) 4 SCC 719

According to new Webster's dictionary victim means:

"A person destroyed, sacrificed or injured by another or by some condition or agency one that is cheated or duped a living being scarified to some deity or in the performance of a religious rite".

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As per Collins English Dictionary:

'Victim' means a person or thing that suffers harm, death etc. from another or from some adverse act, circumstance etc.

According to new Webster's dictionary victim means:

"A person destroyed, sacrificed or injured by another or by some condition or agency one that is cheated or duped a living being scarified to some deity or in the performance of a religious rite".

In the context of criminal justice system the term victim is defined in Black's law dictionary as:

"The person who is the object of crime or tort, as the victim of a robbery is the person robbed".

As per Macmillan dictionary victim

“Someone who has been harmed injured or killed as the result of a crime”.

Sec.2 (wa) Cr.P.C. defines the term Victim:

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.

1. 3 Objectives of Research:

1) To make an enquiry in regards to basic violations of human rights of victim and its concern in present criminal justice system.

2) To scrutinize the issue from various social, legal and psychological dimension so as to provide justice to the victims.

3) To probe the changing facet and scenario of criminal justice system and its attitude towards the victim.

4) To make an enquiry from international perspective and accordingly suggest the changes / modification / alteration in Indian criminal justice system.

5) To trace out the hurdles, loopholes and pitfalls if any in available legal framework and criminal justice system protecting the interest of victims and suggest suitable changes wherever necessary.

6) To fathom the reasons for the unwillingness of the victims to report to the police.

7) To suggest remedies on the basis of research this would make the existing criminal justice system more effective.

1.5 Hypothesis

1) The criminal justice system requires due consideration and new outlook towards victim to mitigate the ends of justice.
2) Whether the Indian criminal justice system and implementing machinery is effective enough to deliver justice to the victim?
This hypothesis is based on the neglected position of victim in criminal justice system and consideration and re-consideration and formulation of new policies with this object.

1. 5 Statement of Problem

This issue has many angles in the era of humanitarian approach and democratic sense and set up of criminal justice system. The justice to the victim from the criminal justice point of view is an area of utmost important. As this being one of the neglected issue which needs topmost attention and consideration. This is the thing which prompts the researcher to peep into this unattended area. As a law on paper is much more different than law in execution because of

Many difficulties so is a case with justice to the victim. Considering the various angles and vast area the researcher want to complete this research in meaningful and manageable time, the main focus will laid down on Indian perspective only.

1.6 Research Methodology

The problem is selected with great interest keeping the significance and impending needs in the societal conditions on the role and protection of victim in the present criminal justice system. The topic selected by researcher to study in systematic way and which is relevant under social, political and economical in general and legal in particular. The nature of the study is being socio-legal it is not possible to do empirical way. However doctrinal research methodology used in order to critically analyses the Indian legislative framework including the laws, policies and the role of Indian judiciary with reference to protection of victims of crime.

1. 7 Importance of Victim in Criminal Justice System:

No one expects to be the victim of a crime or a witness to a crime but it does happen. Every year many citizens are victimized by crimes. The knowledge of victims or witness about a criminal case is extremity important. No crime can be solved without the help of victims and witnesses. So participation of victims in criminal justice system could prevent others from being victimized.

The criminal justice system depends on crime victims to come forward, report their crimes and co-operate in seeking to hold offenders accountable. As without the co-operation of victims and witnesses the criminal justice system would cease to function, yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.

The existing criminal justice delivery system has failed to satisfy the society in maintaining law and order. One main reason for its partial failure is overemphasis in court proceedings on the right of the defense of the accused, being his constitutional right under Articles 20, 21, and 22 of the Constitution of India. Under the penal laws of India, in the process of trial for an offence, the focus always remain on the accused with insistence on all concerned to give him fullest opportunity to defend himself against the charge. In the existing procedure of the court, hardly any attention is paid towards the plight and right of the victim and witnesses on whose evidence the efficacy of trial and the verdict of court depends. The apathy towards the right of victim and very little or no participation given to him in the course of trial coupled

with frequent occurrence of witnesses turning hostile under compulsions, e.g. intimidations, coercion or allurement deflects the course of justice, invariably resulting in acquittals. The victims are thus left to suffer physically, mentally and financially under the crime committed against him.

The balance between the right of the offender and those of victim is heavily shifted towards that of the offender whereas it should have been the other way round. The victim here is the heavy loser. His role is almost next to none in whole of the process. The laws and provisions so provided are not adequate and do not help in casing the suffering and distress of the victim.

The victim remains only as a witness in the proceeding and to improve his status the researcher gives remedies from victim's viewpoint and suggestion for improvisation have also been added. Not only this research work sees the victim from human rights angle too, it further reveals that how victimization has been well taken up by the human right bodies. The issue at hand is the balance between the human rights of the offender as well as that of the offended, though there is a fine-line only between the two. The judiciary and administration around the globe has been rightly influenced by the human rights. Along with this, various other relevant provisions are properly discussed in the work.

1.8 Review of Literature

Researcher would like to make an extensive survey of available statute, legislative and regulatory framework on criminal justice system coupled with humanitarian approach. For this research the researcher would like to rely on human right approach as well as criminal law approach considering victim at a central point. Also researcher is relying on textual material, statutes, judicial pronouncement, report of law commission, national and international conventions and their reports, articles, journals, encyclopedia etc. would form the basis of this research. Here researcher gives brief review of some text book and Mallimath Committee Report which will helpful to carry his research work.

Mallimath Committee Recommendations-

Justice V. S. Malimath Committee on Reforms of Criminal Justice System, Volume 1 India (March 2003) - This report is also called as Malimath Committee Report, in this report

Various committee members recommended suggestions on reforms of criminal justice system and tried to make criminal justice system more effective. The committee also focuses on the role of victim in the criminal justice system and gives effective suggestions to improve the status of victim. Researcher agrees with this report because ―justice given to victim as well as critical analysis on loopholes of the system are neatly observed by the committee. Investigation process, role of judiciary, the difference between adversarial and inquisitorial model of criminal justice system etc. classically compiled. The vision for better criminal justice system is useful to review the status and position of victim under present criminal justice system.

Prakash Talwar "Victimlogy" ISHA publishing house, New Delhi, 2006

In this book the basic concept and development of science of Victimology has been explained and also helpful to clear idea about what is victimological science.

Mohammad Farajiha Ghazvini, "Police Protection to Victims of Crime" -Deep and Deep publication Private limited, 2000

The Concept and definition of victim, who is victim of crime, origin and history of victim, classification of victims is sort out from this book. Author says about how victim is originated and how it suffered from different types of offences. That's why this book is useful to understand the meaning of victim and at the same time it is useful to trace out the history regarding development of position and status of victim.

G. S. Bajpai, Victim in the Criminal Justice Process: Perspectives on Police and Judiciary, Uppal Publishing House (1997), New Delhi.

The author gives emphasis on process of victimization, post victimization effect of violent crimes, nature of problems of crime victims in justice process and the need for assistance to them. This text book is useful to understand the role of victim in the criminal justice system.

K. D. Gour Textbook on Indian Penal Code, III Edition, 2004 Universal Law Publishing Company Private Limited.

In this book Prof.Gaur included the article on-justice to victim which stressed upon the weakness of our criminal jurisprudence. Also in this article one quotation by Hon'ble Justice Krishna Iyer is very much inspires the reader. So this book is very helpful to start introductory part of research.

K. I. Vibhute, Criminal Justice, Eastern Book Company, Lucknow, First Edition, 2004.

This is a great compilation of different essays written by scholars from India and abroad which are edited by Prof. K. I. Vibhute. No doubt these essays are thought provoking to understand the 'human rights perspective' of individuals – accused, prisoner and victim of crime who come in contact with the State, vital State functionaries which includes the police, prosecution and courts. From researchers point of view this book will be helpful to him to understand the problems in relation to victim of crime, how victim struggled for getting justice as the author concentrated mainly on - approach of human rights towards justice to victim of crime. As per my opinion the book contributes a great stuff for research.

N.V. Paranjape, Criminology and Penology, Central Law Publishing, 12th edition, 2005.

In this book the concept of crime has been given and also researcher referred various dimensions of Victimology from this book.

S. Venugopal Rao, Victims of Crime, Allied Publication Limited, (1989) New Delhi.

In this book the author tried to direct the focus on the position of victim in the administration of criminal justice and makes a careful examination of the legal provisions, which defines his status as one who is directly affected by the criminal act and as one whose participation in the system's functioning at various points is of vital importance.

Bharat B. Das, Victims in the Criminal Justice System, APH Publication, (1997) New Delhi.

The author tries to study the victims position in the criminal justice system and makes a critical study of the legal provisions dealing with compensation to the victim and an attempt also has been made to critically study various problems faced by the victim and ultimately he gives valuable suggestions to improve the condition of victim and to make the criminal justice system more meaningful.

Jonathan Doak, Victims' Rights, Human Rights and Criminal Justice, Hart Publishing (2008), USA.

This is a commentary on victims, in relation to the notion of human rights and the rights of victim of crime. This book aims to unite this discourse by considering the prospects for realizing victim's right within a human rights framework. The author argues that the very

Concept of victim's right rings hollow unless we reconceptualise these rights as being human rights, fully protected and directly applicable within both domestic and international legal orders. I think this book is helpful to analyses the features of Adversarial and Inquisitorial criminal justice system.

Harvey Wallace, Victimology, Allyn and Bacon Publication (1998), USA

Author attempted to take a global perspective on the study of victimology which includes traditional theories regarding victimology and he also makes a brief discussion about responses to victimizations, consequences of victimization and empowering of victim.

Chapter II

Criminal Law and Human Rights Perspective of Victim Status

The role, importance, and visibility of the victim have varied greatly in human societies. These variations reflect the historical revolution of legal concepts, as well as diverse approaches to the interpretation of such notions as that of individual responsibility. At one time in history, the victim of crime enjoyed the central position in the administration of the criminal justice. Over the centuries, however, the victims have evolved as a mere witness in the criminal proceedings. In this chapter researcher tries to trace the history, origin and development of the position of the victim. The researcher also tries to study the status of victim in each period including ancient, medieval or modern period and also tries to analyses how his/her status changed in each period. At the same time researcher also tries to study various theories of victimology as it is equally important one to study victim - offender relationship and how these theories develop various typologies of victims which are helpful to study the victims of crime from different angles.

Crime and criminal has been recognized throughout the history of mankind. So also in the criminal-victim relationship, the aspect which was recognized was the harm, injury, or other damages caused by the criminal to his victim. Till the end of II World War there has been virtually no consideration of the victim's participation in the wrong doing or victim's perception of criminal justice system or compensation to the victim of crime by the criminal law and criminologist. But historically the victim once enjoyed the golden age during which his important role was recognized and also an emphasis was given for due consideration to compensation recognizing his right to physical and economic well-being in terms of human dignity.

The mythological heritage of any society would indicate that the concept of victim of crime was inextricably woven with sacrifice made in the name of religion, custom and the contemporary social rituals. It is also true that before societies created laws or rules, law and order originated in the individual. The victim himself chose the culprit's punishment and, if possible inflicted it. Hence in early societies the relationship of victim and offender primarily demonstrated a struggle for power and survival, and the right of the individual victim to take revenge was of great importance.

During Middle Ages the victim had an important role to play. Also in the Germanic common law, the victim was of focal concern so far as the issue of crime-compensation was concerned. Apart from this, the Law of Moses, the Code of Hammurabi, ancient Roman Criminal and Civil Law and the Law of Twelve Tables etc. were the legislations which included many issues relating to crime victims. During the administrative regimes of Bot, Wergil and Anglo-Saxon-England and the law of Deodand in the Indian context also provided some help to the victims of crime. This period was said to be the golden age for the victims of crime.

2. 2 The Code of Hammurabi

When we discuss the status of victims of crime in criminal justice system it is essential one to know about Hammurabi's Code. The noteworthy importance of the code was its concern for the rights of victims.[3] This code has been treated as the first "victim rights statute" in history. At the same time the Code of Hammurabi is considered one of the first known attempts to establish a written code of conduct. King Hammurabi ruled Babylon at approximately 2000 B.C. He was the sixth King of the First Dynasty of Babylonia and ruled for nearly fifty five years. Babylon during that period was a commercial center for most of the known and civilized world. Because Babylon's fortune lay in trade and other business ventures, the Code of Hammurabi provided a basis for order and certainty. The code established rules regarding theft, sexual relationship and interpersonal violence, and it was intended to replace blood feuds with a system sanctioned by thestate.[4]

1. A Penal or code of laws
2. A manual of instruction for judges, police officers, and witnesses
3. A handbook of rights and duties of husbands, wives and children
4. A set of regulations establishing wages and prices.
5. A code of ethics for merchants, doctors, andofficials.[5]

The code established certain obligations and objectives for the citizens of Babylon to follow, these included:

[3] H. Gordon, Hammurabi's code: Quaint or forward looking, (Rinehart, New York) 1957.
[4] S. Schafer, The victim and his criminal, Random House, New York, 1968
[5] Masters& Roberson, Inside Criminology, Prentice - Hall, Englewood Cliffs, N.J. 1985

1. An assertion of the power of the state. This was the beginning of state administered punishment .Under the code, the blood feuds that had occurred previously between private citizens were barred.

2. Protection of the weaker from the stronger. Widows were to be protected from those who might exploit them; elder parents were to be protected from sons who would disown them, and lesser officials from higher ones.

3. Restoration of equity between the offender and the victim. The victim was to be made as whole as possible and in turn forgave vengeance against the offender.

The Hammurabi Code was a nice code to take care of every section of society and it frames the code, ethics for doctors, judges and fix the wages and prices, it also states about to take care of weaker section of society including elders, widows and Childs. The most important feature of this code is to prevent blood feuds and the restoration of equity between the offender and the victim. But unfortunately it was relatively short lived. Victims were again to be neglected in society's rushed to punish the offender with the result that victims' rights would not resurface again until the present century.

Babylon law had a considerable influence on cannaites in Palestine and there are similarities between the code of Hammurabi and the restitution of the Old Testament. Restitution and vengeance were the theme of punishment. It provided that a thief could not afford to compensate a victim, he becomes the victim's property and could be sold as a slave, the victim keeps the sale proceed as compensation. Theft was discouraged by imposing a severe burden of restitution on the offender by compelling him to pay four or five times the stolen property.

2. 3 Other Early Codes and Laws

The Mosaic Code which is based on the assumption that God entered into a contract or covenant with the tribes of Israel, had a long –lasting impact on our collective consciousness. According to tradition, Moses returned from a mountaintop carrying the Ten Commandments, which were inscribed on two stone tables. These commandments subsequently became the foundation of Judeo-Christian morality. The Mosaic Code also becomes the basis for many of the laws in our modern society. The prohibitionagainst

Murder, perjury and theft were all present in the Mosaic Code thousands of years before the founding of the United States.[6]

The Germanic tribes enjoyed more rights than those of Rome. By the 9th century A. D. and time of Alford and his so called "Dooms of Alford," the blood feud was invoked only if the victim's request for monetary compensation was denied. Like Hammurabi Code, each crime had a price depending upon the types of crime committed as well as victim's status, age, sex. Another important milestone in the development of law was early Roman law; Roman law was derived from the Twelve Tables which were written around 450 B.C. These laws had existed for centuries as unwritten law and applied only to the ruling patrician class of citizens. A protest by the plebeian class who were the workers and artisans of Rome caused commerce to come to a standstill. These workers wanted the law to apply to all citizens of Rome.[7] As a result the laws were inscribed on twelve wooden tablets and prominently displayed in the forum for all to see and follow. These tables were a collection of basic rules relating to the conduct of family and religious and economic life.

In the middle of the first century, England was conquered by Roman legions. Roman law, customs, and language were forced on the English people during the next three centuries of Roman rule. When an offence was committed, compensation was paid to the victim or to the victim's family. If the perpetrator failed to make payments, the victim's family could seek revenge, usually ending in a blood feud. For the most part during this period, criminal law was designated to provide equity to what was considered a private dispute. Inspite of the fairly close relationship between the ancient Roman criminal and civil law, it is not easy to find reliable information concerning the position of the victim or restitution to him. According to the law of the Twelve Tables the codification of Roman oral law, a thief who was caught in the act of committing the theft was obliged to pay double the value of the stolen object. In cases where the stolen object was found in a search of his house, he was to pay three times the value or four the value if he resisted the execution of the house search. He was to pay four times the value of the object if he had stolen it by force or threat of violence. In certain cases the kinship was exposed to the revenge of the victim.

In the case of slander, also, the insulting person had to pay. The sum to be paid was decided by the magistrate according to the rank of the victim, his relation to the offender, the

[6] S.A. Cook, The Laws of Moses and the code of Hammurabi, Adam and Charles Black, London, 1903
[7] O.W. Mueller, "Tort, Crime and the Primitive", 43 Journal of Criminal Law, Criminology and Police Science, 303, 1955

seriousness of the offence, and the place where it was committed. In any case, the history of Roman law shows some general decline from its classic stage to the Justinian period, its system of responsibility reached higher level than did any previous law.

However, it was only toward the end of the Middle Ages that the concept of restitution was closely related to that of punishment and was temporarily included in penal law. Still the victim's role in the crime itself was not considered at all and his participation in criminal procedure served only to gain satisfaction for his injury. At the same time the influence of the king and the court grew, so did their share of the payment and the sums received by the victim steadily declined. This resulted in the total payment being taken by the Crown with the victim's right to restitution being replaced by a fine decided by a tribunal.

2. 4 Ancient Hindu Law

In the early era of history, it is established that the emphasis was on compensation to the victim or the "spiritual" and material satisfaction of the victim, rather than on punishment of the offender.

Reparation or the compensation as a form of punishment is found to be recognized from ancient time in India. In ancient Hindu law during sutra period, awarding of compensation was treated as a royal right. According to the law of Manu,[8] the offender requires to pay compensation and pay the expenses of cure in case of injuries to the sufferer and satisfaction to the owner where goods were damaged. In all cases of cutting of a limb, wounding or fetching blood the assailant shall pay the expenses of a perfect cure or in his failure both full damages and a fine of some amount.[9]

In ancient Hindu law, the law gives were fully aware of the necessity of directly compensating of victims of crime. Thus Manu in Chapter VIII, Verse 287 says: [10]

"if a limb is injured, a wound (is caused) or blood (flows, the assailant) shall be made to pay (to the sufferer) the expenses of the cure, or whole (both the usual amercement and expenses as a fine to the king)."

[8]Manu, TheProgenitoroftheHumanraceandthegiverofthereligiouslawsofManuaccordingtoHindu Mythology
[9] M.J. Sathna, Society and the criminal, M.N. Sethna, Jurisprudence, Bombay (1969) P. 340
[10]TheLawsofManuinSacredBooksofEast, MaxMuller, Vol.25, OxfordUniversityPress, Oxford (1886), p.304

" A merchant who conceals the blemishes of an article which he is selling or mixes bad and good articles together's or sells (old articles) after repairing them shall be compelled to give a double quantity (to the purchaser) and to pay fine equal (in amount) to the value of the article".

The law of Vishnu and Yajnavalakayas also advocates compensation to the victim of crime for their injury. Yajnavalakaya, Narada and Brihaspati fix compensation twice to the purchase (who paid the price) and a fine an equal amount, in case of fraudulent sale of one article to another, or knowingly, selling defective articles as free from defect. Again traders or business men who lost their property while travelling through the kingdom were also compensated.[11]

According to Dr. Priyanath Sen, [12] in the Hindu law of punishment of crimes occupied a more important place than compensation for wrongs. Payment of compensation to the individual injured was in addition to and not in substitution for the penalty. In ancient India, it was conceived that the King was under a duty to indemnify the individual who had suffered from a crime. As Dr. Sen has observed:

"It is, However, remarkable that in as much as it was concerned to be the duty of the King to protect the property of his people, if the king could not restore the stolen articles or recover their price for the owner by apprehending the thief it was deemed to be his duty to pay the price to the owner out of his own treasury, and in his turn he could recover the same from the village officers who by reason of their negligence were accountable for the thief's escape."

Thus it can be said that in ancient Hindu law, the victim was placed in central stage and liability to compensate and satisfy the victim was on both offender and the king.

2. 5 Ancient Muslim Law

Not only in the time of the Greek, but in still earlier ages, where Mosaic dispensation was established among Hebrews, traces of restitution to the victim are apparent. That dispensation, in its penal department, took special and prominent cognizance of the rights and claims of the injured persons, as against the offender.23 For example, if two men were

[11] Arthsastra by Acharya Vishnugupta (Chanakya) C.F.P.N. Banerjee, "Compression to the victim of criminal violence in India", The Bancras Law Journal, Vol. 12 (1976), P. 110.
[12] Dr. Priyanath Sen, "General Principle of Hindu Jurisprudence", P. 335

involved in a fight and one hit the other with a stone or with his fist with the result that the opponent was badly injured but did not die, the perpetrator was required to pay for the loss of the injured man's time and cause him to be thoroughly healed. For injuries both to person property, restitution or reparation in some form was the chief and often the only element of punishment. Among Semitic24 nations the death fine was the general practice and it continued to prevail in the Turkish Empire.

For every homicide, the Mosaic code bade the elders of the murder's own city "fetch him and deliver him into the hands of the Avenger of Blood."[13] Sometimes the injured persons compounded the offences substantial money payments.

Reparation and compensation as a form of punishment is found to be recognized in ancient times. So also during Islamic rule, restitution and atonement was a recognized form of punishment. The Law of Moses provided four fold restitution for stolen sheep and fivefold for the more usefulone.[14]

In state of Arabia, the tribes in the cities found it necessary to provide compensation for offences against the person in order to prevent the socially disintegrating effects of the blood feud.[15]

Thus, it can well be asserted that in times of yore, the victims of crime were paramount figures on the stage of the criminal setting.

2.6 Victim in the Medieval Period

The change from vengeful retaliation to composition was part of a natural historical process. As tribes settled down, reaction to injury or loss became less severe. Compensation to the victim served to mitigate blood feuds, which, as tribes became more or less stable communities, only caused endless trouble because injury would start perpetual vendetta.[16] Composition offered an alternative that was in many ways equally satisfactory to the victim. In Arabia, the tribes in the cities found it necessary to provide compensation for offences against the person in order to prevent the socially disintegrating effects of the bloodfeud.[17]

[13] Duet (XIX, 12) the fifth book of coronial Jewish and Christian scripture containing narrative and mosaic laws
[14] Margery Fry, Arms of Law (London) 1951, P. 124
[15] E.B. Tyler, Anthropology, New York, (1989)
[16] H.E.BornesandN.K.Teeters, NeurHorizonsofCriminology, PrenticeHall, EnglowoodCliff, NewJeriy, (1944)
[17] E.B. Tyler, Anthropology, New York, (1989) C.F.J.L. Gillin, Criminology

Among the German tribes, the criminal was humiliated to some extent by compensation, which appeased the victim's desire for revenge.30 At this time it was assumed that the victim should seek revenge or satisfaction. This was the only aspect of the criminal - victim relationship that gained recognition. Among the ancient Germans, said Tacitus, “even homicide is atoned by a certain fine in cattle and sheep; and the whole family accepts the satisfaction to the advantage of the public weal, since quarrels are most dangerous in a free state.[18]

Composition combined punishment with damages. For this reason it could be applied only to personal wrongs, not to public crimes. This was only why, in its first stage of development, it was subject to private compromise. This supports the view that during the Middle Ages the penal law of Communities, in which crimes were paid for by restitution, was not a law of crimes, but a law of torts.[19]

Criminal- victim relationships were viewed only in term of the victim's revengeful emotions and his claim for compensation. The injuring party offered monetary satisfaction or something else of economic value. If the injured party accepted it, he was fully avenged and the "criminal procedure" was complete. Payment was entirely to the victim or his family. The amount depended on the importance and extent of the injury. The amount of compensation varied according to the nature of the crime and the age, rank, sex and prestige of the injured party; "A free norm man is worth more than a woman and a person of rank more than a freeman."[20]

Thus the "value" of the human being and their social position were involved in determining compensation and a socially stratified composition developed. By the time of Alferd in 871, the feud was resorted to only after compensation had been requested and refused. The ‘Dooms of Alfred” provided a scale of monetary penalties whereby the knocking out of the front teeth was calculated at a rate of eight shillings to be paid to the victim, the knocking out of an eye tooth or a molar being calculated at four shillings and fifteen shillings respectively. These dooms detailed the compensation for a variety of crimes against the person.

It is difficult to pinpoint the start of new developments in community judicial control, since the community traditionally exercised a certain collective control over the extent of

[18] Tacitus, Germani, Chapter 21, C.F.J.L. Gillin Suprs, F.N. 28
[19] Iriving E. Cohen, "The Integration of Restitution in Probation s ervices", Journal of criminal level and Criminology, Vol.34, (1994), P. 315
[20] Ephrusim Emerton, Introduction to the History of the Middle Age Boston, (1888), P. 87-90

Compensation. The bridge to state criminal law had as a support the system of composition and the settlement by periodical tribal assemblies of the amount to be paid provides an early example of judicial proceedings. Soon after the emergence of composition, some laws elaborated an intricate system of compensation. Every kind of blow or wound given to every kind of person had its price.[21]

Because of the increasing importance of economic goods the delictual conditions started to change and the system of responsibility was transformed. Blood feud faded out and physical retribution began to be replaced by financial compensation. The criminal and his victim introduced the redemption of revenge and submitted the judgment of guilt to negotiation. In most cases, the agreement on the question of compensation still involved both interested political entities - the criminal's tribe, clan, or family and that of the victim. It took some time until the individual offender and the individual victim stood somewhat as they had in the era of private revenge, and negotiated guilt and punishment as two individuals. This was the emergence of a new era in the history of victim's position and compensation called Middle Age.

From the many differences in the amount of damages and in the "value" of the victim, a complicated system of regulation evolved that culminated in the earlier codified law of many people's particularly that of the Anglo-Saxons. Several aspects of the law of Aethelred and of Alfred are mentioned by a Clarence R. Jeffery:

"Henceforth, if any one slays man, he shall himself bear vendetta, unless with the help of his friends he pays compensation for it within twelve months to the full amount of the slain man's wergild, according to the inherited rank " The authorities mustput a stop to the vendettas. First, according to the public, the slayer shall give security to his advocate and the advocate to the kinsmen of the slain man, that he the slayer will make reparation to the kindred. If a man has spear over his shoulder, and anyone is transfixed thereon, he shall pay the wergild without the fine. If a bone is laid bare, 3 shillings shall be paid as compensation. If a shoulder is disabled, 30 shillings shall be as compensation.[22]

Presumably outlay, which resulted from a failure to provide composition, developed in connection with these tariff regulations. If the wrongdoer was reluctant to pay or could not

[21]FredericPollockandFredericWillionmaitlond, theHistoryofEnglishLaw,CambridgeUniversityPress, Vol.II,Cambridge,(1898),P.451

[22]ClarenceR.Jeffery, TheDevelopmentofcrimeinearlyEnglishsociety.Journalofcrimelaw,criminology andpolicescience,vol.47,(1957)pp.645-66.

Pay the necessary sum, he was declared a outlaw, he was to be ostracized, and anybody might kill him with impunity.

A share is claimed by the community or king as a commission for its trouble in bringing about a reconciliation between the parties, or perhaps, the price payable by the malefactor either for the opportunity that the community secures for this of redeeming his wrong by a money payment, or for the protection that it affords him after he has satisfied the award against further retaliation on the part of the man whom he had injured.[23]

Gradually, however, the power of the community exceeded the strength of the individual and the community began receiving. Part of the compensation went to the victim- wergild and another part went to the community- Friedens geld. In Saxon England, compensation for criminal offences consisted of two payments that are, one to the victim's family (War, for homicide, Bot for injuries) and the other to the ruler of kind (Wite).

The next step was for the State to claim all monetary compensation due to a victim. The growth of royal and ecclesiastical authority in the Middle Ages contributed to a sharpening division between tort law and criminal law. By the twelfth century the victim's right to compensation was largely replaced by fines assessed by a state tribunal against the offender. More offences came to be considered crimes against the society or breaking the "king's peace" so that punishment was to be malted out by the king, and the king would be compensated. The Anglo-Saxon adopted the Germanic system of splitting fines between victim and the ruler but whenever a crime was termed as a "breach of king's peace" the king received the entire amount originally for a crime to breach the king's peace. It had to affect the king's household and property directly.

The double payment continued, but gradually the king took all off it. Discretionary money penalties took the place of the old white, while both gave way to damages, assessed by a tribunal.[24]As the state monopolized, the institution of punishment, the rights of the injured were slowly separated from the penal law. Composition as the obligation to pay damages became separated from the criminal law and became a special field in civil law. Thus, the victim was stripped off the financial compensation and psychological satisfaction of avenging crime.

[23] Heinrich Opperheimer, The rationale of punishment, University press of London, London (1913) pp. 162-163.
[24] Pollock and Maintland, The History Of English Law Before The Time of Edward I, vol. 1 (1898)

With this development, the "Golden Age" of the victim came to an end. It had been an era when his possible participation in any wrong doing was not taken into consideration. During that time, in fact, it seems inconceivable that the victim's relationship with the criminal could have helped to develop or precipitate the crime. The criminal victim - relationship was strictly divided between the active role of the doer and the passive role of the sufferer. The criminal alone was responsible for the crime. The victim was merely the injured party; he was not thought to be involved in any psychological intricacies of crime causation and pushed his every advantage as the object of a crime that was allegedly, caused by the criminal. He had almost dictatorial power over the settlement of the criminal case; at no other time in the history of crime has the victim occupied such an advantageous position in criminal procedure.

The state of affairs marks the closing phase of the centuries long period during which criminal procedure was the private or personal concern of the victim or his family and was largely under their control. The injury, harm, or other wrong done to the victim was not only the main or essential issue of the criminal case; it was the only issue. In the criminal procedure there was no room for societal or other considerations. The survival and power of the group, so often the real reason behind the criminal procedure remain almost always behind the scenes. The procedure was exclusively aimed at the private compensation of the victim, which took the form of private revenge.

It was indeed the golden age of the victim. Criminal justice served only his private interests. No other aspects of crime could compete with this concept in this privately owned and privately administered criminal law.

2. 7 Victims in the Modern Age / Period

As we seen the position of victim during the ancient and medieval period in which the victim enjoyed the central position under existing criminal justice system. But when we talk about modern age the situation is going to be changed as in Middle Ages the person harmed must have recourse through the common law, rather than taking the law into his or her own hands. Unfortunately, the picture began to change with modern criminal justice by bringing the offender to book or arrest and to impose fine on wrongdoer to left the victim with ineffective remedies. Some time Government allows compensation to the victims of crime to move slowly from the practice of private vengeance to the enforcement of public justice. As the modern state emerged and the Government took on itself the responsibility of enforcing

Justice, the offender gradually becomes the central figure in the criminal arena. It is, of course true that the evolution has not been uniform throughout the world, there are countries where eye for eye, tooth for tooth, cutting-off the hand for committing theft, castration for offence of rape and death penalty for adultery still prevail, but they are the exceptions. The general tendency is the other way. Therefore, with the criminological theories becoming more and sophisticated, the victim is getting almost forgotten. Whenever the criminal act was treated as a crime against society, the civil remedy for damages was delayed until after the offender's trial, conviction and sentencing. All too frequently, this resulted in the denial of any monetary or tangible personal compensation to the victims.

By the end of the Middle Ages, restitution, as a concept separate from punishment, seem to have been on the wane. Little as we know about crime today, even less was known then. No other possible aspect of the victim's role was taken into consideration, and the victim became the "poor relation" of the criminal law. The decline of restitution as a criminal sanction has been traced to several developments in the criminal justice system.

Even in recent times, but before the Anglo-Saxon [25] system of criminal justice was introduced, the victim was not completely neglected. A story is told how Emperor Jahangir was faced with a problem in one of his "darbars" and how he solved it.

One day the Empress in a fit of anger hit her launderer whose work was not satisfactory. The washerman fell down dead. Somebody persuaded the widow to attend the Jahangir "darbar" the next morning.

The laundress waited trembling till all the others had mentioned their grievances and received redress from the Emperor. Finally, Jahangir looked at her and said, "Who are you? What do you want?" In great trepidation she replied that she was the court laundress and recapitulated the previous day's calamity. "Your husband was killed? By who?" queried Jahangir?

"By the Empress," replied the woman.

It is said that Jahangir was stunned and leaned back on his throne, but only for a moment. He then came down the steps of his throne and faced the laundress. Drawing his sword from the gilded holster, he held it out to her and said, "Hold it." The woman did not know what she

[25]Anglo-Saxon,AmembersofchermanicpeoplethatenteredandconqueredEnglandwiththeAnglesand Jutesinthe5thcenturyA.D.andmergedwiththemtoformtheAnglo-Saxonpeople.

was being led up to. But she obeyed the command of the Emperor. Then he spoke to her along the following lines:

"The Empress killed your husband. Now, with that sword, you kill the Empress's husband. I command you to do it."

The laundress was non-plussed. She felt at the Emperor's feet recovered her equanimity soon enough, and said, "Sire, I have suffered, but I do not want either the Empress or the country to suffer by my obeying in Your Majesty's command. I am prepared to take any punishment for this disobedience.

The story goes that Jehangir was so touched by the words of the washerwoman that he made her a baroness and showered her with riches beyond measure. It is perhaps one of the earliest known cases of victim compensation in modern Indian history.

However, whilst the victim's right to compensation may have diminished in the Middle Ages, victims continued to play a vital role in the process of prosecution until the mid-nineteenth century.

With the growth of centralized legal systems, however, restitution was gradually phased out. Government took over; crimes seen as act against the State, and the State assumed the role of the Prosecutor. It was the State that decided what punishment the offender should undergo and in a sense in return for taking upon itself the major task of dealing with the criminal offences. In the process of transfer from a personalized system to an impersonal state-run system, the victim was virtually forgotten by the system. In the evolutionary process, the government became stronger familial groups which were replaced by the sovereign as the central authority in matters of criminal few. During this process the interest of the state gradually overshadowed and supplanted those of the victim. The connection between restitution and punishment was severed. Restitution to the victim came to play an insignificant role in administration of criminal law. The victims rights and the concept of compensation and restitution were separated from the criminal law instead became incorporated into the civillaw.[26]

The decline in the penological importance of restitution and non-recognition of the victim's functional role in crime gained theoretical support from the endeavor to find different bases

[26]JoceylyneA.Scutt,"Victims, offendersandQestitutionRealAlternativeorPanacer?"TheAustralianLaw Journal,Vol.56(1987),P.156

For penal and civil liability. Victims who want that offender should make good of the losses are left to the civil justice system.

The theories that distinguished between civil and penal liability reveal two trends. According to the subjective view, penal liability results from deliberate infringement of the law. It differs from civil liability in that the latter does not involve strong deliberate opposition to the will of the state. This theory fails to take into account criminal offences committed through negligence. On the other hand, there are certain kinds of deliberate infringement that give rise to civil liability only.

According to the objective view, however, penal wrongs involve a direct injury to the victim, which exists in and of itself, apart from any statement made by the victim. This differs from civil liability, which is an indirect injury solely dependent on the victim's statement. This theory fails to consider that infringement of the civil law can exist independently of the statement of the victim. On the other hand, volenti non fit injuria has some application to criminal law. Generally speaking, since the era of composition, the conventional view is that a crime is an offence against the state, while a tort is an offence only against individual rights.[27] Also, in accordance with this thinking crime means only the offender and his offence and the victim's relationship to the crime are viewed in a civil rather than in a criminal point of view.

However, this may be, the system of compensation surrendered only after a struggle; even after the Germanic-Busse Penal law there are records of victims who, in spite of the common law character of the criminal law, asked for indemnification and personal satisfaction as well as public punishment.

The connection between crime and restitution might have lessened but could not completely disregarded, even after the introduction of the procedure of inquisition, in which the theoretical and practical distinction between the demands of penal law and those of the victim are most acute. Court practice in the 16th and 17 centuries made possible the so called adhesive procedure which opened the way for discretion by a court concerning the victim's claim for restitution, within the scope of the criminal proceedings. Though the original rationale for victim restitution diminished over the years, the potential for restitution itself never completely disappeared as a criminal sanction. Penal codes of the 19th century also

[27]NormenKarlBinding,(3rdEd.Belin,1916)Vol.1pp.433-79,Southerland,PrinciplesofCriminology,P. 14.

Seemed to give some support to the idea of restitution in the form of the adhesive procedure. The procedure appeared in the laws of the some states. Later on, however, the situation got worse, and even in the criminal procedure, the idea of restitution was kept alive only by the force of tradition.

The revival of restitution and compensation was considered during the nineteenth century movement for penal change. Jeremy Bentham [28] advocated the return of compensation, holding that, "satisfaction" should be drawn from the offender's property, but if the offender is without property. It ought to be furnished out of the public treasury, because it is an object of public good.[29] The restitution of crime victims was also discussed at each of the five International Prison Congresses held during the latter part of that century. Almost all eminent criminologists hailed various forms of restitution as desirable, generally in the form of direct payment from the criminal to his victim, either immediately or through prison wages. Garofalo noted that "a fund of this sort existed in the Kingdom of the Two Sicilies[30] as well as in the Duchy of Tuscany, but it never appears to have been of much service to claimants, as the treasury always put it under contribution to defray the expenses of the courts.[31]

The emergence of the 'new' police especially after 1856 when forces were beginning to be established throughout the countries saw the demise of pro victim associations. This resulted ultimately in a fundamental change in the relationship of the victim to the criminal justice process. The introduction of the 'new' police conversely had the effect of increasingly removing the victims from that process. The police forces not only took on the role of searching for and apprehending offenders but also took over the victim's role in prosecution.

In modern societies, the state has assumed the responsibility to protect its citizens from crime and has taken over the exclusive rights, in the collective interest of the community, to punish offenders. However, the state accepts no responsibility for injury to victim. Though retribution occupies a subordinate position in the present day administration of criminal justice, its importance is undeniable. The emotion of retributive indignation is even now the mainspring of criminal law. Solan rightly replied when asked how men might

[28] Jeremy Bentham, 1748-1832, English Jurist and Philosopher; expounded doctrine that morality of actionisdeterminedbyutility,thattheobjectofallconductandlegislationis"thegreatesthappinessof the greatestnumber."
[29] Richard Worsnop, "Compensation for victims of crime", Editorial Research Report, 22 (1965), P. 696
[30] Two Sicilies, Former Kingdom consisting of Sicily and S. Italy
[31] Rafaele Garfalo, "Criminology" (1958), P . 434

Most effectively be restrained from committing injustice: "If those who are not injured feel as much indignation as those who are."

By the beginning of the twentieth century, it can be seen that the status of victim in the criminal justice process was minimal. Victims played a role obviously in reporting crime to the police and there was some minimal legislative provision for compensation. They did not however have a right to compensation, neither were they implicated in the process of prosecution. Means in the beginning of the twentieth century the victims of crime becoming the neglected object in the criminal justice system.

As we discuss the history of victims of crime and how his status is going to be changed during ancient period to medieval and modern period. In earlier days the victim enjoyed a central position as victims were an integral part of the criminal process, but during the beginning of the twentieth century his status going to be deteriorated as we then moved away from that model and the state become the representative of the victim. And this thing invited the attention of different jurist to see towards this problem with a different angle to improve the position and status of victims of crime to bring him at par with the accused person.

The academic study of the victim of crime can however be dated back to the theoretical and empirical work of Hans Vein Henting (1948) and Benjamin Mendelson (1973) whose first study on victim was published in a Belgium Criminology Journal in 1937.The result of the study suggested that the personality of the victim was crucial in attracting the criminal. Hans Von Henting also took a similar approach in his article “Remark on the Interaction of Perpetrator and Victim”. They advanced a dynamic conception of the genesis of crime where victim of crime is no longer considered a passive subject but an active object in the process of criminalization and decriminalization.

Victimology as a distinct field of study has indeed emerged in recent years and is a derivative of its parent discipline criminology. The word ‘Victimology’ was invented in 1947 by Benjamin Mendelsohn by deriving from the Latin “Victim” and the Greek “Logos” meaning science of victim. The primary object of interest of victimology therefore is the person of victim. Marvin, E. Wolfgang defines victimology as the scientific study of the victims and process of etiology and consequence of victimizations. Victimology is also taken to mean the study of social process by which individuals or group are maltreated in a manner

likely to give rise to social problems. The first problem which encountered in victimology is to define, who is a victim?

The term "victim" is often one of moral approbation lacking descriptive precision in respect of actual human behavior. It implies more than the existence of an injured party, in that innocence or blamelessness is suggested as well as a moral claim to a compassionate response from others.[32]

Merriam Webster dictionary defines victim as one that is acted upon and usually adversely affected by a force agent as a (1) one that is injured, destroyed or sacrificed under any of the conditions like victim or cancer, victim of auto crash, victim of murder, etc. (2) one that is subjected to oppression, hardship or mistreatment.

Oxford Dictionary of Current English defines the victim as a person or thing injured or destroyed in pursuit of an object, in gratification of a passion, etc. or as a result of event or circumstances (the victim of disease, of a road accident).

The definition of the victim has been given **under International Criminal Court Statute** as 'natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the ICC. The term include "legal entities that have sustained direct harm to any of their property, which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarianpurposes.[33]

'Victimology' is now emerging as one of the important branch of criminology though not as a separate science. Criminological research has so far been restricted in connection to crime and the personal characteristics of criminal and there is least attention towards the rights of victims of crime or to formulate the penal policy that would encompass the relationship between the criminal and the victim.

It is only recently that society has woken up to a realization of the victim's plight and his concern. The U. N. Congress on Prevention of Crime and Treatment of Offenders took up the cause and has contributed substantially in drafting a declaration of the victim's right and

[32] Edward A. Ziegenhagen: Victims, Crimes and Social Control, Praeger, New York (1977), p.1.
[33] Rule 85 (Definition of Victims) of the Rules of Procedure and Evidence of ICC.

placed it on the agenda of the 7th U. N. Congress in Milan in September 1985. On 29 November, 1985, the General Assembly of United Nations adopted the Declarations of Basic Principles of Justice for Victims of Crime and Abuse of Power. This declaration, the first specifically concerned with societal responses to the needs of the victims, which establishes standards that take into account the variety in the legal system, social structures, and stages of economic development of member-states.

The U. N. declaration defines victim "as a person who has suffered physical and mental injury or harm, material loss or damage, or other social disadvantages, as a result of conduct by an individual or group, in violation of penal laws of the nations".

The term "victim of crime" can thus be defined as a person who has suffered injuries and material losses as a result of breach of criminal law. Therefore, a victim is a person who is murdered, assaulted, raped, robbed or whose property is destroyed. The Indian Penal Code of 1860 defines such act as offences against person, property and reputation and prescribed punishments thereof.

Victimology is concerned with the wide range of problems. It investigates the relationship between offender and victim in crime causation. It also deals with the process of victimization, of being a victim, and in this context directs much of its attention to the problems and miseries of victim. The victim suffers various problems during the course of investigation, prosecution, restitution etc. there is utter disappointment on the part of victims of crime and ultimately this whole process results into violation of human rights of victims.

2. 8 Victimology Theories

In the early 1940s the victimology emerged as a new branch of criminology the number of jurist tries to study the victimology from various angles as it has been an interdisciplinary approach to violence and its effect on victims. Some of the jurist tries to throw a light on victim- offender relationship, typology of victims so it is essential one to study the various theories, of victimology.

A. Mendelsohn's Theory of Victimization

Benjamin Mendelsohn was a practicing attorney. In the course of preparing a case for trial, he would conduct in-depth interviews of victims, witnesses and by standers.[34]He would

[34] B. Mendelsohn, "The origin and Doctrine of Victionology", 3 Excespta crimin ological, June 1963, pp. 239-244

use a questionnaire that was prepared in simple language and contained more than 300 questions concerning the branches of criminology and associated sciences. The questionnaire was given to the accused and all others who had knowledge of the crime. Based on these studies, Mendelsohn came to the conclusion that there was usually a strong interpersonal relationship between the offender and the victim. In an effort to clarify these relationships further; he developed a typology of victims and their contribution to the criminal act.[35] This classification ranged from the completely innocent victim to the imaginary victim. Mendelsohn classified victims into six distinct categories:

1. The Completely Innocent Victim. This victim may be a child or a completely unconscious person.

2. The Victim with Minor Guilt. This victim might be a woman who induces a miscarriage and dies as a result.

3. The Victim Who Is as Guilty as the Offender. Those who assist others in committing crimes fall within this classification.

4. The Victim more Guilty Than the Offender. These are persons who provoke others to commit a crime.

5. The most guilty Victim, This occurs when the perpetrator (victim) acts aggressively and is killed by another person who is acting itself-defense.

6. The Imaginary Victim. These are persons suffering from mental disorders such as paranoia who believe they are victims.

Hence Mendelsohn have a great contribution in the development of victimology as many scholars credit Mendelsohn with coining the term "victimology" and still others consider him the father of victimology. His typology was one of the first attempts to focus on victims of crimes rather than to simply examine the perpetrator. However, Mendelsohn was only one of two early scholars who explored the relationship between victims and offenders. The other noted early researcher in victimology was Hans Von Hentig.

[35] S. Schafer, The eviction and his criminal (Random House, New York) 1968

B. Von Hentig's Theory of Victimization

In an early classical text, The Criminal and His Victim, Von Hentig explored the relationship between the 'doer' and criminal and the 'sufferer' or victim.[36] Von Hentig also established a typology of victims.[37] This classification was based on psychological, social, and biological factors. Von Hentig established three general classes of victims: the general classes of victims, the psychological types of victims, and the activating sufferer.

His classification identified victims by examining various risk factors. The typology includes:

I. The General Classes of Victims

1. The Young. They are weak and the most likely to be a victim of an attack. Youth is the most dangerous period oflife.[38]

2. The Female. The female sex is another form of weakness recognized by the law, because numerous rule so flawed body the legal fiction of a weaker (female) and stronger (male) sex.

3. The Old. The elder generation holds most positions of accumulated wealth and wealth-giving power, and at the same time is physically weak and mentally feeble.

4. The Mentally Defective. The feeble-minded, the insane, the drug addict, and the alcoholic form another large class of victims.

5. Immigrants, Minorities, and Dull Normal. Immigration means more than a change in country. It causes a temporary feeling of helplessness in vital human relations. The inexperienced, poor, and sometime dull immigrant, minority, or other are easy prey to all kinds of swindlers.

II. The Psychological Types of Victims

6. The Depressed. These victims may suffer from a disturbance of the instinct of self-preservation. Without such an instinct, the individual may be easily overwhelmed or surprised by dangers or enemies.56

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[36] HansVonHenting,ThecriminalandHisvictim,(FirstPublishedbySchockenBooks,NewYork,1979, RepublishedbyYakUniversityPress1984)

[37] SomeScholarshavesubdividedVonHenting'soriginaltypology(Probablyforeaseofunderstanding). Se,forexample,DoernerandLab,Victionology(WestPublishing,St.Paul,Minn.1994)whereth eauthors listthirteenclassifications,Theyarriveatthisnumberbylistingimmigrants,minorities,anddullnormals as separate categories instead of one subdivision as von Henting.

[38] Von Henting, The criminal and his victim, P. 404

7. The Acquisitive. This type of person makes an excellent victim. The excessive desire for gain eclipses intelligence, business experience, and inner impediments.

8. The Wanton. Often a sensual or wanton disposition requires other concurrent factors to become activated. Loneliness, alcohol, and certain critical phases are "process-accelerators" of this type of victim.

9. The Lonesome and the Heartbroken. Loneliness causes critical mental facilities to be weakened. These individuals become easy prey for criminals.

The heartbroken victims are dazed by their loss and therefore become easy targets for a variety of "death rackets" that might, for example, charge a widow an outlandish fee for a picture of her late husband to be included in his biography.

10. The Tormentor. This victim becomes a perpetrator. This is the psychotic father who may abuse the wife and children for a number of years until one of the children grows up and under extreme provocation kills him.

11. The Blocked, Exempted, and Fighting. The blocked victim is so enmeshed in such a losing situation that defensive moves become impossible. This is a self-imposed form of helplessness and an ideal condition for a victim from the point of view of thecriminal.[39]

III. The Activating Sufferer

12. The Activating Sufferer. This occurs when the victim is transformed into a perpetrator. A number of factors operate as activators on the victim: certain predispositions, age, alcohol, and loss of selfconfidence.[40]

Von Hentig through his theory stated that a large percentage of victims because of their acts or behavior, were responsible for their victimization. This concept has since been repudiated by modern studies which have more closely examined and defined the relationship between the victim and the offender

C. Schafer's Functional Responsibility

Using Von Henting's approach a third scholar has been instrumental in establishing another classification of victims. Stephen Schafer examined both Mendelsohn's and Von

[39] Von Henting, The Criminal and His Victim, P. 433
[40] Id. at P. 445

Henting's work in his text, The Victim and His Criminal, and attempted to classify victims on a basis of responsibility instead of risk factors.[41] Schafer believed that the study of the criminal victim relationship indicated an increasing recognition that the criminal justice system must consider the dynamics of crime and treat both criminals and victims.

Schafer went on to state that "the study of criminal-victim relationships emphasizes the need to recognize the role and responsibility of the victim, who is not simply the cause of, and reason for, the criminal procedure, but has a major part to play in the search for an objective criminal justice system and a function solution to the crime problem.65 He stated that responsibility is not an isolated factor in society; rather it is an instrument of social control used at all times by all societies to maintain themselves.66 Schafer believed responsibility was a critical issue in the problem of crime.

According to Schafer, crime was not only an individual act, but also a social phenomenon. He believed that not all crimes simply "happen" to be committed, but that victims often contribute to crime by their act of negligence, precipitate actions, or provocations. Schafer concluded that the functional role of a victim is to do nothing to provoke others from attempting to injure him and at the same time to actively prevent such attempts. In other words; this is the victim's functional responsibility.[42]

D. Wolfgang's Study of Homicide

From 1948 to 1952 in Philadelphia, Marvin E. Wolfgang conducted the first major study of victim precipitation. He focused on homicides, studying both the victim and the offender as separate entities and as "mutual participants in the homicide". Wolfgang evaluated 588 homicides and found that 26 percent (150) of all the homicides studied in Philadelphia involved situations in which the victim was a direct positive precipitator in the crime the first to use force during the acts leading to the homicide.

E. Karmen's Theory of Victimology

Scholars have continued to expand their scope of inquiry and explore other aspects of the victim's role in society. Karmen discusses the development of victimology and points out that those who study this relatively new discipline have three main areas of concentration

[41] S. Schafer, The Victim and His Criminal (Rondom House, New York) 1968
[42] Id. at P. 152

1. Victimologists study the reasons if any of why or how the victim entered a dangerous situation. This approach does not attempt to fix blame on the victim; rather it examines the dynamics that resulted in the victim being in the risky situation.

2. Victimology evaluates how police, prosecutors, courts, and related agencies interact with the victim. How was the victim treated at each stage in the criminal justice system?

3. Victimologists evaluate the effectiveness of efforts to reimburse victims for their losses and meet the victims personal and emotionalneeds.[43]

Karmen correctly points out that victimologists view the dynamics of the victim's role in society from a multidisciplinary perspective. There is still debate among scholars, however, regarding the correct or predominate role for the victimologist. Similar to the development and study of criminology, a number of different perspectives regarding victimology have also developed throughout the years.

We see the different theories of victimology which try to focus on victim-offender relationship and which develops typology of victims. Ultimately the evolution of such theories leads to the rise of the Victims Right Movement. The various social forces were developed in order to protect the rights of victims of crime. A series of events took place at different part of the world to raise the consciousness of the victims themselves regarding their impact on the criminal justice system.

During the late 1960s and early 1980s at International level the victims of crime began volunteering to serve within various victim assistance programs. As these crime victims continued to speak out to put their grievances, the Government of various countries responded them by establishing commissions to study crime and its consequences. In U.S.A. on June 25, 1996, President Clinton proposed a Victim's Rights Constitutional Amendment to the U.S. Constitution. In a speech made in the Rose Garden announcing the Victim's Rights Constitutional Amendment, President Clinton stated:

"Having carefully studied all of the alternatives, I am now convinced that the only way to fully safeguard the rights of victims in America is to amend our Constitution and guarantee these basic rights – to be told about public court proceedings and to attend them; to make a statement to the court about bail, about sentencing, about accepting a plea if the

[43]AndrewKarmen,CrimeVictims,AnIntroductiontoVictimology,2ndEd.(Brooks/Cole,PacificGrove, Calif)1995.

Victim is present, to be told about parole hearings to attend and to speak; notice when the defendant or convict escapes or is released, restitution from the defendant, reasonable protection from the defendant, and notice of these rights."[44]

Hence a number of social forces affected by the development of victimology. The feminist movement raised our awareness of the plight of women. The civil rights movement resulted in a number of laws being passed which afforded individuals certain rights. As crime increased, our society became increasingly conservative and became more aware of the trauma suffered by victims of crime.

[44]"RemarksbythePresidentatAnnouncementofvictimsconstitutionalAmendment"PressRelease,The whiteHouse,officeofthepresssecretary,Washington,D.C.June25,1996,P.2

Chapter III

International Parameter & Framework on Justice to Victim

The last fifty years have witnessed the birth of victimology and the victim's movement. At both the international and national level, various legal instruments have been developed in order to improve the plight of victims in the criminal justice system. The United Nations, the Council of Europe and the European Union are just a few examples of organizations that have taken initiative to secure the interest of victims. Even the newly established International Criminal Court includes rights for victims. Domestically, countries like Canada and the United States have adopted victim rights legislation. New Zealand is the first country in the world to establish a modern programmed to compensate victims of crime and also takes the initiative to pass the Victims of Crime Reform Bill 2011 with an intention to strengthen the existing provisions of legislation for victims of crime. On another hand the countries like United Kingdom, France, Germany, Austria and South Africa etc. are taking continuous efforts to protect the rights of victims of crime through their legislative mechanism and other policies. In this chapter the researcher tries to study the work of various International Instruments to strengthen the position and status of victim and the legislative framework of various countries to protect the rights of victims of crime. The intention of researcher to study this international framework is to understand the mechanism of various countries and at the same time to make the comparison and try to suggest suitable measures to improve the status and position of victim under Indian criminal justice system.

Various programmes developed at international and national level, still victims continue to feel as they don't have proper place in the existing criminal justice system. Criminal law, and in particular the common-law legal systems views victims primarily as witnesses to a crime against the state. As a result, victims are treated as objects and used by legal actors in order to advance their case. The absence of any role for victims in the criminal justice system, other than that of witness, is often seen as the cause of victim's frustration with criminal justice system and an important source of secondary victimization. But gradually picture is going to be changed as the United Nation and various countries of the world taking initiative to improve the status and position of victims of crime.

3.2 Development of International Law on Victim Rights in the Criminal Process

Crime victims did not become an object of criminological research domestically or internationally until the end of Second World War. During the period of 1940s, few prominent jurists worked on this issue and published books mostly addressing the relationship between offender and victim, including victim's contributions to their own victimization. [45] The emergence of the modern crime-victims movement is attributed to Margery Fry, a wealthy, well-educated reformer who promoted crime-victims compensation penal reform in the United Kingdom during the1940s.[46]

Victims remained on the periphery of criminology for another thirty years but during the period of 1970 the scope and study of victimology widened nationally and internationally. Internationally, victims emerged on the world stage as experts and members from a range of nations in the developing and developed world began to hold congresses and form organizations to discuss issues affecting victims, primarily victims of crime. In 1972, several state representatives and experts came together in Jerusalem to hold the first International Symposium on Victimology. Another major international event, the International Study Institute on Victimology, took place in July 1975 in Bellagio, Italy. Since then, nine other international symposia on victimology have been held every three years in several cities around the world to focus on various themes of victimology as a discipline. Out of these meetings, an international community of scholars, practitioners and advocates grew with a collective history and memory. [47]

These symposia have considered several concerns pertaining to crime victims, including the scientific study of the process and consequences of victimization, the offender-victim relationship before and after victimization, society's attitude toward crime victims and the types of reparations that societies should accord victims. Victim reparation initially contemplated only monetary compensation to the victim from the state or recovered from the offender and victim rehabilitation services that included counseling [48] eventually, victims treatment in the criminal justice systems became integrated into the discussion on victim

[45] ElizabethE.Flynn,TheoryDevelopmentinVictimology:AnAssessmentofRecentProgressandof`Continuing Challenges,HansvonHentig,RemarksontheInteractionofPerpetratorandVictim(1941),Mendelson'sNew Bio-Psycho-SocialHorizons:Victimology(1947),andHansvonHentic,TheCriminalandHisVictims(1948)

[46] Frank J. Weed, Certainty of Justice: Reform in the Crime Victim Movement (1995)

[47] PaulRock, A View from the Shadows: The Minister of the Solicitor General of Canada and the Making of the Justice for Victims of Crime Initiative(1986)

[48] Jan van Dick, Ideological Trends within the Victims Movement: An International Perspective.

Reparation and included improving the victims place in the criminal justice system, as well as providing alternatives to the traditional processes of criminal law.

The international symposia on victimology soon led to the formation of the World Society of Victimology (WSV)[49]. The World Society of Victimology brings together experts in victimology from around the world to promote research in victimology and the development of programs and victim services, as well as policies and legislation favoring victim's rights. Much of the WSV's work has included lobbying the United Nations and other inter-governmental organizations to adopt programs and norms addressing the needs and rights of crime victims. Similarly other international organizations like the International Association of Penal Law,[50] the International Association of Judges, the International Association of Chiefs of Police, and the International Law Association began propose international law standards that showed new concern for victims. From above discussion we may conclude that, the World Society of Victimology play a vital role to protect the rights and interest of victims of crime as they arrange the symposium every year at different places to have a detail discussion about various issues relating to victims of crime and ultimately which gives input to various countries and United Nations Organization to take lead to protect the rights and uplift the plight and status of victims of crime under criminal justice system.

As a result of these early efforts by experts and victim advocates from around the world to increase the world's attention on victims, States adopted victim-focused international programs and norms. Until the mid-1970s, the UN focus had been on crime itself and on creating and enforcing universal standards on the treatment of suspects or prisoners in the criminal justice system. Since then, however, several UN organs and other UN sponsored for a, including the UN Crime Prevention and Criminal Justice Programmed and the Quinquennial UN Congresses for the Prevention of Crime and the Treatment of Offenders have contributed to the development of victim focused international programs and standards. The 1984 Ottawa Interregional Meeting of Experts in particular, influenced by the WSV, drafted an agenda for the 1985 Seventh UN Congress for the Prevention of Crime that included issues affecting victims as one of its main topic areas.

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[49]TheWorldSocietyonVictimologyisanon-governmental,non-profitorganisationfoundedin1979,following the Third International Symposium on Victimology.

[50]The IPL was founded in 1924 to promote legislative and institutional reform toward a more humane and efficient justice system.

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Ultimately these publications and early penal reform efforts marked the origins of victimology.

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[51]ElizabethE.Flynn,Theory Development in Victimology: An Assessment of Recent Progress and of `Continuing Challenges,Hans von Hentig,Remarks on the Interaction of Perpetrator and Victim(1941),Mendelson'sNew Bio-Psycho-SocialHorizons:Victimology(1947),andHansvonHentic,TheCriminalandHisVictims(1948)

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[53]PaulRock,A View from the Shadows: The Minister of the Solicitor General of Canada and the Making of the Justice for Victims (1986)

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Treatment in the criminal justice systems became integrated into the discussion on victim reparation and included improving the victims place in the criminal justice system, as well as providing alternatives to the traditional processes of criminal law.

The international symposia on victimology soon led to the formation of the World Society of Victimology (WSV)5 . The World Society of Victimology brings together experts in victimology from around the world to promote research in victimology and the development of programs and victim services, as well as policies and legislation favoring victim's rights. Much of the WSV's work has included lobbying the United Nations and other inter-governmental organizations to adopt programs and norms addressing the needs and rights of crime victims. Similarly other international organizations like the International Association of Penal Law, the International Association of Judges, the International Association of Chiefs of Police, and the International Law Association began propose international law standards that showed new concern for victims. From above discussion we may conclude that, the World Society of Victimology play a vital role to protect the rights and interest of victims of crime as they arrange the symposium every year at different places to have a detail discussion about various issues relating to victims of crime and ultimately which gives input to various countries and United Nations Organization to take lead to protect the rights and uplift the plight and status of victims of crime under criminal justice system.

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[55]Centre for International Crime Prevention(CICP),Establishedin1997and is responsible for crime prevention, criminal justice and criminal law reform.

[56]TheQuinquennialUNCongressforthePreventionofCrimeandtheTreatmentofOffendershavebeenheld everyfiveyearssince1955,inaccordencewithGeneralAssemblyResolution415(V)of1Dec.1950.

Drafted an agenda for the 1985 Seventh UN Congress for the Prevention of Crime that included issues affecting victims as one of its main topic areas.[57]

A. The United Nations

The increased attention on victims prompted the adoption by the UN General Assembly of the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power15 and publications relating to its implementation. This is the "Magna Carta" of crime victims, and contains four fundamental principles:

The rights of access to trial proceedings and fair treatment.

– The right to compensation by the perpetrator.

- The right to compensation by the state.–

The right to necessary material, medical, psychological and social assistance from volunteer and public institution.

The crime victim thus receives the right to respect and acknowledgement at all levels of the criminal justice system, the right to receive continual information about how the case is proceeding, the right to give information to those responsible for decisions regarding the criminal, access to legal counsel, protection of personal integrity and physical security and the right to economic compensation. In addition, it states that an officer of the court shall be trained in ways to meet the needs of victims.

Two Types of Victims

The U. N. Declaration codifies victims' rights in two parts and prescribes two sets of standards. Part A sets out specific provisions relating to the rights of victims of crime and of certain abuses of power, including standards for their access to justice and fair treatment. Part B more generally urges states to prescribe abuse of power pertaining to conduct not yet criminal under domestic law and to consider adopting remedies for victims of such abuse.[58] The division of the U. N. Declaration into two parts was a compromise that resulted from the decision of several experts who drafted the original version of a proposed declaration to

[57] 4 R.I.Mawby and Sandra Walklate, Critical Victimology: International Perspectives (1994)
[58] TheU.N.Declarationdrawsadistinctionbetweenvictimsofcrimeandvictimsofabuseofpowerbecauseitis adocumentthatmergesthedraftsofitstwooriginalauthorswhofocusedonthesetwotypesofvictims.

define victims not only as persons harmed by conventional crime but also those harmed by abuse of power.

Ultimately, the compromise resulted in the bifurcation of abuse of power into two distinct concepts, one of which became codified in Part A of the U. N. Declaration and the other in Part B. Leroy L. Lamborn, who served as a consultant to the United Nations Secretariat regarding the development of the U. N. Declaration, has classified the two types of "abuse of power" that concerned the original drafters as non-enforcement abuse of power and immoral abuse of power. In Part A, the definition of victims of crime includes victims of conventional crime, whether committed by private actors or the state, as well as victims of non-enforcement abuse of power as to conventional crimes. Victims of crime include "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 prescribing criminal abuses of power."[59] Moreover, the definition of victims of crime in Part A, unlike the definition in Part B, is not limited to the direct victim and includes, "where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization." The fact that Part A included victimization by state officials through acts or omissions, at least for those crimes recognized under domestic law, was significant because it belied the argument that states could only protect the negative liberty of the accused.[60]

The definition of victims of abuse of power in Part B is limited to victims of immoral abuse of power. Thus, victims of abuse of power under Part B includes "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 do not yet constitute violations of national criminal laws but of internationally recognized norms lasting to human rights."

Thus the Declaration gives a broader meaning to the term victim. It includes not only the real victim himself but also the immediate family and dependents. The most important thing is that the victims are protected not only from the violation of conventional crime but

[59] The U.N. Declaration, supra note 15

[60] 9KentRoach,Due Process and Victim Rights: The New Law and Politics of Criminal Justice(1999).

Also from immoral abuse of power which may be recognized or not under domestic law but internationally recognized as violation of human rights. The Declaration ensures the victims of the crime to get the required assistance and access to justice and fair treatment. It gives victim importance in view of the fact that a victim is normally forgotten in the entire system of administration of criminal justice. The Declaration visualizes the establishment of judicial and administrative mechanism to enable the victim to get remedy through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Otherwise, in the traditional criminal administration of justice system victim compensation settlement takes lot of time because of the technicalities and intricacies involved.

For the first time in Criminal Justice System, the Declaration proclaims the rights of the victims i.e. the right to information about progress of the proceedings, the right to hear his views and concerns at appropriate stages of the proceedings, right to privacy when necessary, right to speedy disposal of the cases protects individual dignity and honour of the victim and make human active participant in the process of administration of criminal justice system. It enables proper and fair estimation of damages caused to the victim and determines a just, fair and reasonable compensation.

The United Nation through this declaration tries to protect the rights of victims of crime as it takes utmost care and caution to strengthen the status and position of victims of crime. The Declaration is helpful to various countries to make the necessary changes in their existing laws to protect the rights of victims of crime including human rights.

B. The Council of Europe

Parallel to the work of the U. N., The Council of Europe has also taken measures to protect and strengthen the human rights. The foundation for the Council's work is the European Convention on Human Rights, with its beginnings in the 1950s which deals with the protection of human rights and fundamental freedoms. The convention states about the right to life, personal liberty, freedom of speech, trial by law and the right to not be convicted for a crime without a legal basis. The Council declares the various conventions from various angles to protect the rights of every section of the society, especially when we discuss about the victims of crime the important move on the part of council is the Convention on the Compensationtovictimsofviolentcrimes[61].The main purpose of this convention is to give

[61] See ETS No.116, at Treaty Office on http://conventions.co e.int

Compensation to relatives of victims who were killed during a crime and state is responsible to pay compensation if other sources cannot be obtained. This right to compensation applies even in cases where the perpetrator cannot be charged or convicted.

In 1985, the Committee of Ministers also issued a more specific recommendation to Member States titled "On the Position of the Victim in the Framework of Criminal Law and Procedure."21 The recommendation contains guidelines for member states prosecution, sentencing and penal organizations. These guidelines include the responsibility of authors to provide help and support to crime victims, including information, compensation and protection of personal integrity. The Committee of Ministers determined that the exclusion of victims from participation in the criminal justice system is worse and that is the reason Committee recommended that victims should obtain information on the outcome of police investigation and of any final decision concerning prosecution and have the right to ask for a review by a competent authority of any decision not to prosecute, or the right to institute private proceedings.

In a more recent Recommendation of the Committee of Ministers on the role of public prosecutions in the criminal justice system, the Committee restated its recommendation that victims and other interested parties of identifiable status should be able to challenge the decisions of public prosecutors not to prosecute either by way of judicial review or by authorizing parties to engage in private prosecutions.[62]

The Council also recommended informal settlement of disputes between the victim and the offender without courting a formal criminal procedure. The advantage derived out of this system is that this will avoid a stigmatization of victim and offender and also thereby relieve the burden of the criminal justice system. Hence we can say that the Council Europe on the footstep of United Nations did a nice job to protect the rights of victims by way of different recommendations.

C. The European Union

In recent years we have seen that the European Union taking more interest in the situation of crime victims. The European Union presented reports and took several decisions with an intention to safeguard the interest of crime victims. In 1999 the European

[62]Recommendatin of the Committee of Ministers,724th meeting of the Ministers Deputies, Docv.No .R (2000) 19(2000).

Commission,[63] presented the report Crime Victims in the European Union – Reflections on Standards and Action[64] to the European Parliament. The Report included presentations of preventive activities, support to crime victims, the victim's position in the legal process and compensation as well as information, language issues and education. The Commission concluded that victims should be treated with respect and dignity during the legal process and that their privacy and security should be insured.

The Council of the European Union similarly has approved a Framework Decision to improve victims' standing in criminal proceedings. This Decision urges Member States to ensure that victims have a "real and appropriate role in its criminal legal system." In addition, the Decision calls on Members States specifically to do the following:

Safeguard the possibility for victims to be heard during the proceedings and to supply evidence.

Ensure that victims are kept informed, inter alia, of the outcome of the complaint and the conduct of the criminal proceedings.

Afford victims, who have the status of parties or witnesses, reimbursement of expenses incurred in their participation.

This latter provision does not require Member States to afford victims the status of parties in criminal proceedings, but it does encourage states that do so to facilitate that role by providing financial assistance.

In 2010 The Stockholm Program was adopted during Swedish presidency. In the program the European Council calls on the Commission and the Member States to:

Examine how to improve legislation and practical support measures for the protection of victims and to improve the implementation of existing instruments.

Offer better support to victims in other ways, possibly through existing European networks that provide practical help and put forward proposals to that end.

Examine the opportunity of making one comprehensive legal instrument on the protection of victims by joining together two directives i.e. directive relating to compensation

[63] European Commission is the Executive body of the European Union.
[64] KOM (99) 349 final

to crime victims[65] and Council Framework Decision28 on the standing of victims in criminal proceedings.

European Union always tries to make a comprehensive legislation to protect the crime victims and ultimately on October 4th 2012, the European Union made history by adopting new directives to establish minimum standards for the rights, support and protection of victims of crime across 27 sovereign nations. These countries include such major nations as England and Wales, France, and Germany.

The minimum standards are impressive and should be the envy of victims of crime throughout the world. The 30 articles of the Directive commit 27 governments to providing information, support and assistance to all victims of crime and also ensure that support and rights will be provided across national borders. The articles provide for participation in criminal proceedings, such as the right to review a decision not to prosecute an offender. They provide for special protections, particularly for woman, children and vulnerable victims. They provide for restorative justice where the victims interests will be respected.

There are several innovations in the directive that are inspiring for other nations outside Europe. The directive includes a commitment to evaluate the extent to which its implementation will have achieved its goals of supporting and protecting victims every five years. Ultimately this is a good decision on the part of European Union to establish such minimum standards to protect the rights of victim, its success or failure depends on how the member countries implement it in proper way or not. Some voice is there that this minimum standard does not fulfill the needs of crime victims, but in spite of this thing it is a welcome step on the part of European Union to establish such minimum standards to protect the crime victims.

D. International Criminal Court

On 17 July 1998, 120 States adopted a statute in Rome - known as the Rome Statute of the International Criminal Court i.e., “the Rome Statute”

Establishing the International Criminal Court, For the first time in the history of humankind, States decided to accept the jurisdiction of a permanent international criminal

[65] Council Directive 2004/80/EC of 29 April 20 04.

court for the prosecution of the perpetrators of the most serious crimes committed in their territories or by their nationals after the entry into force of the Rome Statute on 1 July 2002.

The International Criminal Court is not a substitute for national courts. According to the Rome Statute, it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes. The International Criminal Court can only intervene where a State is unable or unwilling genuinely to carry out the investigation and prosecute the perpetrators.

The Rome Statute of the International Criminal Court includes a number of innovative victim provisions on recognition, participation, protection and assistance, and reparations. In terms of which individuals can avail of the victim provisions before the Court, Rule 85 in the Rules of Procedure and Evidence (RPE) define 'victims' as 'any natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court' as well as certain legal persons.

The judges of the ICC determine the types of harm to be taken into account, such as bodily harm, Psychological harm, that is, where a person's mind has been affected by what he or she has experienced or witnessed, or material harm, which consists of loss of or damage to goods or property.

The international criminal court conferred various rights to victims of crime and such rights never before been conferred. Victims may be involved in the proceedings before the ICC in various ways:

- Victims can send information to the Office of the Prosecutor and ask the Office to initiate an investigation;
- at a trial, a victim may voluntarily testify before the Court, if called as a witness for the Defense or the Prosecution or other victims participating in theproceedings;
- victims are also entitled to participate in proceedings through a legal representative; during proceedings, victims may participate by presenting their views and concerns to the judges; such participation is voluntary and enables victims to express an opinion independently of the Prosecution or the Defence and offers them the opportunity to present their own concerns and interests;

- Victims participating in proceedings may also, in some circumstances, lead evidence pertaining to the guilt or innocence of the accused; they may also challenge the admissibility or the relevance of evidence presented by the parties;
- Lastly, victims can seek reparation for the harm that they have suffered.

The provisions on victim participation are one of the most important rights conferred on victims of crime and this is the provision which raise the argument that such right to participation may conflict with the rights of accused. The main victim participation provisions under Article 68(3) enable victims to present their 'views and concerns' in appropriate proceedings where their personal interests areaffected.[66]

In terms of victim protection the Rome Statute and Rules of Procedure and Evidence provides a well-developed regime, drawing from the experience of the ad hoc tribunals and human rights jurisprudence.[67] Protection is extended to not only those victims and witnesses testifying before the Court, but also those applying to participate. Protection measures include closed hearings (in camera), pseudonyms, voice and facial distortion, public non-disclosure, and redaction of identity or identifying information from the record.[68] Special measures are also afforded to vulnerable witnesses and victims, such as children and those subjected to sexual violence, and comprise a support person, shielding devices, video conferencing technology, and sensitive questioning.[69] The protection regime is facilitated by the Victims and Witnesses Unit (VWU) within the Registry, which provides counseling and other assistance to witnesses and victims before the Court. This is supplemented with assistance to victims through the Trust Fund for Victims (TFV), which under its second mandate is to provide 'physical or psychological rehabilitation or material support for the benefit of victims and their families' who have suffered from crimes within the jurisdiction of the Court under Rule85.[70]VictimscanalsoclaimreparationsonceaperpetratorisconvictedunderArticle
75. Together these are the main provisions for victims with the International Criminal Court; it is worth now turning to evaluate how effective they are in practice and how they implemented in future while protecting the rights of crime victims. The International Criminal Court include many provisions relating to criminal justice and victim compensate

[66] There are also specific victim participation rules under Articles 15(3), 19(3) and 75(3) Rome Statut e
[67] Article 68 (1) and (2) Rome Statute, Rules 16 -19 and 87-88 RPE
[68] Article 68 (2) Rome Statute, Rule 87 (3) RPE, and Regulation 94 Registry Regulat ions.
[69] Rule 88 (1) RPE
[70]Article79(1)andTFVRegulations42and50(a)(i),underitsfirstmandatetheTFVfacilitatesreparations ordered by thecourt.

from every angle and ultimately which leads a great job in international criminal justice to incorporate justice for victims within its proceedings and outcomes. International Criminal Court while including such provisions creates a faith and belief in the mind of every person of the world that his rights are to be protected and taken care by International Criminal Court.

The adoption of international documents in recent decades gives a clear idea of reinforcement of human rights protection mechanisms. When we try to analyze these documents, we found that they give more emphasis on crime victims. The working of United Nations and European Union is worth to appreciate as they try to protect the rights of crime victims through various declaration and recommendations, but unfortunately UN and EU victim related documents are not implemented properly by many states. This is why the EU Council has recently adopted the resolution on the roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings which has a legal basis in the Lisbon Treaty. Ultimately this resolution results into adopting a new directive to establish minimum standards for the rights, support and protection of victims of crime across 27 sovereign nations. So we can say that the UN, EU and ICC play a prominent role to strengthen the rights of crime victims and also give a guideline to various countries to make necessary changes in their existing laws to protect the rights of victims of crime.

As we discuss the role of the United Nations, the Council of Europe, the European Union and the International Criminal Court to strengthen the status and position of victims of crime in the criminal justice system. But at the same time it is equally important one to study the legislative mechanism of various countries like USA, UK, New Zealand, Canada, France, Germany etc. so this study will be helpful to understand their legislative mechanism to protect the rights of victims of crime.

3. 3 United States of America

During the period of 1980s the wave was going on in United States of America that the present legislative framework is not sufficient one to take care of victims of crime as victims becoming the forgotten object and subject under criminal justice system. This thing is seriously noted by the president of USA and ultimately President Reagan said in 1982 that, "The plight of innocent citizens victimized by lawlessness deserves immediate national attention."[71] The President urged "all… involved in the criminal justice system todevote

[71] Proclamation No.4929, 47 Reg. 16,313 (1982).

special attention to the needs of victims of crime, and to redouble their efforts to make our system responsive to those needs." [72] Sharing the President's views, the Special Senate Subcommittee on Aging and the Senate Judiciary Subcommittee on Criminal Law" conducted hearings on victims'rights. These hearings indicated that, victims were the "forgotten persons" in the criminal justice system and that their needs were being ignored. Soon after these hearings, and in response to the national outcry concerning victim rights, separate bills were introduced in the Senate and House which eventually became the Victim Witness Protection Act. The distinguishing features of the Act were that

I. It required that report on the result of investigation submitted by the public prosecutor to the courts must contain a 'Victims Impact Statement' in which victims point of view was to be given the prominence as to crime and its consequences. It had to narrate all sorts of losses suffered by the victim.
II. An attempt was made to enforce restitution ideologically and practically in Federal criminal process. The court could order

Restitution of damage caused to the victim as an independent penal sanction. The court could order restitution in addition to or in lieu of any other penalty authorized by the law.36

III) A shift in emphasis was changed. In all cases criminal procedure was expected to tend to restoration of peace through restitution between the offender and the victim and not between offender and state.

IV) A shift in priority was also emphasized. The aim of restitution was to act as a means of reparation to victims rather than as a technique for rehabilitating the offender. It required just restitution in proportion to loss or injury.

V) It proposed that restitution should have priority in the criminal justice system and it should have upper hand in comparison to traditional punitive sanction of imprisonment and fine.37 Thus the victim was assured of fair treatment in Federal Criminal Justice system and also assured of his participation in process and protection from victimization along with restitution with priority basis.

The compulsory introduction of the 'Victim Impact Statement' is designed to render it impossible that a court can try an offender without even having seen or heard the victim, as

[72] Ibid, the President further declared the week beg inning April 19, 1982 as "crime victims week".

was not infrequently the case until then. The statement shall devote particular attention to the financial, social, physical and emotional damage the victim has suffered as a result of the crime.[73]

The earlier Act was followed by the enactment of the Victims of Crime Act, 1984. By enacting the Act, Congress provided funding for victims assistance, victim compensation and training and technical assistance for victim service providers across the nation. Its innovative funding mechanism consisted of fines, penalties and bond forfeiture. The victims of federal crimes were made eligible for state compensation benefits. States responded so by making necessary amendments in their respective laws.

Twenty years later, the landscape of victims' rights changed dramatically when President George W. Bush signed the Crime Victim Rights Act (CVRA) on October 30, 2004.The CVRA establishes the rights of crime victims in federal criminal proceedings and provides mechanisms for victims to enforce those rights.

The CVRA gives victims a greater role in the criminal justice process and significantly affects the way Department of Justice Employees interact with crime victims.

Section 3771(a) of the CVRA provides crime victims with the following rights:

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or any release or escape of the accused
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- The reasonable right to confer with the attorney for the government in the case.
- The right to full and timely restitution as provided by law.
- The right to proceedings free from unreasonable delay.

[73]BharatB.Das,VictimsintheCriminalJusticeSystem,APHPublishingCorporation,NewDelhi,Page139.

- The right to be treated with fairness and with respect for the victim's dignity and privacy.

Additionally, the CVRA allows either the victim or the government to assert the victim's rights in court. If the judge denies the right asserted, the victim or the government may then ask the court of appeals to review the judge's ruling. The court of appeals must rule on the petition within 72 hours of its filing, but the statute makes clear that court proceedings may not be delayed more than five days for purposes of enforcing the CVRA. Further, in any appeal in a criminal case, the government may ask the court of appeals to review a judge's denial of the victim rights.

The CVRA has had a tremendous impact on the Justice Department and in turn, on victims of federal crime. Since the CVRA's passage, United States Attorneys' offices have developed an increased awareness and a more energetic approach to according victims their rights. In nearly seven years since the CVRA went into effect, there has been a dramatic change in the role of victims in federal criminal cases. Victims are taking part in cases in greater numbers than ever before by attending court proceedings, exercising their right to be heard, and receiving notifications of public court proceedings. The number of identified victims in federal cases has more than tripled since the CVRA passed, increasing from 554,654 victims in 2004 to 2.2 million victims in 2010, a 298% increase. Victim notifications doubled to 5.7 million notices within one year of CVRA's passage in 2004 and totaled nearly 8 million in 2010.[74]

In addition to the rights granted under the CVRA, crime victims receive services to help them through the criminal justice process. Pursuant to The Attorney General Guidelines for Victim and Witness Assistance, victim service professionals in the various investigative agencies and litigating components in the Department of Justice provide numerous services to victims of federal crimes. These services begin at the investigative stage and continue through the prosecution stage, post-conviction proceedings, and imprisonment. The services include emergency assistance, counseling and social service referrals, assistance with creditors, providing information about victim impact statements, assistance with securing victim compensation, and restitution information.

[74] http: // www. Victims Rights / USAO / Dept. of Justice, accessed on Sept.2, 2014 at 11:30 AM.

The Crime Victim rights Act is the excellent piece of legislation extending rights to crime victims. Across the country in USA both at the federal and state levels, there is growing recognition that crime victims have an important role to play in criminal proceedings. The crime victims must be protected by both trial and appellate courts. USA did a remarkable work to protect the rights of crime victims both federal and state criminal proceedings.

3. 4 United Kingdom

In United Kingdom, the movement towards a positive concern for the victims of crime started in early 1950. The credit goes to Margery Fry, a social worker who takes an initiative to proper attention towards the victims of crime and ultimately in 1954 she suggested that victims of criminal offences should be compensated by the State. In a book written even earlier on the basis of her endeavor she said: "We have seen that in primitive societies, this idea of making up for a wrong has wide currency. Let us look once more into the ways of earlier man, which may still hold some wisdom for us."[75] The issue was debated at length in the British Parliament in 1957, but the response was limited only to the problems of extending the scope of existing principles in the penal law which provided for restitution. In 1959, the Government came up with a report which adhered to the general concept of orienting the criminal justice system in relation to the treatment of the offender as the major concern while conceding that Miss Fry's proposals for victim compensation deserved to be considered carefully due to the various difficulties surrounding the development of a practical scheme in relation to the genuine needs and apparent neglect of the victim.[76] Consequent upon the recommendations made in the above report, the Home Office constituted a Working Party which examined the problem from various angles and submitted another report in 1961 which did not amount to much since the authors of the report appeared to be more obsessed with the hurdles in implementing a programme of compensation to victims of crime rather than genuinely interested in devising a pragmatic scheme. It, however, took nearly three years more for the Government to make up its mind and a formal move was made in May 1964. Both the Houses of the Parliament endorsed the proposals of the government to provide suitable machinery for compensating victims of crime of violence and the Criminal Injuries Compensation Board came into existence with effect from August 1, 1964.

[75] Margery Fry, Arms of Law (1951), London; Gollancz
[76] HMSO'S Office, Penal Practices in a Changing Society (1959); Great Britain.

The Criminal Injuries Compensation Board is thus not established by any statute but through an executive order. It is a part of the Home Office and consists of a chairman who should have wide experience in the field of law, and the funds for the programme are sanctioned by the Parliament as 'grant in aid'. The most important feature of this British scheme is, the awards of compensation are ex-gratia in character and the decisions of the Board are not subject to appeal. The Board was transformed into a statutory body under the Criminal Justice Act of 1988.

The Criminal Justice Act 1972 accepted the payment of compensation as an appropriate action after criminal conviction. It was largely replaced by the Criminal Court Act, 1973 and the same Act was amended several times and ultimately replaced by the Criminal Justice Act of 1988. The compensation order was entirely a matter of discretion of the court under the 1973 Act. Under the Criminal Justice Act of 1988, now it is no more a discretion of the court to grant or not to grant compensation to the victim of crime. The Act of 1988 makes it obligatory on the part of the court to record reasons for not awarding compensation if it is having a power to order compensation and the same isdeclined.[77]

The Criminal Justice Act 1988 is a milestone in the history of criminal justice system of England which takes care of victims of crime. The act confer the power to award the compensation, the only thing is that there is a need to establish a causal link between the offence and the loss suffered by the victim. Another thing is that the compensation order was not punitive but the sum awarded was purely by way of compensation and the financial capacity of the offender was taken into consideration. The most important thing is that there were certain schemes which provide compensation to the victim of crime by the state.

Many schemes relating to 'Victim Support' and victims welfare were launched with a view to provide victim right to be heard, necessary information to protect his interest, right to be protected by law enforcement agencies, right to receive compensation and restitution, right to receive support and assistance, pecuniary and financial support etc. Home office issued charter as Victims Charter, 1990 and Victims Charter, 1996 providing for standards of service to be given to the victim and his family. It included right to be treated with human dignity and respect, right to support and protection, right to compensation and reparation. After this Charters the Criminal Justice Act again amended in 2003 and which make some important changes in the 1988 act regarding the issue of compensation as follows:

[77] Sections 104-107 of the Criminal Justice Act, 1988.

1. As regards to compensation award power of Magistrate's Court is limited up to 5000 pounds but there is no limit in the Crown's Court.

2. A compensation order can be issued a long with the order of disposal or the order of punishment.

3. Courts must give reasons if they are not imposing a compensation order.

Compensation was also awarded through the State Funded Criminal Injuries Schemes. The Scheme which was already started in 1964 to pay the compensation, the same was modified many times as in 1969, 1979, 1990 and 1995.Finally, Criminal Injury Compensation Act, 1995 established a 'new tariff' approach based on types of injuries rather than individualized consideration of harm or damage.

The other mode of doing justice was reparation. The statutory basis of reparation can be found under the Crime and Disorder Act, 1988, the Youth Justice and Criminal Evidence Act, 1999 and Power of Criminal Act, 2000. Reparation scheme could be implemented at three different levels in the criminal, justice system. It could be applied at pre-prosecution stage so as to divert offender from prosecution. It could be applied at the stage between conviction and sentence. It could be applied at third stage as a part of punishment so as to make offender personally responsible for his behavior. It could inspire and rehabilitate him by mixing with victim and other members of the society.

The victims are getting more and more informational right as to progress of the case. Victim is also receiving active right of participation in prosecution as witness. Victims Charter of 1996 allows a victim an influential say in sentencing. The personal statement of victim or giving him an opportunity to participate in sentencing process is a real innovation to confer the rights on the part of crime victims. The UK certainly did a lot of things to protect the crime victims specially to pay the compensation to victims of crime or their dependents from the state funds. In 2008, UK had come out with the Criminal Injuries Compensation Scheme (2008); this Scheme was made by the Secretary of State under the Criminal Injuries Compensation Act 1995. Presently, the Criminal Injuries Scheme, 2008 determines the standardamountofcompensationforthevictims.[78]Also,the criminal court sare empowered up

[78] Ss.26-29, Criminal Injuries Compensation Scheme, 2008.

to provide compensation to the victim[79] by the Powers of Criminal Court (Sentencing) Act, 2000 up to limit of £5000.[80]

From 1964 to still today the scheme of compensation becomes the integral part of UK criminal justice system. At the same time UK Criminal justice system also tries to protect the crime victims from other angles as they get information about the progress of case, right to participation in sentencing process and to put his personal statement. The current development is in the form of the Code of Practice for Victims of Crime46 which was placed on a statutory footing under the Domestic Violence, Crime and Victims Act 2004 and was first issued in 2006.The Code sets out the services the victim can expect to receive from each of the criminal justice agencies, like the police and the Crown Prosecution Service. Some of the key components of the Code include:

- . A right to information about the crime within specified time scales, including the right to be notified of any arrests and Court cases..
- A dedicated family liaison police officer to be assigned to bereaved relatives..
- Clear information from the Criminal Injuries Compensation Authority (CICA) on eligibility for compensation..
- All victims to be told about Victim Support and either referred on to them or offered their services..
- The flexibility for victims to opt in or out of services to ensure they receive the level of service they want.

The Code of Practice for Victims of Crime was subsequently revised and reissued in October 2013 to make the Code more user-friendly for victims, to make it more Outcome-focused rather than process-orientated, and to give good effect to the requirements of the Directive. This revised code reissued only for the fulfillment of minimum standards for the rights, support and protection of victims of crime established by European Union.

The Code defines a victim as: a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by criminal conduct; or a close relative of a person whose death was directly caused by criminal conduct.[81] This is

[79] Ss.126 – 142, Powers of Criminal Court (Sentencing) Act, 2000.
[80] Ibid,S.131.
[81]Ibid,Para4

a relatively wide definition and takes significant steps in meeting the broad definition of victim provided under the Directive.[82]

The Code outlines a whole list of services to which victims are entitled, and identifies a range of criminal justice agencies that are obligated to deliver these services to victims of crime. According to this scheme when an authority fails to comply with this Code that does not, of itself, make him or her liable to any legal proceedings. The Code is, however, admissible in evidence in both criminal and civil proceedings and the court may take failure to comply with the Code into account in determining a question in any such proceedings.

3. 5Germany

Germany has already legislated a good standard of victim protection laws considering to protect the interest of victims of crime. For the last several years legal luminaries, academicians and policy makers took continuous efforts to increase the attention towards victim in criminal proceeding. The efforts came into existence when the first Victim Protection Act of 1986 was enacted which among other things included a special section about victim rights into the German Criminal Procedure Code. After various minor amendments in the following years, the Victim Protection Act of 1998 formed another crucial point. With these new laws, video recordings were qualified as legal documentations of interrogations, and simultaneous video interrogation was finally implemented. As implementation of the EU framework decision, the Victims´ Rights Act was enacted in 2004. The main aims of this act are as follows:

The strain on the victim, especially the one caused by interrogation, shall be minimized.

The victims´ rights of participation and information during the proceedings shall be enforced the legal instrument of procedural support shall be improved.

The so-called “adhesive proceedings” by which victims claims of compensation can be enforced shall be reformed and thus be made more effective.

[82] The Directive, Art. 4.

Considering the fact that the legal position of victims in criminal proceedings requires constant scrutiny, and that there should be an ongoing assessment of whether any further measures to improve their situation appear advisable, the German Federal Government has recently taken another initiative to further strengthen the legal position of witnesses and aggrieved persons in criminal proceedings. In February 2009, it submitted the "Draft Bill for an Act to Strengthen the Rights of Aggrieved Persons and Witnesses in Criminal Proceedings", or the Second Victims Rights Reform Act to the parliament of Germany i.e. Bundestag.49 After passage by the Bundestag, the Act entered into force on 1 October 2009.50 In the course of the legislative process, several additional measures were taken to improve victim and witness protection.

The measures taken with the Second Victims Rights Reform Act build on the legislative measures taken to date in Germany to improve the level of protection for victims and witnesses. In doing so, the fundamental allocation of roles stipulated in the system of criminal proceedings remains unaffected. Above all, the aim was to achieve practical improvements for the victims of crime without challenging the right of the accused to a fair trial in accordance with the rule of law.

In order to enhance the rights of victims and witnesses of crime in criminal proceedings as appropriate, and to ensure that their existing rights are enforced more consistently, the Act pursues three central goals:

1. To strengthen the procedural rights of aggrieved persons in criminal proceedings;
2. To strengthen the rights of juvenile victims and witnesses;
3. To strengthen the rights of witnesses.

Along with the legislative mechanism the Constitution of Germany also obliges State organs to stand in defence for crime victims and to respect their needs.

3. 6 Austria

In the beginning of the 19th century, the victim was redirected from criminal to civil procedure. It was only in 1873 that according to the newly reformed Criminal Procedure Code the person who had suffered damages as a consequence of an offence could again participate in criminal proceedings. The victim could join the proceedings with regards to his/her claims of compensation and could appeal against court decisions. These provisions haveremainedinforceeversinceandwillcontinuetodosountil2008.More than a century

later, in 1987, the Criminal Law Reform Act granted the right to appoint a person of confidence to be present at interrogations to victims of sexual offences. In 1993, the Criminal Procedural Reform Act extended this right to all witnesses.

The Criminal Procedural Reform Act of 2004 by which the European Union Framework Decision is implemented in Austrian Law, victims rights are put onto a completely new basis. The reform will enter into force in 2008. The criminal procedural reform of 2005 has preliminarily implemented selected victims rights, which is why since the beginning of 2006, victims have the right to "psycho-social" and "legal" support during criminal proceedings. The Criminal Procedure Reform Act, 2008 brought the important changes in Austria's legal system specially related to the rights of victims. The act deals with important provisions related to rights of victim51and deals with a general definition of the term victim. According to the provision, any person whose legal goods could be affected is to be termed "victim"[83]. The hypothetical character of this term is based on the fact that the offence in question is yet to be proved during the criminal proceedings. The above-mentioned law provides the example that a person has suffered damages or harm as a result of an offence and can now sue for compensation. As a special example for such harm, the above-mentioned provision refers to persons "who, through an intentional deed, have been subject to violence or dangerous threat or whose sexual integrity could be infringed". This definition especially refers to victims of coercion or blackmail as well as to rape victims. It has to be noted, however, that those persons who have been distantly affected by an offence are also termed as victims under Austrian law: Close relatives of a deceased victim as well as relatives who witnessed the deed have to be included. The importance of this type of victims can be seen in connection with the special rights granted to them by the law.

Thus, we can distinguish between "direct" and "indirect" victims, and among the former, between "normal" victims and victims of coercion or sexual offences the last of which are granted special rights during the proceedings.

The Criminal Procedural Reform Act, 2008 confers various rights to crime victims, such as the right towards the police, the public prosecution and the court. In broad way these rights are grouped into four categories. The rights are as follows:

[83] Ss.65-73 of the Criminal Procedure Reform Act, 2008.

1. Right to receive information

The right to be informed and to have access to information about the proceedings is a fundamental right on the part of victim. The police as well as the prosecution have to inform the victim about the subject as well as the course of proceedings from the beginning and without delay.53 In addition to that, the victim has to be granted access to records in a similar way as the accused.54 Before the Criminal Procedural Reform Act access to records was granted only to the private participant, whereas now this right is granted to all victims. It must be restricted or denied only in exceptional cases where either the purpose of the investigation would otherwise be at risk or where an influence on the objectivity of the testimony of the witness would have to be feared.

2. Right to representation

The victim is entitled to appoint a representative who supports, advises and substitutes him/her. These representatives must not necessarily be lawyers but can also be members of victim support organization which are acknowledged by the state. Provisions on the costs of the representation are established by law and differ according to the type of victim.

3. Right to participate along with Private Participation

The victim has various possibilities to participate actively in the criminal court proceedings as well as in the investigation proceedings. In this respect, it is especially the participation in a contradictory interrogation as well as the active participation in the main trial which have to be noted. Victims can also join the proceedings with regard to their claims to compensation as a private participant. This position also comprises further rights such as the right to call for evidence and to have a lawyer whose fees are state-funded.

4. Right to appeal

In case the public prosecution should drop the case, the victim has the right to apply to continue with the case. In case the proceedings have been settled by a verdict, the victim then has the right to appeal against the passages of the verdict which refer to him/her.

Special rights

As we discuss the above rights conferred on victims, along with this rights there are certain special rights under the act conferred on certain group of victims, like victims who are

severely traumatized, have the right to psycho-social support as well as legal advice during the proceedings, as far as such a support is necessary to maintain the victims procedural rights. In this respect, and according to the law, the utmost attention has to be paid to the personal affection of the victim.

On the one hand, "psycho-social“ support means that the victim is prepared for the proceedings as well as for the emotional strain which is to be expected, and on the other hand it means that victims are physically accompanied to interrogations which take place during the investigation and during the trial. ‘Legal’ support means legal advice as well as representation by a lawyer.

Victims of sexual offences need special consideration that is the reason the act conferred special rights for victims whose sexual integrity could be violated[84]. Those victims have to be informed about various additional rights, e.g. the right to be interrogated by a person of the same sex, the right to deny testimony of circumstances which he/she thinks unacceptable to describe and the right to have the public excluded from the trial. The Austrian criminal proceeding is mainly inquisitorial system and in this system the crime victims have a upper hand. Along with this the Criminal Procedure Reform Act, 2008 also confers various rights on the part of victims.

3. 7 Switzerland

Contrary to Germany and Austria, Switzerland has no uniform criminal procedural law. Each of the 26 cantons has its own procedure code which, of course, is gradually being replaced by prevailing federal and supranational law. For instance, in 1991, a federal Victims Support Act, which has established mandatory minimum standards, has been enacted. The main purpose of this act is to provide comprehensive help for victims of crimes to cope with the consequences of the offence. On the one hand, secondary victimization shall be prevented, and on the other hand, the victim shall be supported when enforcing his/her claims of compensation. In order to do that, the following rights are provided:

To advice and support –

To participate in the criminal proceedings –

To compensation

[84] Ibid S.70 (2) of the Act.

Indirect victims, especially close relatives, are considered equal to direct victims of crime. An important victims' procedural right is the right to psycho-social and legal advice. Covering of costs, however, is provided only in certain cases.[85]

3.8 France

French criminal proceedings are mainly inquisitorial; however they also include adversarial elements so as to reach a balance between the rights of the defence, the rights of the victim and those of society as a whole. The main principles are defined in the introduction of the Code of Criminal Procedure:

- Equitable and adversarial proceedings,

- Information and guarantee of the victims rights,

- Presumption of innocence and rights of the defense.

4. The Role of Public Prosecutor

The public prosecutor must be immediately informed of all offences committed as well as whether the police judiciary is holding persons in custody for the purpose of its investigations. The public prosecutor ensures that custody in the police station is carried out in compliance with the law and may authorize its extension beyond 24 hours for a maximum duration of 48 hours. When someone has committed an offence, it will result in an investigation (preliminary investigation or investigation of flagrancy) conducted by various police departments. The offices of the prosecutor will then look at the case and decide on the charges and what direction to give at the case. The prosecutor may decide to close the case or prosecute, according to the principle of prosecutorial discretion.

5. The Role of Proof under French Criminal Law

Pursuant to the principle of the presumption of innocence, the burden of proof is on the plaintiff, i.e. the public prosecutor in general, and sometimes on the victim when he or she claims damages. The public prosecutor must produce evidence that the offence was committed and the person being prosecuted was involved. He/she must collect elements of proof both in favour of the prosecution and in favour of the defence. The defendant does not have to provide proof of his or her innocence and is in no way obliged to collaborate in the

[85] http: // www.isrcl.org , accessed on dt. 15 -12-2014, time 05:25 p.m.

search for evidence. The standard for a criminal conviction is proof "beyond reasonable doubt". Any doubt must benefit the defendant. All types of evidence –written, oral testimony, confessions, and scientific examinations – are admissible if they have been collected and produced in compliance with the French Code of Criminal Procedure. Under French law, there are no varying degrees of evidence: it is up to the discretionary judgment of the sitting judges to determine the value of the evidence submitted in each case.

6. Role of Judges in Proceeding

The French judicial system includes specialist judges, known as investigating judges 'judges instruction,' who oversee investigations in the most serious and complex offences. The process is known as the judicial investigation information judiciaries. Cases are referred to the judges instruction by the public prosecutor or by a victim who wishes to bring a civil claim for damages within criminal proceedings. His or her role is to gather all the information that may incriminate or exonerate a person accused of an offence. The judge instruction does not reach any decision about a person's guilt or innocence. As a part of the investigation, the judge may interview any person, call upon the assistance of the police to require witnesses to attend for interview, issue warrants, take statements from persons bringing claims for damages and from suspects, appoint experts, carry out searches and seizures, order telephone tapping, etc. Pre-trial detention may only be ordered by a judge for freedom and detention Judge des liberties et de la detention. When the investigation ends, the investigating judge may refer the accused to a court tribunal or Court assists for trial (if there is sufficient evidence) or discharge the matter (if there is not enough evidence).In order to encourage teamwork ,91 poles de instruction (each one staffed by several judges instruction) have been in operation since 2010. They investigate complex offences.

7. Role of the victim

The victim enjoys a more formal status and role within the investigation and trial phases in French criminal justice system. The preamble to Criminal Procedural Code contains a reference to the duty of the judiciary to guarantee the rights of the victim throughout the criminal process, together with specific requirements in the code to offer guidance and assistance to victims.

The victim may constitute him or herself as a party to the case (partie civile). The partie civile usually becomes involved at the investigative stage of the case. The object of this

"civil party procedure" is compensation, restitution, and legal costs. However, it does provide the victim with the ability to take an active role throughout the proceedings.

There is the further advantage for victims in the relative simplicity, speed and cheapness of using the criminal process to obtain compensation as compared to a civil action. Legal aid is available to victims who chose to constitute themselves parties civil. Discovery and the obtaining of evidence is easier than in a civil action and the victim is relieved of the burden of leading the conduct of proceedings while still being able to play a meaningful role.

The right to be included in the proceedings as a parties civil exists only for those victims who have suffered injuries arising from the commission of serious or middle-range offences. The concept of "injury" is a broad one and includes material, physical and moral damage.

Where the procurer decides not to take proceedings, the victim may have the matter investigated by a judge instruction, although he or she may be required to deposit a sum of money to cover the costs of the proceedings and may be exposed to a claim for damages if the accused is not convicted.

The partie civile may claim compensation (dommages-intérêts or dommages et intérêts) in the criminal proceedings for loss and damage caused by the accused in the commission of the offence, relying on the evidence collected pre-trial and on any further evidence adduced at the trial. Indeed, the partie civile may seek to have the juge d'instruction gather evidence directed to the claim for compensation and include it in the case dossier. The level of compensation is the same as would be awarded in independent civil proceedings. Any compensation awarded is payable by the state which then can seek reimbursement from the accused.

French law has no concept of a private prosecution. It is the State alone, acting through the prosecutor that has the exclusive right to initiate criminal proceedings. However, where no prosecution has been instituted, the victim may activate proceedings directly by instructing the juge d'instruction and thereby requiring an investigation. Also, the victim may institute civil proceedings for damages in the relevant criminal court, which has the effect of automatically triggering a parallel criminal prosecution thereby obliging the procurer to act.

A partie civile has the same rights as the defence in relation to requesting the juge d'instruction to investigate certain matters and put particular questions to witnesses. At trial,

the partie civile may seek to elicit evidence and make submissions relevant to liability and to sentence. The French Criminal Justice System mainly follows the inquisitorial system though they include some of the principles of adversarial system and that is the reason the victims of crime have a better say. The French Code of Criminal Procedure allows victim to join the prosecution as a matter of right. Victim can join in the criminal proceeding of prosecuting the offender as a third party. The victim in the criminal proceeding is a full-fledged party, whatever the way in which he acts, so all the important acts and proceedings are notified to the civil party. He can appeal against decisions which are against his interest.

In France, though the victim is a full-fledged party in criminal proceeding but the lack of clear distinctions between the roles of the police, prosecutor and the judge d'instruction create confusion in the mind of victim and that is the reason it is a common cause of complaint. A reform Commission in 2009 recommended the abolition altogether of the office of the juge d'instruction with the procurer taking responsibility for all investigations including the most serious and sensitive matters. Due to controversy, the proposal was postponed for further consideration in 2011. It is still unclear that what action the French Government will go to take.

3. 9 Canada

In Canada, there are both federal and provincial laws that apply to victims. In federal legislation, victims rights are recognized in the Criminal Code and in the Corrections and Conditional Release Act.

A. Canadian Criminal Code

According to the Canadian Criminal Code, a victim of crime can file and read a Victim Impact Statement at the time of sentencing an officer.[86]A Victim Impact Statement made by the victim that describes the harm done to the victim and, more generally, the effect that the crime has had on his or her life. The Victim Impact Statement is given to the judge who will take it into account when considering the sentence the offender will receive.

B. Corrections and Conditional Release Act

When enacted in 1992, the Corrections and Conditional release Act (CCRA) marked the first time that victims were formally recognized in any federal legislation governing the

[86] Section 722 of Criminal Code.

correctional and conditional release system. While the CCRA is largely focused on offenders, it does permit victims to receive certain information about offenders. According to the provisions of the CCRA the Correctional Service of Canada (CSC) and the Parole Board of Canada (PBC) are required to disclose the following information to the victim:[87]

- the offenders name,

- the offence for which the offender was convicted and the court that convicted the offender,

- the date of commencement and length of the sentence that the offender is serving, and

- eligibility dates and review dates applicable to the offender in respect of escorted and unescorted temporary absences or parole.

In addition to these rights, the CCRA also provides the opportunity for further information to be shared with the offender. The CCRA permit the CSC and the PBC to disclose additional information on a case-by case basis, if they determine the release of the information is justified on the grounds that the interest of the victim in such disclosure outweighs any invasion of the offender's privacy that could result from the disclosure. This information may include:

C. Canadian Statement of Basic Principles of Justice for Victims of Crime

In addition to these rights, all federal, provincial and territorial ministers Responsible for Criminal Justice endorsed the Canadian Statement of Basic Principles of Justice for Victims of Crime in 1988 and then a renewed version in 2003. The Statement provides a comprehensive and valuable overview of how victims should be treated, particularly during the criminal justice process. However because it is not law, it does not provide victims with additional rights beyond those outlined above.

In honour of the United Nations Declaration of Basic Principles of Justice for Victims of Crime, and with concern for the harmful impact of criminal victimization on individuals and on society, and in recognition that all persons have the full protection of rights guaranteed by the Canadian Charter OF Rights and freedoms and other provincial charters governing rights and freedoms; that the rights of victims and offenders need to be balanced; andofthesharedjurisdictionoffederal,provincial,andterritorialMinistersResponsiblefor

[87] Section 26 (1) and 142 (1) (a) of Corrections and Conditional Release Act.

Criminal Justice agrees that the following principles should guide the treatment of victims, particularly during the criminal justice process. The following principles are intended to promote fair treatment of victims and should be reflected in federal/provincial/territorial laws, policies and procedures:

The Civil law countries like Germany, France and Austria follows the inquisitorial system of criminal proceeding where the victim is the full-fledged party of criminal proceeding and that is the little but advantage as compare to adversarial system of criminal proceeding . The country like Germany has legislated a good standard of victim protection laws considering protecting the interest of victims of crime. The Germany takes initiative to enact special laws in the form of The Victim Protection Act, 1998 and Victims Rights Act, 2004 which confers various rights with an intention to minimize the strain on the victim specially during the course of interrogation and also gives other rights like right to participation and information during proceeding along with the right of compensation. The Germany also implements the measures like protection for victims and witnesses as such protection is essential one in the interest of justice.

The country like France follows mainly the inquisitorial system along with some of the principles of adversarial system of criminal proceeding to balance the rights of victim and accused. In this system the victim is the full-fledged party of a case, and he or she also acts as a civil party to claim compensation from accused for the loss which he or she suffered. His active participation during trial will be of great help in the search for truth without inconveniencing the prosecution74.The roles of judges are interchangeable as on one hand they are the part of investigation and on another hand to decide the matter in their judicial capacity. The one of the important feature of French criminal justice system is that there is no concept of private prosecution as it is the State alone; acting through the prosecutor has the exclusive right to initiate criminal proceedings. However, where no prosecution has been instituted, the victim may activate proceedings directly by instructing the juge d'instruction and thereby requiring an investigation. Also, the victim may institute civil proceedings for damages in the relevant criminal court, which has the effect of automatically triggering a parallel criminal prosecution thereby obliging the procurer to act.

Recently the Canada takes an initiative to pass the Victims of Crime Act, 2014 with an intention to protect the rights of crime victims. This act is a significant piece of legislation

that seeks to create clear statutory rights at the federal level for victims of crime for the first time in Canada's history.

The legislation would establish statutory rights to information, protection, participation and restitution, and ensure a complaint process in place for breaches of these rights. In the same way the South Africa recently declared victims charter which promotes justice for victims of crime. This charter confers various rights on the part of crime victims.

When we discuss about the country like New Zealand as this country is first country of the world to establish a modern programmed to compensate victims of crime. So the credit goes to New Zealand as it gives proper attention towards the victims of crime that to in 1963.The New Zealand establishes compensation tribunal to award compensation to victims of crime as the members of tribunal have discretionary power to award compensation to victims of crime by considering number of factors as like pecuniary loss, pain and sufferings of the victim along with behavior of the victim and also his contribution to the injury or death.

The New Zealand also passed the Victims Rights Act, 2002 which having the comprehensive provisions to protect the rights of victims of crime. This act takes care of victims of crime to provide necessary information, assistance and compensation to victims of crime. This act recently amended in 2014 with an intention to strengthen the existing general provisions in legislation for victims of crime, also to give victims more opportunity to be involved in criminal justice processes and also to ensure victims get necessary information of proceedings and about their various rights. The most important thing is that the act intends to increase the accountability and responsiveness of government agencies providing services to victims. Hence the New Zealand through their legislative mechanism takes care of victims of crime by giving proper voice to them in their criminal proceeding.

Hence we can say that the various countries at international level take the initiative to enact separate laws or to make the changes in existing laws to protect the interest of crime victims. The credit goes to various movements which take place at international level as well as efforts taken by various jurists, organizations to invite the attention of various countries to uplift the status and position of victim and to protect their rights.

Chapter IV

Constitutional and Legislative Safeguards in India

In the last chapter the researcher discusses the role of international instruments such as United Nations, European Union and International Criminal Court, as all these international instruments have a great contribution to strengthen the position and status of victims of crime. Along with these international instruments, researcher also discusses the legislative mechanisms of various countries to protect the rights of victims of crime. This study is essential to know the initiative taken by these countries to improve the status of crime victims under their respective criminal justice system. One more important aspect of this study is to compare these legislative frameworks to Indian scenario as what changes are essential under Indian criminal justice system to uplift the status and position of crime victims. In the present chapter the researcher is analyzing and studying the various constitutional and legislative protections given to victims of crime. The study is essential to know the various provisions under these legislative mechanisms to protect the rights of victim and try to know whether these provisions are sufficient to protect the interest of crime victims.

The Constitution of India is the highest law of the land and there is nothing beyond the constitution. According to the Kelson's pure law theory the Constitution of India is the grand norm means it is at top and there is nothing beyond that. The Constitution of India takes care of every section of the society to protect their rights and at the same time it restricts the state not to violate rights of persons guaranteed by the Constitution. The Constitution of India guarantees equal protection to all and forbids the state from depriving anybody's life and personal liberty without procedure established by law[88]. Social justice which is the base of the Indian Constitution has its overtones in the criminal justice system too. The preamble of Indian Constitution itself make it clear that there is equality among all the citizens of India and that is the reason all persons are equal before the law including law makers and followers of the law. The Constitution of India also guarantees equal justice to all the people of India apart from their caste and religion.

4. 2 Overview of the Indian Criminal Justice System

India derived its criminal justice system from the British model as Britishers ruled this country for hundreds of years. But when we try to trace the history of Indian Criminal Justice

[88] Art.14 and 21 of Indian Constitution.

System we found that there are different phases of this criminal justice system. With the passage of time the changes took place time to time in the criminal justice system as there was no uniform criminal justice system which prevails in India. 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 and 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 Smriti 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 Vedas. The penalty for crime was increasingly severe the higher the Varna of the victim and lower the Varna of the perpetrator[89]. The discriminatory system of inflicting punishments and contradictory provisions in different legal literature made the criminal justice system defective and confusing.

During the Muslim rule in India though enlightened monarchs like Sher Shah Suri and Akbar showed great zeal to administer justice impartially, yet as a whole the administration of justice during the Muslim period in India suffered from defects. The concept of equality was applicable only to the Muslim population in India and thus the bulk of the population, i.e. non-Muslims, was subjected to humiliating discrimination. The Hindus suffered in almost similar manner as the people of lower Varna suffered at the hands the people of higher Varna among the Hindus. The major defect of Muslim criminal law was that most of the crimes were considered private affairs of the individuals. Many offences, including murder, could be compounded by the payment of ditya, i.e. blood money and human life was considered rather cheap, capable of assessment in terms of money. The criminal justice system developed by the Muslim rulers continued in India even after the British took control of India. It was in 1860 that the codification of laws changed the discriminatory provisions of Muslim criminal law.

The British after assuming power in India found the then prevailing criminal justice administration defective and decided to bring about drastic changes in it. The major credit goes to Lord Cornwallis who made detailed studies of the existing conditions of the criminal

[89]DasR.M.,CrimeandPunishmentinAncientIndia:withspecialreferencetotheManusmiriti,firstEd.,Bodh- Gaya: Kanchan Publication(1986),p.66.

justice administration and 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 and also supports for various social reforms in India with an intention to eradicate the social evils from the society. 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 High Courts and Prisons. At the same time we cannot ignore the work of Lord Macaulay who is considered as father of Indian Penal Code as this code was drafted by him in 1834 and the same was passed by the British Parliament in 1860. Hence this was the first step to supersede the Mohammedan criminal law and applies the code uniformly to all the people apart from their caste and religion. A general Code of Criminal Procedure followed in 1861 and the process of superseding native by European law, so far as criminal justice is concerned, was completed by the enactment of Evidence Act of 1872. The Britishers through this codification of laws introduced the principles of equity, justice and good conscience, which results into the significant improvement in the preceding criminal laws and also in the present criminal laws as still we follow the same code and laws which were enacted by Britishers with little but change.

Thus, the Britishers 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 Britishers always enjoyed special privileges. It was only with the Constitution of India coming into existence which fully recognised the right to equality before law and incorporated the same as a Fundamental Right.

The researcher tries to analysis the development of Indian Criminal Justice system in nutshell to understand the changes took place under the criminal justice system. From above discussion it is clear that the Indian criminal justice system mainly based on British model as Britishers ruled this country for hundreds of years and passed several laws and codes which

are the basic foundations of present criminal justice system. One thing is certain due to the arrival of Britishers and the efforts taken by them, it is possible to establish uniform criminal justice system throughout the India. As we studied how there was discrimination during the ancient, medieval and Mughal period while treating the wrongdoer and giving the justice to victims of crime. In present criminal justice system it is not possible to discriminate among the citizens on the basis of caste and religion. The only thing is that the view of criminal justice system is going to be changed to treat the offender or wrongdoer from punitive to reformative perspective. The various jurist of the globe feel that no criminal is a born criminal but due to some reasons the person going to commit a crime and they also of the opinion, the society itself responsible for such act as the fault lies somewhere in the society itself. Due to this philosophy the real sufferer i.e. the victim becomes neglected object under the proceeding. Victims have no rights under the criminal justice system, and the state undertakes the full responsibility to prosecute and punish the offenders by treating the victims as mere witnesses. When we talk about Indian criminal justice system, it is essential one to know the nature and working of this system as it is essential to know that what kind of protections given to victims of crime and what are the provisions related to crime victims. The Indian criminal justice system governed by mainly four laws:

1) The Constitutional Law of India

2) The Indian Penal Code

3) The Criminal Procedure Code

4) The Indian Evidence Act

4. 3 The Constitutional Law of India

The Constitution of India is remarkable for many outstanding features which will distinguish it from other Constitutions even though it has been prepared after "ransacking all the known Constitutions of the world" and most of its provisions are substantially borrowed from others. As Dr. Ambedkar observed[90]-

"One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled when the first written Constitution was drafted. It has been followed by many other countries reducing their

[90] 3 Constitutional Assembly Debate, Vol.VII, pp. 35 – 38.

Constitution to writing… Given these facts, all Constitution in their main provisions must look similar. The only new things, if there be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country."

So, though our Constitution may be said to be a 'borrowed' Constitution, the credit of its framers lies in gathering the best features of the existing Constitutions and in modifying them with a view to avoiding the faults that have been disclosed in their working and to adapting them to the existing conditions and needs of this country. So, if it is a 'patchwork', it is a beautiful patchwork[91] .

From the above discussion it is clear that our Constitution is the mixture of all worlds Constitution but the framers gather the best things, the things which suited to Indian culture. Indian Constitution is the unique Constitution of the world which takes care of each and every section of the society. The most important feature of the Constitution is the fundamental rights as the framers of Constitution added a separate chapter in our Constitution i.e. Part III of the Constitution, which talks about most sacred, inalienable, natural and inherent rights i.e. fundamental rights.

As we already discussed the Constitution of India is the highest law of land and the three major wings of the state i.e. Legislature, Executive and Judiciary works as per the powers conferred to them and ultimately within the sphere of four corners of Indian Constitution. When we talk about Indian criminal justice system, we found that it is the integral part of the Constitution and works for to give justice to the person or citizen. The 'Rule of Law' is the basic feature of the Indian Constitution5 and the same thing is obligated on the criminal justice system. Hence, we can say that the Constitution of India takes utmost care and caution to protect the rights of every person. When we try to analyses the Constitutional protection to victims of crime, there are several provisions under the Constitution which protects the rights of victims. The Indian constitution has several provisions which endorse the principle of victim compensation. The guarantee against unjustified deprivation of life and liberty[92] and obligates the state to compensate victims of

[91] 4 Ibid. p.2.
[92] Art. 21 of Indian Constitution

criminal violence. Also constitutional law guarantees protection of arrest and detention in certain cases[93] .

The principle of the state accepting legal liability for criminal injuries suffered by its citizens is an acknowledgement of states obligation for protection of human rights. It is also in public interest as it tends to strengthen the criminal justice system and promote general welfare according to the directive principles of the statepolicy[94].

Hence, ultimately we can say that the social justice will never be meaningful or complete in the absence of justice to the victims of crime. The human values of Part III and Part IV of the Constitution also have vital bearing on the criminal justice. "We the people of India, justice-social, economic and political, "equal protection of law"; "dignity of the individual"; basic freedom, fair procedure and free legal aid-these and other provisions enshrined in the constitution humanize the system of social defence through criminal law. These rights and values are implicit in our constitution, which however, have been innocently ignored by the criminal justice system – that is by the Police, Prosecutors and Courts.

4. 4 Indian Penal Code

Indian Penal Code was the first codified law passed by the British Parliament in 1860 for India with an intention to have a uniform criminal law to punish the wrongdoer or offender. As we already discussed, how the Muslim criminal law was discriminatory one which discriminate on the basis of religion and during that period crime was considered as private affair of the individuals. This was the major reason Britishers decide to have a uniform law to establish criminal justice system and finally they constituted the First Law Commission under the chairmanship of Thomas Babington Macaulay [95] who took tremendous efforts and prepared the draft of Indian Penal Code in 1834. Its basis is the law of England freed from superfluities, technicalities and local peculiarities. Elements were also derived from the Napoleonic Code and from Edward Livingston's Louisiana Civil Code of 1825. The first final draft of the Indian Penal Code was submitted to the Governor-General of India in Council in 1837, but the draft was again revised. The drafting was completed in 1850 and the Code was presented to the Legislative Council in 1856, but it did not take its place on the statute book of British India until a generation later, following the Indian Rebellion of 1857.

[93] Art. 22 of Indian Constitution
[94] Art. 38, 39 and 39 A of Indian Constitution
[95] It was initially offered to Sir James Stephen; se

The draft then underwent a very careful revision at the hands of Barnes Peacock, who later became the first Chief Justice of the Calcutta High Court, and the future puisne judges of the Calcutta High Court, who were members of the Legislative Council, and was passed into law on 6th October, 1860. The Code came into operation on 1st January, 1862.

Unfortunately, Macaulay did not survive to see his masterpiece come into force, having died near the end of1859[96].

It is pertinent to note that the Law Commission did not base its Draft Penal Code on either the then penal law prevailing in different provinces or the penal law system premised on the Mohammedan or Hindu law. The Commission reasoned: the criminal law of the Hindus was long ago superseded… by that of the Mohammedans… The Mohammedan criminal law has in its turn been superseded, to a great extent, by the Regulations. Indeed, in the territories subject to the Presidency of Bombay, the criminal law of the Mohammedans, as well as that of the Hindus, has been altogether discarded, except in one particular class of cases; and even in such cases, it is not imperative on the judge to pay any attention to it. The British Regulations having been made by three different legislatures contain, as might be expected, very different provisions.

The object of this Act is to provide a general penal code for India11 and this code sub-divided into twenty three chapters, comprises five hundred and eleven sections. The Code starts with an introduction, provides explanations and exceptions used in it, and covers a wide range of offences. This was the first attempt to prescribe or to give a detailed list of offences and the punishment for the same. The word 'offence'[97] defined as except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code. The act or omission which is prohibited by this Code is liable to punish as the punishment prescribed by the Code. The kinds of punishment[98] prescribed under the Code and these are the only punishment which prevails in India and other kinds of barbaric punishments are abolished from society.

It is pertinent to note that the Indian Penal Code 1860 which has been amended only sparingly since its enactment in the post-British era is in operation as a major substantive penallawofIndiasinceaboutthelast150years14.Onlythreechaptersnamely,offences

[96] Available at http: // en. Wikipedia.org, accessed on 01 -01-2015 at 11:32 A.M.
[97]Sect.40ofIPC
[98]Sect.53ofIPC

relating to criminal conspiracy, election and cruelty to married women, have been added to its original 23 chapters. Recently the Criminal Law (Amendment) Act, 201315 took place which makes the changes mainly related to sexual offences against women i.e.Sect.354 and 376 of IPC. This amendment has a history of Delhi gang rape case i.e. Nirbhaya Case, a college going girl brutally raped in moving bus that resulted into huge cry against Government and finally Government appointed a three member committee under the chairmanship of Justice J. S. Verma to make the amendment in the existing laws to prevent the sexual offences against the women. The Verma Committee suggests several changes in the existing provisions but Government does not accept all the suggestions of this committee but finally took decision to make the amendment and tries to impose the stringent punishment for such offences.

The main purpose behind this amendment is to protect victims of sexual offences, as several such offences are gradually going to be increased against woman and they feel in secured. When we talk about outraging modesty of woman, the punishment given under S.354 is not sufficient one and that is the reason the punishment under section 354 extended up to five years and inserted few things under the same section to give wider protection to woman. The main object of this section is to protect the women from outraging her modesty. In order to seek conviction under S.354, the prosecution has to prove not only that the accused assaulted or used criminal force to the woman but also that he did it with either the intent to outrage her modesty or the knowledge that it would outrage her modesty.16 However, what constitute an outrage to modesty of a woman is nowhere defined. It can be described as the quality of being modest and in relation to woman 'woman propriety of behavior, scrupulous chastity of thought, speech and conduct, reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions'. It is a virtue attached to a woman owing to hersex.[99]

To protect the woman from outraging her modesty, new sections are inserted in Section 354 as Ss.354-A, 354-B, 354-C and 354-D by way of Criminal Law (Amendment) Act.2013.The new provisions are related to sexual harassment, voyeurism and stalking, these provisions are important one to give more protection to Indian woman. If we analyze the definition of the term sexual harassment given under S.354-A, we find that the key ingredients covered under the definition have been dealt under section 294 and section 509 of theIPC.Thetwosectionscovertheoffenseofsexualharassmentofwoman.Theonlything

[99] Tarkeshwar Sahu v. State of Bihar (2006) 8 SCC 560.

is that the punishment is so meager under both the sections as this punishment is not sufficient one seeing the present scenario of India, where the offense of sexual harassment has increased by leaps and bounds, and the offenders managing to escape the liability because of such meager punishment, but now we cannot say like this as the punishment extended up to five years for such offences.

In modern era due to the advancement of technology which leads to various offences against woman and considering the same thing the two more offences added or inserted in Section-354 i.e. voyeurism and stalking as S.354-C and S.354-D respectively to protect the woman and their dignity. In both the cases, the men tries to take the undue advantage of such technology as in case of voyeurism, the man tries to watch or capture the images of woman engaging in a private act in circumstances where she would have the expectation of not being observed either by the perpetrator or by any other person. In case of stalking, a person cannot try to follow any woman through internet, email, mobile or any kind of electronic communication repeatedly despite a clear indication of disinterest by such woman. In both the cases, such offences are liable to be punished and the punishment extended up to seven years. I think this is a welcome step on the part of Government to give wider protection to women and prevent any kind of sexual harassment of woman.

The another change brought by this Criminal law (Amendment) Act, 2013 is related to the offence of rape as this amendment redefines the offence of rape and imposes severe punishment for such offence. The offence of 'rape' is the most brutal and heinous offence against the woman as it is the murder of soul of woman. It is 'the ravishment of a woman, without her consent, by force, fear or fraud', or 'the carnal knowledge of a woman by force against her will'.18 Rape is the fourth most common crime in India. According to the National Crime Record Bureau 2013 annual report, 24,923 rape cases were reported across India in 2012.This is one fact relating to offences of rape in India as how such crimes are going to be increased and another thing which compelled the legislature to amend the existing provision, is Delhi gang rape case i.e. 'Nirbhaya Case' and finally Government redefine the offence of rape under S.375 of IPC.

The S.375 defines rape as, A man is said to commit "rape" if he –

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of another person or makes the person to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of another person or makes the person to do so with him or any other person; or

(c) manipulates any part of the body of another person so as to cause penetration into the vagina, urethra, anus or any part of body of such person or makes the person to do so with him or any other person; or

(d) applies his mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:-

First.— Against her will.

Secondly-Without her consent.

Thirdly. — With her consent when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.— With the consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.— With or without her consent, when she is under eighteen years of age.

Seventhly.— When she is unable to communicate consent.

Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific act:

Provided that, a woman does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

When we try to analyses the definition of rape given under this section, it is clear that the legislature widened the scope of offence of rape. The number of changes brought by way of this amendment as it does not restrict to penal-vaginal penetration, it tries to cover all forms of insertion i.e. any object or part of body, not being the penis, into the vagina, the urethra or anus. Initially it was very difficult to punish offender for such act or it create confusion in the mind of police while framing the charges against the offender. As earlier it was restricted to penetration whether it was slightest or complete it doesn't makes any difference to constitute the offence of rape but now it covers all forms of penetration other than penal-vaginal penetration. Here the researcher likes to discuss one high profile case[100] where same issue was raised as the insertion of object, finger into private part of woman amounts to rape or not ? In this case the present Union Financial Minister Mr. Arun Jaitly argued on behalf of Smt. Zhaku and he strongly states that, it is essential to widen the definition of rape and cover all such forms into the definition of rape. More elaborately he urged that to interpret the terms 'sexual intercourse' and 'penetration' used in a S.375 in such a way as to bring within their ambit not only penile-vaginal penetration but also penetration of any part of his body (like fingers) or any foreign object (like stick or bottle) into bodily orifice of woman (vagina, anus or mouth). But unfortunately the court ruled that 'sexual intercourse' and 'penetration, mean only the penile-vaginal penetration. Further the high court held that it is for the legislature and not for the judiciary to give wider interpretation to the words 'sexual intercourse' and 'penetration'. Now the legislature took the appropriate step to widen the definition of rape through the amendment 2013, as the definition of rape includes penile and no penile penetration in bodily orifices of a woman by a man.

Another change is related to age of consent as the age is increased from 16 years to 18 years means if the girl is below 18 years her consent is immaterial. This might be because the legislature feels that the age of 'juvenile'20 is 18 years so it is appropriate to increase the age of consent. Another thing is that the criminalization of marital rape is not done as it kept as it is in spite of the recommendations of J. Verma Committee. The severe punishment imposed for Gang rape21 as twenty years or life imprisonment means the offender has to spend entire life in jail for such offence and fine; further provided that fine imposed under this section shall be paid to victim.

[100] Smt.Sudesh Jhaku v.KCJ and others (1998) Cr.L.J. 2428 (Del).

4. 5 The Criminal Procedure Code

The essential objective of criminal law is to protect society against criminals and law-breakers. For this purpose the law holds out threats of punishments to prospective law-breakers as well as attempts to make the actual offenders suffer the prescribed punishments for their crimes. Therefore, criminal law in its wider sense consists of both the substantive criminal law and the procedural criminal law. Substantive criminal law defines offences and prescribes punishments for the same, while the procedural criminal law is to administer the substantive law. In the absence of procedural criminal law, the substantive criminal law would be almost worthless[101]. Because, without the enforcement mechanism, the threat of punishment held out to the lawbreakers by the substantive criminal law would remain empty in practice. Empty threats do not deter, and without deterrent effect, the law of crimes will have hardly any meaning or justification.

The code of Indian criminal procedure was passed by Britishers in 1861 as like IPC passed in 1860.The main reason to pass this code is to have uniform code, as that time there was no uniform procedure to prosecute and punish the offender. When we try to trace the history, we found that in medieval India, subsequent to the conquest by the Muslims, the Mohammedan Criminal Law came into prevalence. The British rulers passed the Regulating Act of 1773 under which a Supreme Court was established in Calcutta and later on at Madras and in Bombay. The Supreme Court was to apply British procedural law while deciding the cases of the Crown's subjects. After the Rebellion of 1857, the crown took over the administration in India. The Criminal Procedure Code, 1861 was passed by the British parliament[102]. The 1861 code continued after independence and was amended in 1969. It was finally replaced in 1972.

The Code of Criminal Procedure (CrPC) is the main legislation on procedure for administration of substantive criminal law in India26. It was enacted in 1973 and came into force on 1 April 1974. It provides the machinery for the investigation of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused person and the imposition of suitable punishment on the guilty person. Additionally, it also deals with public nuisance, prevention of offences and maintenance of wife, child and parents. It takes care of all kinds of victims to protect their rights.

[101] Dr.K.N.Chandrashekharan Pillai, R.V.Kelkar's Criminal Procedure, fifth ed., Eastern Book Company, Luck now (2008), p.1

[102] Available at http: // en. Wikipedia .org, accessed on 15 -01-2015 at 12:32 P.M.

The Criminal Procedure Code also controls and regulates the working of the machinery set up for the investigation and trial of offences. On the one hand it has to give adequately wide powers to make the investigative and adjudicatory processes strong, effective and efficient and on the other hand, it has to take precautions against errors of judgment and human failures and to provide safeguards against probable abuse of powers by the police or judicial officers. This often involves "a nice balancing of conflicting considerations, a delicate weighing of opposing claims clamoring for recognition, and the extremely difficult task of deciding which of them should predominate".27 In short the Code takes precautions while conferring the powers on the part of competent authorities not to results into any kind of injustice to victims of crime.

A. Special Importance of Criminal Procedure

The basic importance of criminal procedure has to be borne in mind, as it is the procedure that spells much of the difference between rule of law and rule by whim and caprice.

B. Investigation of Offences and the Role of Victim

The victim has right to file complaint in police station or before court. The Code makes such provision to have access to raise the voice against any offence committed against him. Once case is registered, the role of police as investigating machinery is important one as they start the investigation, collect the evidence to prove the case against accused. The Code, however, does not contemplate the use of the police in respect of investigation into each and every offence. The Code has classified all offences into two categories i.e. cognizable and non – cognizable.

In case of cognizable offence, a police officer can arrest the alleged culprit without warrant and can investigate into such a case without any orders or directions from a magistrate.43 The law not only allows the police officers to wield these powers but also enjoins them to exercise the same in respect of a cognizable case.44In case of a cognizable offence, it is the responsibility of the State to bring the offender to justice.

C. Trial Procedure and Role of Victim

The system of criminal trial envisaged by the Code is the adversary system based on the accusatorial method. In this system the prosecutor representing the state (or the people) accuses the defendant (the accused person) of the commission of some crime and the law

requires him to prove his case beyond reasonable doubt. The law also provides fair opportunity to the accused person to defend himself. The judge more or less is, to work as an umpire between the two contestants. These are the features of Indian criminal justice system, where the victim is represented by prosecution lawyer and for accused, the defence lawyer is there to defend him and the judge acts as umpire to decide the case.

D. Doctrine of Plea-Bargaining

Plea bargaining is a concept that originated in United States and it has evolved over the ages to become a prominent feature of the American criminal justice system. Plea bargaining is the pre-trial negotiation to reduce either the sentence or the seriousness of the charge. In the United States more than 75 percent of criminal cases end in guilty pleas almost are resulting from plea bargaining. In India, this concept is new as recently the Chapter XXIA consisting of Sections 265-A to 265-L was inserted into the Criminal Law (Amendment) Act, 2005 with effect from 5th July, 2006.

In Indian, the concept of plea bargaining has been incorporated by the legislature after several law commission recommendations63 and also by the Committee on Criminal Justice System Reforms under the chairmanship of Dr. (Justice) V. S. Malimath.[103] This doctrine has been considered and implemented in a manner that takes into account the social and economic conditions prevailing in our country. When we discuss the view of Indian Judiciary, prior to 2005, consistently opposed the incorporation of plea bargaining in our Criminal Justice Process as implicit in series of cases. In Madanlal Ram Chandra Das v. State of Maharashtra[104] , the Hon'ble Supreme Court for the first time made an observation in regard to the efficacy of plea bargaining and observed "In our opinion it is very wrong for a court to enter into a bargain of this character. Offences should be tried and punished accordingly to the guilt of the accused. If the Court it may impose a lighter sentence. But the Court should never be party to bargain by which money is recovered for the complainant through their agency".

E. Compensations to Victims of Crime

A comprehensive provision for compensation to the victims of crime has been provided in Section 357 of the Code of Criminal Procedure. According to Section 357 sub-section (1) and

[103]4FormerlyChiefJusticeoftheKeralaHighCourtwhoendorsedtherecommendationsoftheLaw Commission.
[104] 5AIR 1968 SC 1267.

sub-section (3), the court may award compensation to victims of crime at the time of passing of the judgment, if it considers appropriate in a particular case in the interest of justice. Under Section 357, CrPC the trial court and the appellate courts (while exercising revisional powers) are competent to award compensation to victims of crime only after the trial and conclusion of guilt of the accused.

Sub-section (1) of Section 357 of the CrPC empowers the court to award compensation to the victims of crime out of the fine in the following four cases, namely first, meeting proper expenses of prosecution; secondly, compensation to a person (or his heirs) for the loss or injury caused by the offence when he can recover compensation in a civil court; thirdly, compensation to persons entitled to damages under the Fatal Accidents Act, 1855; and fourthly, compensation to a bona fide purchaser of property which being the subject of theft, criminal misappropriation, cheating, etc. is ordered to be restored to the person entitled to it.

F. Pronouncement of Judgment and Role of Victim

This is one of the important stages of criminal justice system where the competent court declares its judgment after hearing both the parties. At this stage the court will either convict or acquit the accused by following all the provisions regarding the delivery and pronouncement of the judgment.

If the judge convicts the accused person, he is required to pass sentence on him according to law. However, considering the character of the offender, the nature of the offence and the circumstances of the case, the judge may instead of passing the sentence, decide to release the offender on probation of good conduct under section 360, or under the Probation of Offenders Act,1958.

After the accused is found guilty and an order of conviction is recorded by the court, a separate and specific stage of trial has been provided by Section 235(2) whereby the court is required to hear the accused on the question of sentence. In this sense, the section provides for a bifurcated trial and specifically gives to the accused person a right of pre-sentence hearing which may not be strictly relevant to or connected with the particular crime under inquiry but may have a hearing on the choice of thesentence.[105]

[105]BachanSinghv.StateofPunjab,(1980)2SCC684;RajendraPrasadv.StateofU.P.,(1979)3SCC646.

4. 5 Indian Evidence Act

The object of every judicial investigation is the enforcement of a right or liability that depends on certain facts. The law of evidence can be called the system of rules whereby the questions of fact in a particular case can be ascertained. The term 'evidence' owes its origin to the Latin terms 'evident' or 'evidere' that mean 'to show clearly, to discover, to ascertain or to prove.' In short the law of Evidence plays an important role to prove or to decide the matter in the competent court.

The enactment and adoption of the Indian Evidence Act was a path breaking judicial measure introduced in India, which changed the entire system of concepts pertaining to admissibility of evidences in the Indian courts of law. Until then, the rules of evidences were based on the traditional legal systems of different social groups and communities of India and were different for different people depending on caste, religious faith and social position. The Indian Evidence Act introduced a standard set of law applicable to all Indians.[106]

4. (6) Probation of Offenders Act, 1958 This Act is enacted with an intention to release the offender on probation rather than to put them behind the bar. The purpose of the act is to stop conversion of youthful offenders into stubborn criminals as a result of their association with hardened criminals of mature age. The Probation of offenders Act empowers a trial court, at its discretion, to release an offender after due admonition (in certain specified offences) and on probation of good conduct in suitable cases.

4. 7 Fatal Accident Act, 1855

In order to give effective rights to the person injured or expired in an accident Fatal Accident Act was enacted in India. One will be surprised to know that even before the enactment of the Indian Penal Code, 1860 (IPC), The Fatal Accidents Act was brought on the statute book in 1885 to provide compensation to the families (dependents) for the loss occasioned by the death of a person caused by actionable wrong.

However, in view of the time consuming, lengthy, expensive and cumbersome procedure in civil litigation, the victims have hardly resorted to the provisions of the Fatal Accidents Act. This Act provided only a procedure and a right of named legal heirs to claim compensation from the person committing negligence. Moreover, the provisions have

[106] Sec.82 of IPC.

become obsolete in view of other options available to the victims to claim compensation. This enactment has worked in India for a comfortable long period.

4. 13 The Juvenile Justice (Care and Protection) Act,2000

The juvenile need the special care and attention as they don't attend the sufficient maturity of understanding to differentiate what is good and what is evil. The different treatment is also needed as we cannot give same treatment to adult and juvenile. The age of doli- instead differ from state to state, the Indian Penal Code states that the child below seven years is completely exempted from any criminalliability.[107]

The juvenile Justice Act is the first central legislation enacted in 1986 to enforce throughout the India, the Act amended time to time to protect the interest of juvenile. This act passed by Parliament to give effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the U. N. countries in November 1985.The main objectives of the Act are as follows:-

1) It laid down a uniform framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lockup.

2) To minimize the stigma and in keeping with the developmental needs of the juvenile or the child, the Act divided in two parts, one for juvenile in conflict with law and other for the juvenile or the child in need of care and protection.

3) To create special juvenile police units with a humane approach through sensitiasation and training of police personal.

4) To bring the juvenile law in conformity with the United Convention on the Rights of the Child.

The special feature of the Act is that a juvenile who has committed an offence is not addressed as 'juvenile delinquent'; instead he is called a 'juvenile in conflict with law'. The object perhaps is to avoid stigma which the word 'delinquent 'carries with it in case of juvenile offenders. The trial of juvenile in conflict with law is held by the Juvenile Justice Board,115 which is the competent authority to decide the matters of juvenile in conflict with law. The Child Welfare Committee,116 another competent authority, has all the powersto

[107] Sec.84 of IPC.

take decision regarding child in need of care and protection and such decision is a final decision.

This Act is important milestone in the history of Indian Legislature in regards to juveniles. The Act protects the interest of juveniles and also avoids the victimization of juvenile. As the researcher already discussed, this is the first comprehensive central legislation to deal with the problems of juvenile in our society. The juveniles are themselves the victims of society, so this Act will be helpful to rehabilitation and social reintegration of juvenile.

In this way researcher tries to study and analyze the special legislations which protect the rights and interest of specific victims of our society. The Constitution of India confer such powers on the part of State to make special provisions to protect the rights of vulnerable section of the society and while making such special provisions in favour of such class there is no question of violation of right to equality.

Chapter V

Criminal Justice Delivery System in India:

In the last chapter the researcher discusses in detail the Indian Constitutional and legislative safeguards to protect the rights of victims of crime. The researcher tries to analyze these provisions in detail and to interpret these provisions to know the applicability of such provisions to protect the interest of victims of crime. The Constitution of India takes utmost care and caution to protect and help victims of violation of human rights.

The Code of Criminal Procedure is the main procedural law to protect the rights of victims of crime. The Code have various provisions to deal with victims of crime, the researcher analyses these provisions in the last chapter with an intention to find out the specific provisions related to victims of crime. Along with this Code, the researcher also gone through with Indian Penal Code and Indian Evidence Act to know the various provisions which have concern to victims of crime. To study the procedural laws and substantive law is essential to have a complete glance to know the various provisions related to crime victims.

The researcher has already discussed the constitutional and legislative mechanism to protect the rights of crime victims in the last chapter; in the present chapter the researcher tries to trace out the various hurdles while implementing the legislative provisions to protect the rights of crime victims. The Indian legislative mechanism always tries to give justice to victims by punishing the offender with appropriate punishment.

Hence, in this chapter the researcher intended to find out various loopholes in the existing criminal justice system and to give appropriate suggestions to uplift the status and position of victims of crime.

To trace out the hurdles in the path to give justice to victims, it is essential one to know the nature of Indian criminal justice system. We know that there are mainly two types of criminal justice systems in the world i.e. adversarial criminal justice system and inquisitorial criminal justice system. To know the position and status of victim, it is essential one to study the features of these two criminal justice systems. Both justice systems insist upon right adjudication of the accused and protection of the innocent. But there are basic differences as to rules of procedures in each of these systems. Each system has its own merits and demerits while giving justice to victims of crime.

5. 2 Adversarial Criminal Justice System

The system followed in India for dispensation of criminal justice is the adversarial system of common law inherited from the British Colonial Rulers. The accused is presumed to be innocent and the burden is on the prosecution to prove beyond all reasonable doubt that he is guilty. The accused also enjoys the right to silence and cannot be compelled to reply. This right is guaranteed by Constitution of India in the form of fundamental right[108] and also a universally recognised right of the accused under Art. 14 of the International Convention on Civil and Political rights.

In the adversarial system truth is supposed to emerge from the respective versions of facts presented by the prosecution and the defence before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt. The trial is oral, continuous and confrontational. At the heart of the trial lies the principle of morality, which provides that evidence should generally be received through the live, oral testimony of witnesses in court.[109]

In the adversarial system, the parties use cross-examination of witnesses to undermine the opposing case and to discover information and other side has not brought out. Hence we can say that, parties in the adversarial system enjoy a high degree of freedom of proof, which largely extends to the manner in which witnesses are cross-examined. As the adversarial system does not impose a positive duty on the judge to discover truth he plays a passive role. The judge neither takes part in investigation nor gives any instructions to prosecution.

As the researcher already discussed each system has its own merits and demerits, the adversarial system insists upon strict adherence of procedural law which results into less room for the state to be biased against the accused. It provides ample opportunity to uncover the truth in a laboratory of courtroom. This model allows both parties to fully air their grievances and reach a final solution by a disinterested and impartial judge. The main advantage of this system is that there is not a direct involvement of the judge in the investigation otherwise it will lead to his predisposed to a formulation of the critical propositions. As the adversarial system does not impose a positive duty on the judge to discover truth he plays a passive role. Along with this the individual's right to privacy is best preserved under it.

[108] See Art.20 (3) of Indian Constitution.
[109] Jonathan Doak, Victims Rights, Human Rights and Criminal Justice, Hart Publishing, (2008), p.34.

The main disadvantage of this system is that, the system is heavily loaded in favour of the accused and is insensitive to the victims plight and rights. Another thing is that in most of legal cases in this system do not go to trial; this can lead to great injustice when accused has an unskilled or overworked attorney. It fails to accurately resolve complex technical issue such as science, technology or tax or accounting regulations. Too much insistence on procedure may lead to unnecessary delay and that is the reason justice delayed results into justice denied. When we discuss about the role of victim then we found that, victim act as a mere witness as he don't have any place under the entire procedure of criminal justicve system.

In the adversarial criminal justice system owing to the conceptualization of crime as an offence against the state, the criminal justice system is traditionally viewed as a system to facilitate a conflict between the state and the accused.3 The victim is thereby inherently excluded.

5. 3 Inquisitorial Criminal Justice System

The inquisitorial model basically relates to Romano Germanic System of Law, which is also known as civil law system or continental law system. It aims to attain justice with the composite effort of the prosecutor, the police, the defense lawyer and the court. The court can play active role in procuring evidence, in the investigation of the case and the examination of the witness.[110]

In this system power to investigate rests primarily with the judicial police officers (Police/Judiciary). They investigate and draw the documents on the basis of their investigation. The judicial police officer has to notify in writing of every offence which he has taken notice of and submit the dossier prepared after investigation to the concerned prosecutor. If the prosecutor finds that no case is made out he can close the case. If however he feels that further investigation is called for, he can instruct the judicial police to undertake further investigation.

The judicial police are required to gather evidence for and against the accused in a neutral and objective manner as it is their duty to assist the investigation and prosecution in discovering truth. The main feature of this system is that, the exclusionary rules of evidence hardly exist and at the same time hearsay evidence (rules) is unknown.

[110] Prof.Madhav Prasad Acharya, The Adversarial v. Inquisitorial Models of Justice, Kathmandu School

The main feature of this system is that the accused is presumed to be innocent and it is the responsibility of the judge to discover the truth. The statements of witnesses recorded during investigation are admissible and form the basis for the prosecution case during final trial.

The important thing is that before the trial, the judge, the accused and the victim are entitled to participate in the hearing. However the role of the parties is restricted to suggesting the questions that may be put to the witnesses. It is the judge who puts the questions to the witnesses and there is no cross-examination as such.

The evidence regarding character and antecedents of the accused such as previous convictions or conduct are relevant for proving the guilt or innocence of accused. When we discuss about the main advantage of this system then we cannot ignore one thing that to prove the case, the standard of proof required is the inner satisfaction or conviction of the judge and not proof beyond reasonable doubt as in the adversarial system. Victim plays an important role at every stage of the case.

The disadvantage of inquisitorial system is that there is lack of chances of fair trial and another thing is that participation of the court in the investigation of the case may lead to biased attitude while deciding the case. Right to privacy of the accused is denied and the accused is exposed to express everything which he need not express keeping in view of merit of case.

The inquisitorial system followed specially in civil law countries like France, Germany, New Zealand, Italy and Austria and the countries like United Kingdom, United State of America, India and other common law countries followed the adversarial criminal justice system. In India there is contrary views about the model, the various High Courts of India expressed their views about the present criminal justice system. The High Courts of Allahabad, Andhra Pradesh, Kerala, and Punjab & Haryana have said that the present system is satisfactory. The High Courts of Jharkhand and Uttaranchal have opined that the Adversarial System has failed. The High Courts of Bombay, Chhattisgarh, Delhi, Himachal Pradesh, Kolkata, Madras, Madhya Pradesh and Orissa have expressed that the present system is not satisfactory. Some of them say that there is scope for improving the Adversarial System by adopting some of the useful features of the InquisitorialSystem.[111]

[111]SeeJusticeMallimathCommitteeReportonReformsofCriminalJusticeSystem,vol.1(2003),p.27.

The majority of High Courts give stress on to make some changes in the existing criminal justice system. The former President of India, Dr. R. Venkataraman also made observation about present system:

"The Adversarial System is the opposite of our ancient ethos. In the panchayat justice, they were seeking the truth, while in adversarial procedure, the Judge does not seek the truth, but only decides whether the charge has been proved by the prosecution. The Judge is not concerned with the truth; he is only concerned with the proof. Those who know that the acquitted accused was in fact the offender, lose faith in the system".

The judge should play active role to find out the truth, he concerns only about the proof as the evidences which lead before him on that basis he decides the case. The judge doesn't have any role in the matter of investigation though he acted neutrally to decide the case. The Supreme Court has criticized the passive role played by the judges and emphasized the importance of finding truth in several cases. It is the duty of a court not only to do justice but also to ensure that justice is being done.

The researcher in nutshell tries to discuss the features of adversarial and inquisitorial criminal justice system. In India there is voice on the part of jurist, law Commission and even some of the High Courts to include some of the principles of inquisitorial model. To study these features are essential one as the researcher intends to explore and analyze the role of the victim during criminal proceedings by way of comparing these two systems. To study the status and position of victim under criminal proceeding it is essential to analyze the interaction of the victims with the constituent elements of the criminal justice system i.e. the police, lawyers and courts and the role played by him at each stage of the criminal process. Ultimately the researcher intends to suggest remedial measures to enhance the role of victims during criminal proceedings and sensitive the criminal justice system to the needs and expectations of the victims.

Victims of crime are important players in criminal justice administration both as complainant/informant and as witness for the police/prosecution. Despite the system being heavily dependent on the victim, criminal justice has been concerned with the offender and his interests almost subordinating or disregarding the interests of victim. In the civil law systems generally, the victims enjoyed a better status in administration of criminal justice. Towards the last quarter of the twentieth century, the common law world realized the adverse

consequences arising from this inequitable situation and enacted laws giving rights of participation and compensation to the victims.

5. 5 The Victim and the Police

The victim's first contact with the criminal justice system is with the police. When a person who has been the victim of a cognizable offence gives information to the police regarding the same, the police is required to reduce the information into writing and read it over to the informant. The informant is required to sign it and get a copy of the FIR.6 If the police refuse to record the information, the victim – informant is allowed to send it in writing and by post to the Superintendent of Police concerned. However the provision mandates that the same needs to be done by post. This creates a problem because of the time that this process takes. Assuming that both the postal department and the Superintendent of Police are efficient, a delay of forty-eight hours can reasonably occur. This gives ample time to the accused to tamper with the evidence, and the first information report under Section 154 of the CrPC would then become fruitless. If the police refuse to investigate the case for whatever reason, the police officer is required to notify the informant of that fact.7 Alternatively, victims are enabled by Section 190 of the CrPC to avoid going to the Police Station for redress and directly approach the Magistrate with his complaint. This is termed as a 'private complaint' and the Magistrate is empowered to order investigation, under his or her supervision.

This is a formal process and would require the victim to engage a lawyer in order to satisfy the formal requirements stipulated by the law. In the context of filing the first information report the Indian law appears to put the onus completely on the victim. If the case is a non-cognizable one, the police are required to refer the informant to the Magistrate. Hence; there arises a scope for misuse by the police, which have been empirically recorded in India. The Malimath Committee Report records the fact that informants are treated indifferently by the police and sometimes threatened when they go to them with their grievances. The facts are distorted in order to make cognizable cases non-cognizable.[112]

Here the researcher likes to give reference of French criminal justice system that followed the inquisitorial model of criminal justice system. Under the French criminal law if the police do not have jurisdiction to investigate the offence reported, they are required to

[112] MalimathV.S.(2003),ReportoftheCommitteeonReformsoftheCriminalJusticeSystem.Delhi:Ministry ofHomeAffairs,GovernmentofIndia.

take the statement of the victim and pass the statement to the competent authorities. Incorporating this approach into the Indian criminal law would be beneficial for two reasons. First, the police will become the single point for the victim/informant to approach, which will address the problems that the present is said to have. Second, the time of a Magistrate may be better utilized, since instead of personally recording the statement of the victim/informant, the Magistrate will have to peruse the recorded statement and take a decision whether the case ought to be investigated or not.

Another alternative, which is suggested by the Malimath Committee Report, is that the distinction between cognizable and non-cognizable offences in relation to the power of the police to investigate offences should be removed, and it should be made obligatory on the police to entertain complaints regarding commission of all offences and to investigate them.9 I think this is not desirable as the rationale in making this distinction is to keep the police out in certain situations. For instance, all offences against the institution of marriage are non-cognizable offences. The legislature seems to have intended that the Magistrate apply his or her mind before permitting the police to investigate such a complaint. Removing the distinction would nullify this objective. Hence, the French system seems to be more practical and desirable.

5. 6 The Process of Investigation and the Victim

The process of investigation is the part of proceeding to punish the wrongdoer. To collect the evidence, to find out the truth, the investigation is essential one to put all the matter before the court. In some cases the special investigation officer is appointed by the competent court to investigate the matter.

When we discuss the role of victim in the process of investigation, the Code does not seem to give any role to the victim during investigation. The statement of the victim, if he or she also happens to be the informant, is recorded in the form of first information report. If the victim is not the informant, then the victim will be independently questioned by the police.

The term 'investigation' [113] is defined to include all the proceedings which are essential for collection of the evidence, conducted by a police officer or by any person authorized to do so by a magistrate. As soon as the investigation is completed, the investigation officer has to forward a report in the form prescribed in the Code to the

[113] See Sec.2 (h) of CrPC.

Magistrate. Hence, investigation begins with the filing of the first information report and ends with the submission of final report which is also known as 'charge sheet'.

If we carefully observe the definition of 'investigation' it is clear that there is no reason why the police cannot involve the victim in the process of investigation. In fact, assistance of the victim might help the police to proceed the investigation in a proper way or direction. However, practice reveals that once the statement of the victim is recorded, the case is completely within the control of the police and they do not involve the victim in the investigation process at all. The Malimath Committee report suggests that the victim should play an active part in during investigation.

The objective of criminal justice system, according to the committee is to find out the truth. Hence the victim's involvement becomes very important. The victim can assist the investigation in finding the offender and in collecting the evidence to prove the commission of the offence by the criminal. The committee also suggests that the victim should be allowed to offer suggestions with respect to the investigation and should be given the power to move the court for appropriate directions to ensure proper investigation of the case. This is similar to French criminal justice system, wherein, during the pre-trial inquiry the victim enjoys the same rights of participation as the suspect. He or she may request the judge instruction to carry out particular investigation and through his or her lawyer, access to the case dossier is provided.

Section 157 of CrPC deals with the procedure for investigation. It states that if it appears to the police officer that there is no sufficient ground for entering an investigation, he or she shall not investigate the case. However, if such a decision is taken, the officer is required to notify the informant the fact the case will not be investigated. This seems to have been provided to allow the informant to exercise the other options available in the CrPC to set the criminal justice system into motion.

5. 7 The role and participation of the Victim in the process of Trial

The researcher already discussed the role of victim in the process of investigation and tries to analyze the scope of victim in the process of investigation with the help of relevant provisions under code of criminal procedure. Here the researcher tries to throw some light on the process of trial and whether the victim has any voice under the entire process of trial. The debate in the context of participation of the victim in the trial revolves around the issue of when and to what extent should the victim be allowed to participate. In this part of the chapter, the

researcher shall examine the Criminal Procedure Code and the extent to which victims are permitted to have a voice in the prosecution of crimes against them.

The term 'participation', in the context of victims, has been defined to include 'being in control, having a say, being listened to or being treated with dignity and respect'[114]. But when we talk about the nature of criminal justice system we found that in most of jurisdictions, crime is considered to be an offence against society. It is also considered that criminal liability imports stronger moral culpability than other forms of legal liability. Hence crimes are distinguished from other unlawful acts, by virtue of their public character[115]. This implies that the society is the victim of such a crime and it is the duty of the society to restore the balance disturbed by the commission of the crime. Hence, the State, and not the actual victims, has the responsibility to prosecute offenders.

The Indian system classifies trials into those that are conducted by a 'Court of Session' and those that are conducted are by a 'Magistrate's Court'. A Court of Session cannot directly take cognizance of any offence exclusively triable by such court according to the First Schedule. A competent Magistrate may take cognizance of such an offence and commit the case to the Court of Session for trial.[116] Even in respect of other offences a Magistrate may commit a case to the Court of Session under the circumstances mentioned in Sections 322 to 324 of CrPC. All such cases shall be tried by the Court of Session according to the procedure laid down in Sections 226 to 236 of CrPC.

The Public Prosecutor is appointed by the government for conducting prosecutions, appeals or any other proceedings on behalf of the government.20 The Code does not specifically mention about the spirit in which the duties of the prosecutor are to be discharged. It does not speak of the attitude, the prosecutor should adopt while conducting the prosecution. The objective of a criminal trial is to find out the truth and to determine the guilt or innocence of the accused.

The duty of the prosecutor in such a trial is not merely to secure conviction at all costs but to place before the court whatever evidence is possessed by the prosecutor, whether it be in favour of or against the accused, and to leave the court to decide upon all such evidence whether the accused was or was not guilty of the offence alleged. It is no part of the

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[114] DoakJonathan,'Victims Rights in CriminalTrials:ProspectsforParticipation',JournalofLawandSociety, (2005), Vol.32,p.295

[115] EdwardsI.,'ThePlace of VictimsPreferencesintheSentencingoftheirOffenders',CriminalLawReview, (2002),p.699.

[116] See Section 209 of CrPC.

prosecutor's duty to obtain convictions by hook or by crook. The prosecutor plays a very important role in the administration of justice.

A public prosecutor should be personally indifferent to the result of the case. His duty should consist only in placing all the available evidence irrespective of the fact whether it goes against the accused or helps him, before the court, in order to aid the court in discovering the truth. It would thus be seen that in the machinery of justice a Public Prosecutor has to play a very responsible; the impartiality of his conduct is as vital as the impartiality of the court itself.

The Public Prosecutors who conduct prosecutions on behalf of the State have their own rules of conduct whose function is to place the whole incident in a proper perspective to facilitate an objective decision. The role of the prosecutor has already come in for considerable critical comment on the ground that they are more inclined to be committed to the idea of successful prosecution and conviction of the offender than to a just and dispassionate presentation of the facts. This approach may satisfy the higher principles of justice, but leaves the victim cold.

The public prosecutor, in charge of a case may appear and plead without any written authority, before any court in which the case is under inquiry, trial or enquiry.[117] More importantly, Sub-section (2) of the same section makes a provision for the appointment of a pleader by a private person. The powers of the pleader are restricted since the section states that the prosecution will be carried out by the Public Prosecutor, and pleader shall act under the directions of the Prosecutor. The pleader is however allowed to submit written arguments to the court, if it so permits, after the evidence is closed. Section 302 of CrPC goes a step further. It states that any magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person, other than a police officer below the rank of Inspector and who is not the part of investigation. This thus empowers the victim to argue the case himself or herself or through his or her pleader. The only limitation to this right is provided in Section 225 of the CrPC. This Section states that in every trial before the Court of Session, the prosecution shall be conducted by a Public Prosecutor. Hence in a trial before the Court of Session, the victim only exercise his or her rights to appoint a pleader, as provided by Section 301(2) of the CrPC.

5.8 Compounding of Offences and withdrawal from prosecution

[117] See Section 301 of CrPC.

Another area where the role of the victim comes into prominence is in situations where the Criminal Procedure Code permits a premature end to the trial. Section 320 of the CrPC deals with compounding of offences, wherein the victim is allowed to withdraw the case filed by him or her. This is allowed only with respect to certain offences, enumerated in the said section.

Under certain circumstances it may be advisable to allow the compounding of offences and to drop the criminal proceedings if there is a settlement between the accused person and the victim of the crime. Sometimes, the Public Prosecutor or the complainant may consider it expedient to withdraw from the prosecution; and the court may allow such withdrawal and put an end to criminal proceedings. Under certain circumstances, the Magistrate himself may consider it desirable to stop the proceedings, and the Code, subject to certain safeguards, allow it to be done.

A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognize some of them as compoundable offences and some others as compoundable only with the permission of the court. The compoundable offences are mostly non-cognizable offences are not compoundable. Then again, the offences which are compoundable only with the permission of the court are mostly cognizable offences, though all cognizable offences are not so compoundable.

5. 9 J. Malimath Committee Report and Reforms in Criminal Justice System

The Committee on Reforms of the Criminal Justice System was constituted by the government of India, Ministry of Home Affairs by its order dated 24 November 2000, to consider measures for revamping the Criminal Justice System. The committee appointed under the chairmanship of Dr. Justice V. S. Malimath, former Chief Justice of Karnataka and Kerala High Courts, Chairman, Central Administrative Tribunal and Member of the Human Rights Commission and other members.

The terms of reference for the Committee are:

i. To examine the fundamental principles of criminal jurisprudence, including the constitutional provisions relating to criminal jurisprudence and see if any modifications or amendments are required there to;

ii. To examine in the light of findings on fundamental principles and aspects of criminal jurisprudence as to whether there is a need to re-write the Code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act to bring them in tune with the demand of the times and in harmony with the aspirations of the people of India;

iii. To make specific recommendations on simplifying judicial procedures and practices and making the delivery of justice to the common man closer, faster, uncomplicated and inexpensive;

iv. To suggest ways and means of developing such synergy among the judiciary, the Prosecution and the Police as restores the confidence of the common man in the Criminal Justice System by protecting the innocent and the victim and by punishing unsparingly the guilty and the criminal;

v. To suggest sound system of managing, on professional lines, the pendency of cases at investigation and trial stages and making the Police, the Prosecution and the Judiciary accountable for delays in their respective domains;

In nutshell we can say that the Justice Malimath Committee has made some progressive and welcome recommendations to protect the rights of victim. The rights include, right to participation, the right to produce evidence, to ask questions to the witnesses, to know the status of investigations and to move the court for further investigation, to advance arguments, to participate in negotiations, and the right to appeal under certain circumstances. Equally, the proposal for a Victim Compensation Law enshrining the State's obligation to compensate victims even when the offender is not apprehended is a step towards a real protection of victims of crime and human rights violations.

5. 10 The Code of Criminal Procedure (Amendment) Act, 2008 and Rights of Victim

The Code of Criminal Procedure (Amendment) Act, 2008 brought a radical and impactful change in the Indian Criminal Justice System by introducing and redefining the rights of the victims. The victims were conferred more rights and the major changes that took place have been discussed below.

The most important thing is that the Code first time defines the term victim as the term defined by inserting a new Section 2(wa),'Victim' means a person who has suffered

any loss or injury caused by a reason of the act or omission for which the accused has been charged and the expression 'victim' includes his or her guardian or legal heir.

The definition incorporated under this section widens the expression 'victim'. The new definition includes a guardian or legal heir of the victim and thus confers them with rights equivalent to a victim.

Appointment of an Advocate – A clause has been added to Section 301 (2) whereby a victim has right to engage an advocate of his choice to assist the public prosecutor and who act as per the directions of Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the court, submit written arguments after the evidence is closed in the case. In another way also a victim has right to appoint a lawyer of his choice to assist the Special Public Prosecutor[118] and his role is also same as in earlier case.

Protection to Rape Victims – A proviso has been inserted in Clause (a) of Section 26, which provides that any offence under Section 376 and sections 376 A to 376 D of the Indian Penal Code shall be tried as far as practicable by a Court presided by a woman. In Section 157, a second proviso has been inserted in relation to evidence of rape, whereby recording of statement of the victim shall be conducted at the residence of the victim or in place of her choice and as far as practicable by the woman police officer in the presence of her parent or guardian or near relative or social worker of the locality. The said provision thus makes an exception for the rape victims during investigation and confers them with more rights. A new sub-section (1A) is inserted in Section 173 with a view to provide that the investigation of the offence of rape of child shall be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station. Also, a new proviso has been added in Section 327(2), which provides that a woman Judge or Magistrate should conduct the in-camera trial. The Law Commission of India also made the above recommendations.[119]

Protection to Witnesses – The protection is conferred to witnesses of the case and the person who tried to commit any threat to the witnesses such persons are liable to be punished and a new Section inserted to make provision for a witness or any other person on his behalf to file complaints in relation to an offence under Section 195 A of the Indian Penal Code.[120]

[118] See Section 24 (8) of CrPC
[119] 44 154th report, Law Commission of India.
[120] See Section 195A of CrPC.

Right to Appeal – A new proviso has been inserted with Section 372 whereby the victim shall have the right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. Having regard to the history of legislation and the case law it is strongly felt that the right of victim limited to three categories is intended to be absolute and that it is in consonance with the aim of the legislature to protect the victims.

Victim Compensation Scheme – A new Section 375 A was incorporated in order to provide for the State Government to prepare in co-ordination with the Central Government, a scheme called "victim compensation scheme" for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime. With the introduction of this scheme the victim has been assured of a compensation amount.

Earlier provision i.e. section 357 of CrPC was not able to serve its purpose to compensate the victims or relatives of victims. The scheme is based on Criminal Injuries Act, 1988 of Britain, whereby a Compensation Scheme was incorporated to compensate the victims.46 Also, the Law Commission of India in its 152nd Report and in the 154th Report suggested this scheme. Thus, right to compensation becomes a reality for the victim and this is bound to bring a radical change in the access to justice.

5. (11) Lacunae Existing in Our Criminal Justice System to Protect the Rights of Victim

There are a number of issues, which have to be addressed and included in our Criminal Justice System to reinforce and strengthen the rights of victims. The Law Commission of India in its 154th report on Code of Criminal Procedure, 1973 in the year 1996 and the Malimath Committee on Reforms of Criminal Justice System, 2003 had also highlighted some valuable points which are absent in our Criminal Justice System. The major lacunae have been discussed below.

Right to Participate in the Proceedings

In the existing criminal justice system, a crime victim does not have any significant role to play in the criminal process. The investigation process is exclusively a police function and the victim has a role only if the police consider it necessary. This is the time where victims need assistance at most but the law is silent on it. Similarly, a complainant/informant

does not have any say if the Magistrate, on receipt of a final investigation report (charge-sheet) from Investigating Officer recommending dropping of the case, is inclined not to initiate action against suspect / accused. The Code, in no way, requires the Magistrate, to hear the victim / complainant/informant.47 However the Supreme Court, plausibly realizing the statutory lapse mandated that a Magistrate should not drop proceedings without giving notice to the parties adversely affected. It is just and necessary that, the Apex Court asserts, these parties should be heard before making an order of dismissal of the complainant[121].

The existing law only envisages the prosecutor appointed by the State to be the proper authority to plead on behalf the victim. However, the Code does not completely prohibit a victim from participating in the prosecution. A counsel engaged by the victim may be given a limited role in the conduct of prosecution that too only with the permission of the Court.49 and a crime victim may be permitted to submit, with the permission of the court, written arguments after the closure of evidence in the trial. [122] Thus, the Code restricts direct participation of the victim's lawyer in the trial.

Information to Victims

Owing to ignorance of law or lack of sensitivity, many police officers at the police station level do not inform the victim of the action taken by police relating to the commission of the offence reported to the police station as per provisions of Section 173 (2) (ii) of the Code of Criminal Procedure. Nor is there any statutory provision to inform the victim of the progress of the case during trial by the prosecution. It is essential one that the police and prosecution may follow such procedure to inform the victim of the progress of the case during investigation and trial respectively.

Rehabilitation

The law fails to address the needs of the victim to be treated with dignity, to sustained protection from intimidation, to readily access the justice mechanisms, to legal aid and to rehabilitation.[123] There is also no statutory scheme recognizing the rehabilitative needs of the victim of rape. The Malimath Committee on Reforms of Criminal Justice System had recommended that victims of rape and domestic violence, require trauma counseling,

[121] Public Service Commission v. S. Papaiah, (1997) 7 SCC 614.
[122] Ibid.
[123]1S.Muralidhan,"RightsofVictimsintheIndianCriminalJusticeSystem",2004,alsoavailableathttp://www.ierlc.org/content/a0402.pdf.

psychiatric and rehabilitative services apart from legal aid. The object is to avoid secondary victimization and provide hope in the justice system. At the police station level, with or without the assistance of voluntary organizations, victim support services need to be organized systematically if the system were to redeem its credibility in society. The law fails to address the needs of the victim to be treated with dignity, to sustained protection from intimidation, to readily access the justice mechanisms, to legal aid and to rehabilitation. There is also no statutory scheme recognizing the rehabilitative needs of the victims of rape.

Legal Aid to Victim

There is no provision in the CrPC for providing legal aid to the victim of a crime. Legal aid is available only to the accused.52 The Legal Services Authorities Act, 1987 entitles every person "who has to file or defend a case" to legal services.[124] A victim of crime has a right to legal assistance at every stage of the case subject to the fulfillment of the means test and the 'prima facie case' criteria. [125] The right of representation by lawyer is a constitutional right of every accused[126] and there is no reason why it should not be available to the victim as well. The Malimath Committee had also recommended that a victim has a right to be represented by an advocate shall be provided at the expenses of the State if the victim is not in a position to afford a lawyer.

Witness and Victim Protection

The Criminal Procedure Code recognizes some rights relating to witness protection but is silent on the point of victim protection. Many countries like the South Africa56, France[127] and USA58 has set up provisions for the victim protection. The Rome Statute also mandates the Court to take appropriate measures for the safety of thevictim.[128]

Victim Impact Statement

The Code of Criminal Procedure confers a right of pre-sentence hearing to accused to express his opinion about punishment but the Code is silent regarding the right of victim to narrate about the loss which he suffered due the act of accused. The victims also have some say or voice relating to the quantum of punishment declared by competent court.

[124] Section 12(1) of Legal Services Authority Act, 1998.
[125] Ss.12 (10 (h) and 13(1) of Legal services Authority Act, 1998.
[126] Article 22 (1) of Indian Constitution.
[127] Art. 2-3, 85-91, 114-121, 371-375 Code of Criminal Procedure.
[128] Art. 68(!) of Rome Statute of ICC, 2002.

The researcher tries to discuss the various hurdles in the path to give justice to victims of crime and also analyses the lacunae existing in the criminal justice system especially after the Code of Criminal Procedure (Amendment) Act, 2008. The amendment brought the number of changes to protect the rights of victim but still it is essential one to have more scope for victim to protect their rights and have a proper place and voice under the existing criminal justice system.

Chapter VI

Role of Judiciary to Protect the Rights of Victim

In the last chapter, the researcher tries to discuss elaborately functioning of the justice delivery system in India and highlights various hurdles in the path of achieving justice to victims of crime. Though the Code of Criminal Procedure has number of provisions to protect the rights of crime victims, they are inadequate to protect the interest of victims. The researcher also tries to study and discuss the features of Adversarial and Inquisitorial model of criminal justice system with an intention to study the status and position of victim. After analyzing the Criminal Procedure Code, and other substantive law, the researcher feels that the Code of Criminal Procedure (Amendment) Act, 2008 brought the important changes to protect the rights of victims of crime but still it is essential one to have more protection to uplift the status and position of victims of crime in the Indian criminal justice system.

In the present chapter the researcher tries to discuss the various judicial decisions given by the High Courts and the Supreme Court of India relating to protection of rights of victim. The Indian judiciary plays an important role to protect the rights of crime victims by way of its various decisions and directions. Judiciary has the significant function of enforcing the Fundamental rights of the people granted to them by the Constitution. Justice Untwalia has compared the Judiciary to "a watching tower above all the big structures of the other limbs of the state" from which it keeps a watch like a sentinel on the functions of the other limbs of the state as to whether they are working in accordance with the law and the Constitution, the Constitution beingsupreme."[129]

India has a unified judicial system with the Supreme Court standing at the Apex and the High Courts below it. The Supreme Court thus enjoys the top-most position in the judicial hierarchy of the country. It is the supreme interpreter of the Constitution and the guardian of the people's Fundamental Rights. It is the ultimate court of appeal in all civil and criminal matters and the final interpreter of the law of land, and thus helps in maintaining a uniformity of law throughout the country.

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme

[129]**India v. Sankalchand Himatlal Sheth, AIR 1977 SC 2328.**

Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The preamble of the Constitution of India encapsulates the objectives of the Constitution-makers to build a new Socio-Economic order where there will be Social, Economic and Political Justice for everyone and equality of status and opportunity for all. This basic objective of the Constitution mandates every organ of the state, the executive, the legislature and the judiciary working harmoniously to strive to realize the objectives concretized in the Fundamental Rights and Directive Principles of State Policy.

6. 2 Writ Jurisdiction of the Supreme Court and the High Courts

The Constitution of India confers a writ jurisdiction only to High Courts and Supreme Court under Article 226 and 32 respectively to protect the rights of people including fundamental rights. At the same time, these articles confer the right on the part of people to approach directly to the High Courts and the Supreme Court for judicial rectification, redressal of grievances and enforcement of Fundamental Rights. In such a case the courts are empowered to issue appropriate directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari to protect the rights of people. By virtue of Article 32, the Supreme Court of India has expanded the ambit of Judicial Review to include review of all those state measures, which either violate the Fundamental Rights or violation of the Basic Structure of the Constitution. There is express provision under Indian Constitution to confer the power on the High Courts and Supreme Court to declare a law unconstitutional if it is inconsistent with any of the provisions of Part III of the Constitution, [130] and this is nothing but the power of judicial review to test the legality of any law on the touchstone of Indian Constitution. Hence the power of Judicial Review exercised by the Supreme Court and High Courts is intended to keep every organ of the state within its limits and parameters laid down by the Constitution of India. It is in exercise of the power of Judicial Review that, the Supreme Court has developed the strategy of Public Interest Litigation. The right to move to the Supreme Court to enforce Fundamental Rights is itself a Fundamental Right under Article 32 of the Constitution of India. This remedial Fundamental Right has been described as "the Cornerstone of the Democratic Edifice" as the protector and guarantor of the Fundamentals Rights. It has been described as an integral part of the Basic Structure of the Constitution. Whenever, the legislative or the

[130] 2 See Article 13 of Indian Constitution.

executive decision result in a breach of Fundamental Right, the jurisdiction of the Supreme Court and High Court can be invoked.

Dr. Babasaheb Ambedkar expressed his views to mention the importance of Article 32 of Indian Constitution on the floor of parliament, "If I was asked to name any particular Article in this Constitution as the most important – an Article without which this Constitution would be a nullity–I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it."[131] It is true that a declaration of fundamental right is meaningless unless there is effective machinery for the enforcement of the rights. It is remedy which makes the right real. If there is no remedy there is no remedy at all.

The Right to Constitutional remedy under Article 32 can be suspended as provided under Articles 32(4), 358 and 359 during the period of promulgation of emergency. Accordingly, in case of violation of Fundamental Rights, the petitioner under Article 32 for enforcement of such right cannot be moved during the period of emergency. However, as soon as the order ceases to be operative, the infringement of rights made either by the legislative enactment or by executive action can be challenged by a citizen in a court of law and the same may have to be tried on merits, on the basis of that the rights alleged to have been infringed were in operation even during the pendency of the presidential proclamation of emergency. If, at the expiration of the presidential order, the parliament passes any legislation to protect the executive action taken during the pendency of the presidential order and afford indemnity to the execution in that behalf, the validity and effect of such legislation may have to be carefully scrutinized.

Under Article 226 of the Constitution of India, the High Courts have concurrent jurisdiction with the Supreme Court in the matter granting relief in cases of violation of the Fundamental Rights, though the High Court's exercise jurisdiction in case of any other rights also. Hence the High Court has wider jurisdiction than the Supreme Court. The Supreme Court observed that where the High Court dismissed a writ petition under Article 226 after hearing the matter on merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same relief filed by the same parties will be barred by the 'rule of res judicata'. The binding character of the judgment of the court of competent jurisdiction is

[131] See Constitutional Assembly Debate, vol. II, p. 953.

in essence, a part of the rule of law on which, the administration of justice is founded[132] . Thus the judgment of the High Court under Article 226 passed after hearing the parties on merits must bind the parties till set aside in the appeal as provided by the Constitution and cannot be permitted to be avoided by a petition under Article32.

Article 226 contemplates that notwithstanding anything in Article 32, every High Court shall have power, throughout the territorial limits in relation to which it exercises jurisdiction to issue to any person or authority including the appropriate cases, any government, within those territories, direction, orders or writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them for the enforcement of Fundamental Rights conferred by Part-III and for "any other purpose". Hence, the jurisdiction of a High Court is not limited to the protection of the Fundamental Rights but also of the other legal rights as is clear from the words "any other purpose". The concurrent jurisdiction conferred on High Courts under Article 226 does not imply that a person who alleges the violation of Fundamental Rights must first approach the High Court, and he can approach the Supreme Court directly[133]. But in P. N. Kumar vs. Municipal Corporation of Delhi[134], the Supreme Court expressed the view that a citizen should first go to the High Court and if not satisfied, he should approach the Supreme Court. Innumerable instances of Human Rights violation were brought before the Supreme Court as well as the High Courts. Supreme Court as the Apex Court devised new tools and innovative methods to give effective redressal.

6. 3 Emergence of Concept of Public Interest Litigation

The traditional rule is that the right to move the court is only available to those whose rights are violated including fundamental rights. A person who is not related to the subject matter of the case has no locus standi to invoke the jurisdiction of the court. But during the period of 1980s this rule of doctrine of locus standi liberalized by the competent court and allows any public spirited person to file the writ petition for the enforcement of fundamental rights and other legal rights of any other person or group of persons who are unable to approach the Court for relief due to poverty, illiteracy or unawareness. The major credit goes to great Justice Krishna Iyer and Justice Bhagwati who takes the initiative to liberalise this doctrine of locus standi and allows the petition in the form of public interest litigation. The

[132] Daryao v. State of U.P., AIR 1961 SC 1457.
[133] **Ramesh Thapper v. State of Madras, AIR 1950 SC 124**
[134] AIR 1989 SC 1285.

widening of the traditional rule of locus standi and the invention of PIL by the Court was a significant phase in the enforcement of human rights.

Lexically the expression PIL means a legal action initiated in a Court of law for enforcement of public interest or general interest or in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected…..Thus, the concept of PIL which has been and is being fostered by judicial activism has become an increasingly important one setting up valuable and respectable records specially in the Arena of Constitutional and legal treatment for the unrepresented and underrepresented.[135]

Access to justice is one of the important aspects for any human being to protect their rights. When we talk about the access to justice to weaker sections it is almost illusory one due to their poverty, ignorance and illiteracy. For weaker sections the rights and benefits conferred by the Constitution meant nothing for them as they lacked the capacity to assert their rights. The Constitution had indeed shown a great concern for the underprivileged, conferred on them many rights and entitlements and laid obligations on the State to take measures for improving the conditions of their life. Towards that end, laws were enacted and administrative programmes formulated by the State for bringing about social and economic change and ensuring distributive justice to the people. But these Constitutional edicts, legal enactments and administrative measures needed to be implemented and enforced with vigor and dynamism, creativity and imaginatively and underprivileged assisted to reap their benefits and assert their rights. Someone had toact.[136]

A survey of public interest litigations in our country shows that people have gone to Courts when they found that there was no other means of redressal. Unfortunately, the Executive in a vast number of cases was found to be no longer responsive to protests expressed by the people. The political leadership was expected to be sensitive to the urges and aspirations of the people. It was found not to be so. Matters, which have gone to Courts under PIL, were essentially of concern to numerically small and powerless minorities. Where a group of people is small and is not likely to have any organized strength to make itself politically, judicial process is preferred through PIL, which has by now come to be accepted as a new method by which, to some extent, public injuries can be redressed or the

[135] **Janata Dal v. H.S.Chowdhary, AIR 1993 SC 892.**
[136] M.C.Bhandari Memorial Lecture by Justice A.S.Anand, 2001 (7) SCC (Journal), vol.1.

Government, its agents or instrumentalities compelled to do their own duty in the interest of the citizen. This exercise by the Courts is aimed to serve the cause of justice and wean the people away from the lawless street and bring them to the Court of law - to maintain the rule of law.[137]

6. 4 Pro-active Role of Judiciary to Protect the Rights of Victim

The Indian judiciary has played a vital role to protect the rights of victim by way of their various judgments and directions. The accused enjoys various rights under Indian criminal justice system to prove his/her innocence and ultimately victim becomes the neglected object and the same thing observed by the judiciary and delivered number of judgments to protect the interest of crime victims. The view of higher judiciary to see towards the problems of victim changed during the period of 1980s. **Krishna Iyer, J. in Ratan Singh v. State of Punjab**[138], aptly highlighting the apathy of law to victim of crime, observed:

"It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature."

Again in Maru Ram's case[139], **Krishna Iyer, J.** has observed that while considering the problem of penology the Court should not look the plight of victimology and the suffering of the people who die, suffer or maimed at the hands of the criminals. Further in the judgment of **State of Gujarat v. Hon'ble High Court of Gujarat**[140], it is observed that in our effort to look after and protect the human rights of the accused or human rights of convict we cannot forget the victim or his family in case of his death or who is otherwise in capacitated to earn his livelihood because of the crime committed by convict. Hence we can say that the view of judiciary changed to see towards the plight of victim and judiciary gives number of decisions to protect the rights of victims and uplift the status of victim under Indian criminal justice system.

The victim has right to file a complaint the same should be registered by the police in the form of FIR and if the police refused to register a case the victim has right to knock the

[137] Ibid.
[138] (1974)4 SCC 719.
[139] Maru Ram etc. v. Union of India and Another, AIR 1980 SC 2147
[140] 2(1998)7 SCC 392.

door of competent court. In **Palwinder Singh v. State of Punjab**[141], the Court gives direction that police cannot refuses to register the complaint nor can this power be usurped by the Magistrate. In this case the petitioners were constructing/repairing some religious building in their village on 07-04-1995 on an authorization by the village panchayat. One Kuldeep Singh and others duly armed with deadly weapons attacked and assaulted the petitioners and others. The petitioners were admitted in civil hospital and Asst. Sub-Inspector recorded their statement but subsequently he cannot reduce that statement into FIR as he stated that there no weapon was used in the said occurrence and the statements of the three injured person were contradictory to each other. In this view the matter was doubtful and consequently a report was recorded in the daily diary. The petitioners challenged the act of ASI by way of writ petition. The Court gives above directions and firmly stated that the police should not refuse to register the complaint otherwise the object will be defeated if the police officer in charge of the police station refused to record the information as required by the Sect.154 of CrPC.

It is worthwhile to emphasis here that information to have the status of first information report under Section 154 must be information relating to the commission of a cognizable offence and it must not be vague but definite enough to enable the police to start investigation. It has also been clarified by the Supreme Court that since the word 'information' in Section 154 is not qualified as 'reasonable' it is the duty of the police to register the information under Section 154. The Punjab and Haryana rules prescribe that the police 'is bound to formally register a case and then investigate into the crime'. Moreover recently Supreme Court in **Latika Kumari v. Govt. of U. P.**[142]and Others was held that if information given clearly mentions about the commission of a cognizable offence there is no other option for the police, but to register FIR. Hence from above case law it is clear that the police authorities are bound to register the information and start the investigation to give justice to crime victims.

The victim reports the case to police station and on the basis of same report the police start the investigation to book the offender and give justice to victim. In the process of investigation it is to be supposed that the victim should be involved and he get the information of the progress of investigation but in reality the victim is unaware about the progress of investigation and also what action taken by the police at the time of filing of

[141] 1997 CrLJ 2811 (P & H)
[142] 7AIR 2013 SC 554

chargesheet. The same thing pointed out by the **Apex Court in Bhagwant Singh v. Commissioner of Police**[143] , and ruled that in a case where the Magistrate to whom a report is forwarded under Section 173 of CrPC decides not to take cognizance of the offence or takes a view that there are no sufficient grounds for proceeding against some of the persons named in the first information report, the Magistrate must give notice to informant and provide him or her an opportunity to be heard at the time the report is considered. This was reiterated by the Court in a subsequent case, Union Public Service Commission v. Papaiah[144] . Hence the higher judiciary tries to fill the gap where the Code of Criminal Procedure is silent specially when the magistrate is decided not to take any action or cognizance on the basis of repot given in charge-sheet and the same thing should inform or not to inform the informant. But now the picture is clear and the informant is entitled to know and also has right to heard about the action taken by the Court on the basis of report of charge-sheet.

The Supreme Court of India to make clearer the meaning of the term investigation gives the steps of investigation defined under Section 173 of CrPC. The Court ruled that investigation consists of the following steps : first, proceeding to the scene of crime; second, ascertainment of the facts and circumstances of the case; third, discovery and arrest of the offender; fourth, collection of evidence relating to the commission of the offence, which may consist of examination of various people acquainted with the case and search of places or seizure of things necessary for the investigation; fifth, formation of opinion as to whether, on the basis of the material collected, there is a case to place the accused before the Magistrate for trial and, if so, taking the necessary steps to do so by the filling of a charge-sheet. From above definition it is clear that there is no reason why the police cannot involve the victim in the process of investigation as it is essential one to involve the victim in the process of investigation to trace the offender and finally give justice to crime victims.

6. 5 Compensatory Jurisprudence and Protection of Human Rights

In pursuance of the recommendations of the Law Commission of India in its Forty-first Report, a comprehensive provision for compensation to the victims of crime has been provided in Section 357 of CrPC.

[143] AIR 1985 SC 1285.
[144] AIR 1997 SC 3876

According to Section 357 (1) and (3), the Court may award compensation to victims of crime at the time of passing of the judgment, if it considers appropriate in a particular case in the interest of justice.

Compensation under sub-section (1) can be ordered only where the Court imposes a fine and the amount of compensation is limited to the amount of fine. According to sub-section 357 (3), CrPC, the Court is empowered to award compensation for loss or injury suffered by a person, even in cases where fine does not form a part of a sentence.

It may be noted that sub-section (3) of Section 357 is a new provision which was not available under Section 545 of the repealed Criminal Procedure Code of 1898. The new provision is not conditioned on a sentence of fine. In other words, the power to award compensation is not ancillary to other sentence, but it is in addition thereto. There is no limit to the amount of compensation. It is left to the discretion of the Court to decide in each case depending on the facts and circumstances.

Apart from invoking Section 357 of the CrPC, the victim may approach a higher court under Section 482 of CrPC, to claim compensation, which empowers a higher court to exercise its inherent power in the interest of justice. However, the Supreme Court has not favoured invoking of such a power in view of the existing statutory provisions under Section 357 of CrPC. In **Palaniappa Gounder v. State of Tamil Nadu**[145]the court said:

"If there is an express provision in a statute governing a particular subject-matter, there is no scope for invoking or exercising the inherent powers of the court ought to apply the provisions of the statute. Hence, the application made by the heirs of the deceased for compensation could not have been made under Section 482 since Section 357 expressly confers powers on the court to pass an order for payment of compensation."

But it is pertinent to note that the trial courts have seldom resorted to the powers conferred on them under Section 357 of CrPC, liberally. Perhaps taking note of the indifferent attitude of subordinate courts, the Apex Court in the Hari Krishnan case, directed the attention of all courts to exercise the provisions under Section 357 of the CrPC liberally and to award adequate compensation to the victim, particularly when an accused is released on admonition, probation or when the parties enter into a compromise. The Court highlighted the importance of Section 357(3) of the CrPC in the following words:

[145] AIR 1977 SC 1323.

"Section 357 of CrPC is an important provision but Courts have seldom invoked it, perhaps due to ignorance of the object of it. This section of law empowers the Court to award compensation while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. This power to award compensation is not ancillary to other sentences but it is in addition thereto. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system."

Though the Apex Court expresses his view long back about the liberal use of the provisions of Section 357 but still the same position prevails in India. Unfortunately, these provisions have not been availed by the Courts to award compensation to the victims of crime except in a few cases. It is for this reason that in **Manish Jalan v. State of Karnataka**[146], the Supreme Court observed that though a comprehensive provision enabling the Court to direct payment of compensation has been in existence all through experience has shown that the provision has rarely attracted the attention of the Courts. The Supreme Court further observed that time has to come; the Courts have been again reminded that the provision is aimed at serving the social purpose and should be exercised liberally and yet the results are not very heartening. You will all agree with me when I say that our trial Courts, appellate Courts and provisional Courts must resort to this provision in Section 357 of the Code of criminal Procedure, 1973 to compensate a needy victim whether it is found that convict has a capacity to provide for such compensation.

Some time it happens that the accused don't have capacity to pay the compensation or sometime accused is acquitted or he is absconded, to overcome such situation the legislature introduced the compensation scheme to compensate such victims or dependents of victim. This is a welcome step on the part of Government to introduce such scheme to fill up the lacunae in the existing law to pay the compensation to victims of crime. But unfortunately the victim compensation scheme has still not become the rule and the Courts are also not granting the interim compensation to victims. Same thing pointed out by L. Nageshwar Rao, the Additional Solicitor General for India, assisting the Court in Suresh v. State of Haryana[147]
. It was also brought into the Court's notice that 25 out of 29 States had notified the victim compensation schemes, thereby specifying the maximum limit of compensation and leaving

[146] AIR 2008 SC 3074
[147]Criminal Appeal No.420 of 2012 decided on 28th November, 2014.

the discretion to decide the quantum of compensation with the State/District Legal Service Authorities, subject to the maximum limit. However, it was submitted that the upper limit of compensation fixed by some of the States was arbitrarily low and was not in keeping with the object of the legislation. Considering the fact and need for implementation of the victim compensation scheme, the bench comprising of **Adarsh K. Goel and V. Gopala Gowda**, JJ held that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief, thereby granting interim compensation subject to final compensation being determined later. Taking note of the aforementioned submissions, the Court further opined that there was a need to consider upward revision in the scale for compensation and that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.

A. Compensation for Murder

In murder cases, courts are of the view that true justice will be rendered only when proper compensation is provided to the dependents of the deceased. The amount of compensation awarded ranges from Rs. 10,000 to Rs.1, 00,000 or sometime more than that depending upon the number of dependents of the deceased and capacity of the accused to pay the same. The recent development is that the Court directed the State to pay compensation when the accused is poor and don't have the capacity to pay compensation. The Court in several cases directed the State to frame the compensation scheme and ultimately the Government took the initiative to insert the Section 357 in the Code of Criminal Procedure.

In Guruswamy v. State of Tamil Nadu[148], the Supreme Court awarded Rs.10, 000 as compensation to the widow and the minor children of the deceased. In this case five accused with weapons caused injuries to the deceased which resulted in his death due to a dispute over water among brothers in a family. The Supreme Court imposed a fine of Rs. 3500 on each of the accused and the same amount to be paid to the widow of the deceased. In Swaran Singh v. State of U.P.[149], the Supreme Court treated compensation as an alternative to imprisonment. On special leave petition, it upheld the conviction but reduced the sentence to the periodic ready undergone (one year) by the accused. It directed the accused to pay to the

[148] (1979) 3 SCC 797.
[149] (1998) 4 SCC 75.

widow of the deceased a fine of Rs. 20,000 by way of compensation under Section 357 of the Criminal Procedure Code.

B. Compensation for Sexual Assault

The Apex Court and High Courts passed several judgments to protect the rights of victims of sexual assault. The Court time to time gives the directions to Government to take initiative to protect the victims of sexual assault. In **Kunhimon v. State of Kerala**[150], a young rustic girl who suffered from Epilepsy and Somnambulism were raped by five persons. The High Court of Kerala states that rape is an offence of invoking extreme moral turpitude, at once displaying callous disregard for dignity of the human being and justifies the necessity of compensation to rape victims. The Court further observed that courts should enforce the conscience of law as seen in Section 357 of the CrPC. The High Court sentenced the four accused to pay a fine of Rs.3000 each and the fifth accused, to pay Rs. 10,000 as compensation to rape victim. In another case the Apex Court has come to the rescue of the victims of sexual assault by holding the interim compensation may be awarded to a rape victim even during the pendency of the criminal trial.[151] The Court further observed that unfortunately, a woman, in our country, belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have, therefore, been the victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honorable and peaceful life. Women, in them, have many personalities combined. They are Mother, Daughter, Sister and Wife and not play things for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by Nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.

Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the

[150] 91988 CrLJ 493.
[151] Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490.

society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and also a violation of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of Indian Constitution. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects. Finally Court directed to Bodhisattwa gautam shall pay to Subhra Chakraworthy a sum of Rs. 1000 /- every month as interim compensation during the pendency of criminal case and also directed the petitioner to pay arrears of compensation at the same rate from the date on which the complaint was filed till date.

Hence the Court emphasis the necessity of adequate compensation to the victims of sexual assault for the loss of reputation, agony, torture, misery and the deprivation of the prospect of marriage and settling down to a serene family life. In Delhi Domestic Working women's Forum v. Union of India, [152] the Court held that a Criminal Injuries Compensation Board should be constituted for the award of compensation whether or not convicted has taken place. To espouse the pathetic plight of four domestic servants who were subjected to indecent assault by seven army personnel in a train, the Delhi Domestic Women's Forum filed a writ petition in the Supreme Court under Article 32 of the Constitution of India. The forum urged the Supreme Court to spell out the parameters on expeditious conduct an investigation of trial including compensation to victims of rape. The Apex Court seriously takes the note of entire matter and finally gives the broad parameters to protect the interest of victims of sexual assault.

(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.

[152] 1(1995) 1 SCC 14.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4)A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5)The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the police station before leave of the court was sought or obtained.

(6)In all rape trials anonymity of the victim must be maintained, as far as necessity.

First time the Apex Court gives detail guidelines to protect the rights of Victims of sexual assault and clearly spell out the necessity of legal help and assistance at the time of filing first information report and also to compensate such victims. To understand the agony of rape victims, a Division Bench comprising Justice Kuldeep Singh and S. Sagir Ahmed observed:

6. 6 Emergence of Khap Panchayat and Role of Judiciary

The Supreme Court gives various directions to protect the rights of woman and to establish the rule of law by curtailing the powers and emergence of Khap Panchayat and Village Panchayat which are curse to humanity. The recurrence of such crimes has been taken note of the Court in variety of cases and seriously condemned such matter where the persons are tortured in the name of caste, gotra, religion and sometime such cases result into honor killing. The society divided on the basis of caste and religion which is harmful to unity and integrity of nation and also results into violation of human rights. In **Lata Singh v. State of U.P. and Others**[153], the Court held that:

[153] (2006) 5 SCC 475.

"The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation united. Hence, inter caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news is coming from several parts of the country that young men and women who undergo inter caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law."

The important contribution of higher judiciary which we can't ignore is that to evolve the compensatory jurisprudence to give compensation to victims of crime or dependents of victim. We can say that the evolution of compensatory jurisprudence is the classical example of judicial activism where the Court gives compensation for the violation of fundamental rights including the violation of basic human rights. In India, there is no separate law to give compensation to victims of crime and that is the reason the credit goes to higher judiciary to develop such law to pay compensation to different types of victim. The higher judiciary gives directions time to time that the Court should be liberally use the statutory provisions specially Section 357 (3) of CrPC while giving compensation to victims of crime or dependents of victim. The legislature finally takes the initiative to insert the compensation scheme through Criminal Procedure Code (Amendment) Act, 2008 to give compensation to victims or dependents of victim. The scheme is made applicable to the victims irrespective of the outcome of the prosecution. This is a welcome step on the part of Government to introduce such scheme, but at the same time it is equally important one that the Central Government

should provide funds for such scheme and develop coordination with State Governments to raise the funds to pay compensation to victims or dependents of victim. No doubt the failure or success of this scheme will depend upon in what way Government will implement this scheme to protect the interest of victims.

CHAPTER – VI

CONCLUSION AND SUGGESTIONS

The plight of victims of crime has always been of interest to society. This is evidenced by the importance given to the victim by the media, which attempts to highlight the trauma that the victim suffers, sensationalizing during the process of criminal justice system in India. However, when one examines the role of the victim in the criminal justice system, especially in Countries that follow the adversarial system, it appears that the society seeks to sympathize with the victim, but does not consider it important enough to give the victim a role in the prosecution of the crime committed against him or her.

It has to be recognized that the victim is one of the pillars of the criminal justice system and that without the co-operation of the victim the system will collapse. The Justice Malimath Committee, [154] which was established by the Government of India to suggest reforms to the criminal justice system, states that support of victims and witnesses will not be forthcoming unless their status is considerably improved, and hence there is a need to reform the law to this extent. Similarly the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985[155] by the United Nations General Assembly states that victims of crime and their families are unjustly subjected to loss, damage or injury and that they may suffer hardship when assisting in prosecution of offenders. Keeping this in mind, the United Nations envisaged a more prominent role for the victim.

When we try to trace the history of criminal justice system, we found that, victims of crime received better justice before the formal criminal justice system developed in the world, as the offenders were always asked to pay compensation to the victims in proportion to the amount of damage or injury caused. Later, in the course of the development of the State and its responsibility to preserve peace and protect the citizens from the onslaught of crime, the victim become a "forgotten person" and justice was gradually meant to establish the guilt of the accused and punish the offender if the guilt was proved. In the whole process, the victims had no significant role except to serve as a primary witness during the trial of the case. Victims have to be content with the punishment of the offender, which depends to that of prosecution succeed in proving the offence.

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[154] 1MallimathV.S.(2003),ReportoftheCommitteeonReformsoftheCriminalJusticeSystem,NewDelhi.
[155] U.N.Doc GA Res. 40/34 (1985)

During the middle of the twentieth century, the administration of justice, particularly after formulation of the Universal Declaration of Human rights, 1948 laid emphasis in protecting the human rights of the accused and the prisoners. As the crime committed by offender treated as the offence against society or state and it becomes the duty of the state to protect its citizen by inflicting punishment to offender. Hence there are chances of scapegoat on the part of accused as he is fighting against State to prove his innocence and on another hand State uses its all machinery to punish the accused. So to make a balance the accused enjoyed many rights including fundamental rights to prove his innocence and the real sufferer i.e. victim becomes the neglected object and subject under the criminal justice system.

In 1980's again the attention of jurist shifted on the plight of crime victims as they fill how the victim becomes neglected object and subject under criminal justice system. During this period the new branch of study emerged in the form of victiomology and the major credit goes to Benjamin Mendelsohn and Hans von Henting, the pioneers in Victimology. These jurists brought to the forefront a new perspective on the role of the victim in the proceeding and how the criminal justice system failed to give justice to victims. Since then, crime victims and their position in the criminal justice system has become a subject of intense research by scholars of different disciplines. Many researchers have exposed that the crime victims does not get proper treatment throughout the world.

The movement at different parts of the world to uplift the position and status of victim compel the United Nations to take the cognizance and do some needful in the interest of victim and finally United Nations passed the resolution in the form of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 to protect the rights of victims and conferred the rights in the form of access to justice and fair treatment, restitution, compensation and assistance and hence this declaration treated as 'Magna Carta' of crime victims. The crime victim thus receives the right to respect and acknowledgement at all levels of the criminal justice system, the right to receive continual information about how the case is proceeding, the right to give information to those responsible for decisions regarding the criminal, access to legal counsel, protection of personal integrity and physical security and the right to economic compensation. In addition, it states that an officer of the court shall be trained in ways to meet the needs of victims. This is a welcome step on the part of U.N.to

protect the rights of victims and ultimately it encourages the different countries of the world to take proper initiative to protect the rights of victims of crime.

The Council of Europe has also taken measures to protect and strengthen the human rights. The foundation for the Council's work is the European Convention on Human Rights, with its beginning in the 1950s which deals with the protection of human rights and fundamental freedoms. In 1985, the Committee of Ministers issued a more specific recommendation to Member States titled "On the Position of the Victim in the Framework of Criminal law and Procedure."3 The recommendation contains guidelines for member states prosecution, sentencing and penal organizations. These guidelines include the responsibility of the Government to provide help and support to crime victims, including information, compensation and protection of personal integrity.

In recent years we have seen that the European Union taking more interest in the situation of crime victims. European Union always tries to make a comprehensive legislation to protect the crime victims and ultimately on October 4, 2012 the European Union made history by adopting new directives to establish minimum standards for the rights, support and protection of victims of crime across 27 sovereign nations. These countries include such major nations as England and Wales, France and Germany.

The International Criminal Court includes a number of innovative victim provisions on recognition, participation, protection and assistance and reparations. In terms of which individuals can avail of the victim provisions before the court. The International Criminal Court conferred various rights to victims of crime where such rights never before conferred to protect the rights of victims. Hence we can say that International agencies did a nice job to protect the rights of victims.

The countries like United States of America passed the separate Act in the form of Crime Victims' Rights Act (CVRA) on Oct. 30, 2004 to protect the rights of victims. The CVRA establishes the rights of crime victims in federal criminal proceedings and provides mechanisms for victims to enforce those rights and also give victims a greater role in the criminal justice process.

In U. K., in 1964 the Criminal Injuries Compensation Board established to give compensation to victims of crime. The U. K. enacted separate Act i.e. The Criminal Justice Act, 1988 to give compensation to crime victims and moreover the Code of Practice for

Victims of Crime were first issued in 2006. The Code sets out the services the victim can expect to receive from each of the criminal justice agencies, like the police and the Crown Prosecution Service. The Code of practice for Victims of crime subsequently revised and reissued in October 2013 to make the Code more user friendly for victims, to make it more outcome-focused rather than process-oriented and to give good effect to the requirements of the Directive. This revised Code reissued only for the fulfillment of minimum standards for the rights, support and protection of victims of crime established by European Union.

The Civil law countries like Germany, Austria and Switzerland have separate legislations to protect the rights of victims. In Germany there is Victims Right Act, 2004 and in Austria, the Criminal Procedural Reform Act, 2008 confers various rights to crime victims, such as the right towards the police, the public prosecution and the court.

French criminal proceedings are mainly inquisitorial; however they also include adversarial elements so as to reach a balance between the rights of the defence, the rights of the victim and those of society as a whole. In this system the victim is the full-fledged party of a case, and he or she also acts as a civil party to claim compensation from accused for the loss which he or she suffered. The victim enjoys a more formal status and role within the investigation and trial phases in French criminal justice system.

In Canada, there are both federal and provincial laws that apply to victims. In federal legislation, victims' rights are recognized in the Criminal Code and in the Corrections and Conditional Release Act. The service charter for Victims of crime in South Africa (also referred to as the Victims Charter) is an important instrument that promotes justice for victims of crime in South Africa.

In India we follow the adversarial system of common law from the British. In this system, the accused is presumed to be innocent till his guilt is proved beyond reasonable doubt and the burden of proving his guilt lies on the prosecution. The accused also enjoys the right of silence and cannot be compelled to answer the queries. The judge decides whether the prosecution has been able to prove the guilt of the accused beyond reasonable doubt or not. Though the system per se, seems to be fair but from the victims perspective it is viewed as heavily loaded in favour of the accused. The victim who is a part of the crime often plays an esoteric and not an exoteric role. The victim has hardly any role to play in the entire proceedings except that he may be examined as a prosecution witness. This indifference is fast eroding the faith of society and the victim in the criminal justice system.

In India on one hand, an accused is treated as a privileged person and is provided with all possible help including a defence lawyer and that too at the expense of State. After his conviction, stress is laid on reformation and humane treatment to offenders. On the other hand it is strange to see that the State, which seeks retribution in the place of victim for the maintenance of law and order in the society, forgets about the fear, trauma and hardships, which a victim undergoes after crime.

In India there are no provisions in the existing law to help and support the victim or allow him any participation in the enquiry or investigation of crime. The investigation process is exclusively a police function and victim has a role only if the police consider it necessary. In fact, assistance of the victim might help the police in the process of investigation. However, practice reveals that once the statement of the victim is recorded, the case is completely within the control of the police and they do not involve the victim in the investigative process at all. After the commission of the crime against him and till the actual trial begins in court, he is at the mercy of the State and the society. The victim requires greater help and support soon after commission of crime. At that initial stage the victim needs medical treatment, psychological support and legal aid.

The victim does not get any information about the progress of case and he also doesn't have any right to participate in the prosecution as the prosecutor appointed by the State is the proper authority to plead on behalf of the victim. However, victim has right to engage a lawyer who has limited role in the conduct of the prosecution, that too only with the permission of the Court and to act under the directions of public prosecutor. In view of Section 301(2) and Section 24(8) of CrPC the victim has right to engage a lawyer to assist public prosecutor and special public prosecutor respectively and such lawyer has right to submit written argument to the court with their permission.

The victim does not get fair chance in the existing criminal justice system as it is the prosecution agency who is authorized to plead on his behalf. This action ultimately hampers his personal interest in the prosecution of the case. In a way even if he desires or intend he cannot play a lead role in the prosecution. Somehow his role is subsidiary and subservient to the prosecution agency.

The victim is the person who brought the criminal law in motion as once he reports a crime to police, then he interacts with the constituent elements of criminal justice system i.e. police, lawyers and court. When we try to understand the experience of victim with all these

Professionals operating the system, we found that there is a formation of definite attitude on the part of victim towards all of them. The police authorities are not co-operating them in proper manner and they do not necessarily value them as an important part of criminal justice system nor offer any kind of support. The victim may get the same kind of experience when he interacts with prosecution lawyer and the victim felt that their interests were not being represented by prosecutors.

The Criminal Law (Amendment) Act, 2008 granted some rights to victims which uplift the status of victim under Indian Criminal Justice System but still there is a scope to build the laws relating to the rights of victims. The criminal justice system in India substantially occupied with many safeguards and protections to the accused. The Legislature must look into the recommendations made by the Malimath Committee and the Law Commission of India. The Legislature should also look into the laws of the various countries to strengthen its laws concerning to rights of victim.

Dispensing justice to victims of crime cannot any longer be ignored. The introduction of more victim rights will encourage victim participation and thus victim involvement can help to restore a sense of control and enhance their faith in the criminal justice system. So the time has come where consideration must, must and must be given to the victim of crime - to the one who suffers because of crime.

In the light of above conclusion the researcher likes to give following concrete suggestions to improve the plight of victims under the Indian criminal justice system.

1. Victims should be treated with compassion and respect for their dignity and privacy and should take precaution so as to avoid any inconvenience to the victim during the course of whole proceeding.

2. The victims should be entitled to get the information about timing and progress of the proceedings and of the disposition of their cases. The victims have easy access towards the prosecution agencies so that victim can assist them right from inception of the case.

3. Victims should allow to express their views and concerns at appropriate stages of the proceedings and he/she should be allowed to participate actively and fairly at all levels of the criminal justice proceeding with a right to intervene at any stage of directly or through counsel of his/her choice without prejudice to the rights of the accused.

4. Victims should be allowed to offer suggestions with respect to the investigation of the case specially when the police authorities or investigation officer does not care or ignore about their suggestions. The victim should be given the power to move the court for appropriate directions to ensure proper investigation of the case.

5. It is also suggested that, in cases of non-cognizable offences, instead to send the victim/informant to the magistrate to file a complaint, the police themselves record the statement and pass the statement to magistrate, so the police will become the single point for victim/informant to approach and time of magistrate will save to record the statement personally, hence the magistrate pursue the recorded statement to take a decision whether the case ought to be investigated or not.

6. It is suggested that in cases of plea-bargaining, the victim should be authorized to participate along with his counsel in the process of mutually satisfactory disposition even in the cases instituted on police report.

7. Victims of crime have some voice or say on the sentencing of accused, so there is an urgent need for enactment of a provision under Criminal Procedure Code like "victim- impact statement" or "victim-personal statement" which prevails in U. S. A., U. K. and New Zealand which allows the victim or relatives of victim to narrate about the loss which they suffer due the act of accused and same should be considered by the competent court while awarding punishment to accused.

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